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SACRED BOUNDARIES: LOCAL OPTION LAWS IN ONTARIO

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Abstract

The laws of Ontario operate on the principle that individuals should govern their own conduct unless it affects others adversely. The laws are created to protect individuals and their property and to ensure that citizens respect the rights of others. However, laws are protected and entrenched which defy this principle by permitting and fostering intolerance.

This thesis addresses the local option laws of Ontario's liquor legislation which protect and legitimize invasion of personal liberty. These laws permit municipalities to prohibit or restrict retail sale of liquor within their boundaries by vote or by council decision. Local option has persisted throughout Ontario's history and is unlikely to be abolished despite the growing acceptance of liquor in society.

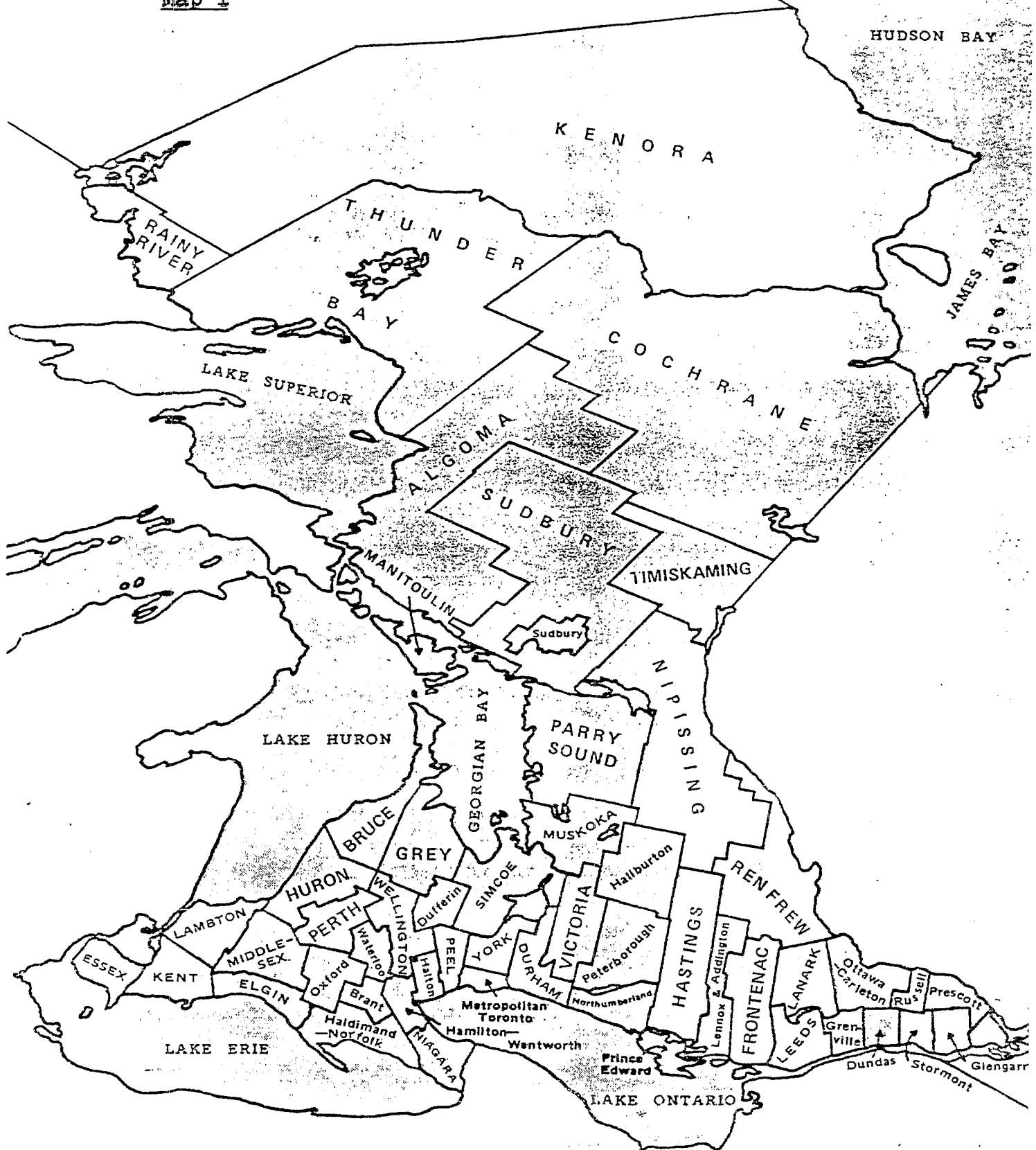
To explain the longevity of these laws, J.R. Gusfield's approach to understanding moral crusades is used. Local option laws have become symbols of the status and influence of the sober, industrious middleclass of the 1800's who founded Ontario. The right to control drinking reassures people who adhere to the traditional values that their views are respected in society.

John Stuart Mill's proposed guidelines for handling potentially harmful commodities, like liquor, are revealed as being consistent with the intention of Ontario's liquor laws but inadequate for symbolic issues. If tolerance of personal liberty is to be achieved, then the issues must be transformed from

evocative ones into quiescent ones. The study of local option is used to assess how a symbolic issue can be recast to induce people to tolerate the self-regarding pursuits of others.

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THE PROVINCE OF ONTARIO

IN COUNTIES, DISTRICTS, REGIONAL
AND DISTRICT MUNICIPALITIES*

*Perly's Detail Atlas: Province of Ontario. Perly's
Variprint Ltd., Toronto 1978, p. 3.

Preface

Few areas of law are invested with a significance as deep-rooted as that of the local option laws of Ontario. The local option provisions give municipalities the right to prohibit the sale of liquor within their boundaries and have not been altered since the reinstatement of local option in 1927, after its suspension during prohibition. In that year the Ontario Temperance Act prohibiting the retail sale of liquor in the province was repealed, but the municipal by-laws, which had prohibited liquor retail prior to the implementation of the Ontario Temperance Act, remained in effect. Municipalities retained these by-laws and their "dry" status until a sixty per cent majority favoured their repeal and the retail sale of liquor within their boundaries. Since 1927, those municipal boundaries of 1916 have been retained as the legal ones for liquor votes. If a municipality or a portion of one is annexed by or amalgamates with another municipality, then that area retains its liquor status until it is altered by a plebiscite in which only the residents of the area are eligible to vote.

Local option has resulted in a complex and confusing system of licensing in Ontario because a municipality can have a variety of liquor statuses within its different sections. Despite the complications and the increasing costs of votes, record-keeping and supervision of local option areas, the liquor boundaries have not been realigned with the political

ones, nor have the statuses of "dry" areas been altered to correspond to the status of the municipality of which they are a part. The provincial government has publicly declared that it will respect the liquor status of these areas and will not interfere with the local option boundaries. The refusal of government to implement policy changes in this area is indicative of the significance of local option.

Local option has acquired a symbolic meaning during its long history as a law in the province. It has persisted because of what it once represented and continues to symbolize to an element of Ontario's society. Local option is a symbol of the values embraced in Ontario in the nineteenth century: the values of sobriety, piety, industry and self-control. As these values have been replaced by more permissive ones and by an attitude that is tolerant of the moral weaknesses of others, the people that believe in them have adhered to laws which reflect these values. Because these people increasingly identify the law as a protector of their standards of conduct and morality, they resist changes to the law which would make it more consistent with the popular values and morality in society. By retaining these laws like local option in their communities, these people are able to create and perpetuate the society they want to live in. The laws allow them to believe that their definition of morality and respectability is still valid and accepted.

This thesis examines local option and the meanings it has acquired. It offers an interpretation of the present law

and its history to explain its persistence as an issue of importance in Ontario's history and then investigates the handling of this law that is invested with a very special meaning for some people. The purpose of this thesis is to elicit an understanding of local option as a status and symbolic issue and to facilitate a comprehension of how issues that are so evocative must be handled if the rights and feelings of people in society are to be respected.

Chapter one gives an overview of the major ideas expressed in the thesis. It presents the Ontario liquor legislation as being consistent with the liberal principles that John Stuart Mill outlined for handling desired but potentially dangerous commodities. The anomaly in this legislation is local option because, unlike liquor legislation and Mill's principles, it allows people to interfere with the personal liberty of others. It legitimizes the prohibition of retail sale of alcohol in communities. Mill's guidelines are used to determine the way that liquor should be handled in a society founded on liberal democratic principles. Because Mill's standards are framed for instrumental issues and cannot be applied to local option since it is invested with a symbolic meaning (and tolerance is antithetical to its meaning) and its advocates will not willingly abide by them, his standards are presented as the goal to be attained through adept handling of symbolic issues like local option. The nature of a status and symbolic issue is then presented in anticipation of chapter three.

Chapter two explains what local option is and how it op-

erates. In the second part of the chapter, the legal history of local option is traced to illustrate the longevity of the issue and how the present law developed. This chapter is intended to provide the reader with a fundamental understanding of local option as a law in order that it can be explained in chapter three.

Chapter three offers an explanation for the persistence of local option as an issue. It illustrates that local option has not been altered directly in spite of the major changes made to other areas of the liquor legislation in recent years. The second section of this chapter is an interpretation and exposition of views on the history of local option. It portrays it as a status and symbolic issue and offers this explanation for its longevity and the lack of changes made to it.

why

Why no changes have been made

Local option is compared to other related laws in chapter four to ascertain whether or not it is handled in an unique manner. The comparison is made in three areas: liquor legislation in general; other municipal boundary laws; and a symbolic law which has been closely related to local option, Sunday legislation. Although local option is handled in a manner that is similar to Sunday laws, it retains an uniqueness. It is accorded a special status.

The manner of dealing with local option effectively and in such a way as to reduce its political intensity and symbolic meaning is the focus of chapter five. This chapter returns to Mill and illustrates why his guidelines for dealing

with potentially harmful commodities and with areas in which people have a propensity to interfere with the actions of others, are inadequate when these areas acquire symbolic meanings. The chapter then explores the ways of handling laws in symbolic areas to increase the possibilities of people tolerating the conduct of others which they may find offensive but does not directly affect them.

To understand a law that has persisted as long as local option has, it is necessary to explore the past and present, the facts and interpretations as well as the instrumental and symbolic meanings. Once this understanding is acquired, then the means of maximizing the benefits of this law to society become clear. This thesis illustrates how local option can be transformed so that feelings of "wets" and "drys" are both respected and tolerated.

How both views can be tolerated!

Sacred Boundaries

The current liquor legislation of Ontario allows citizens to govern drinking behaviour in society. It respects the individual choice of whether or not people wish to drink and only interferes with abuse of alcohol. The liquor laws reflect the liberal principles espoused by such political philosophers as John Stuart Mill generally. The notable exception to the liberal or Millian nature of the laws is local option.

The local option laws of Ontario permit individuals to interfere with the personal liberty of others. Because this is a significant departure from the rest of the legislation, it is necessary to ask why local option has been retained throughout Ontario's history, especially in the present times when abstinence is the exception and not the rule of conduct.

This chapter is intended to establish the basis for answering that inquiry. It will first examine the liquor legislation in relation to the guidelines that John Stuart Mill proposed for dealing with commodities like liquor. Because local option is an anomaly in the legislation, the argument of J.R. Gusfield for interpreting moral reforms (local option) as a status and symbolic issue will be examined. This interpretation will then be used in chapter three to obtain an understanding of local option and the reasons why it has persisted as a law. Local option shares many of the characteristics of other reform movements, therefore, it will be discussed in re-

lation to some of the movements which closely resemble it in terms of supporters and meanings. The solution for handling local option issues will be formulated to apply to similar issues. John Stuart Mill's standards are chosen to apply to this issue because his principles are very similar to those embedded in Ontario's liquor legislation. His work provides the theoretical framework for the interpretation and solution to this issue. *L proposes a solution to problem*

Ontario's system of liquor control reflects the guidelines for handling potentially harmful commodities that John Stuart Mill claimed were consistent with the liberal tradition of liberty and equality. Mill perceived liquor control as a preferable alternative to prohibition. In his estimation, the principle of choice was necessary to preserve to the utmost *used to choice* --until someone's choices began to harm another or society. Mill argued that each adult should have the right to govern himself and his conduct in society because each individual was the best judge of what was good for himself.¹ The Control system operates on these premisses and allows people to choose *same with* to drink or not and to what extent. It restricts this choice to people who are considered rational, adult members of society and denies it to people who abuse that choice excessively, or are considered too young to decide for themselves.² The purpose of the Control system is to provide access to drinking and to protect the liberty of individuals but not to interfere with the activities of individuals unless they endanger others.

Mill stresses that this is a necessary principle that society should use in determining whether or not it should interfere with an individual:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.³

Society should not interfere with anyone if his conduct does not harm others. The most that society can do is to reason or remonstrate with the individual pointing out the dangers in that line of conduct. The law should not prohibit him from behaving as he chooses but should allow him to behave as he desires and only prevent him from interfering with this parallel right of others.

This rule for the determining the legitimate extent of authority over individuals in society is only applicable to full members of a civilised society:

this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others must be protected against their own actions as well as against external injury.⁴

Mill continues to say that these people must be compelled to

do things which are good for them until they are "capable of being improved by free and equal discussion." ⁵ This point of maturity is attained when they have been sufficiently educated to discern what is best for them. But once a person reaches the age of majority, then coercion can no longer be used. ⁶ Mill claims that society has had its chance to instruct members as to what it considers proper and cannot interfere if the member chooses to refuse its customs and advice.

Mill defines two types of actions based on the legitimate extent of authority society has over an individual. The first type is other-regarding actions. These actions may be controlled and the individual may be punished for them when they are prejudicial to the interests of others. If these actions affect the rights of others or harm them, then society is justified in punishing the actor by law. But if the acts of an individual are "hurtful to others, or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights" ⁷ then the offender may only be punished by opinion. Because individuals owe an obligation to society for protecting them, they must respect the rights of others and help defend the society from injury and molestation, and respect the welfare of others. If an individual chooses to ignore these responsibilities, which are crucial to the maintenance of a peaceful society, then he must be punished.

Mill designates the second type of actions "self-regarding".

These actions may not be interfered with by others. Conduct which is self-regarding "affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences."⁸ These actions may only affect others "with their free, voluntary, and undeceived consent and participation."⁹ If others are implicated without their consent, then the action becomes other-regarding and is punishable. Usually, self-regarding actions only affect the individual directly and then affect others through him.

According to Mill, self-regarding actions are not injurious to others directly but "may be proofs of any amount of folly, or want of personal dignity and self-respect."¹⁰ Mill does not censure such acts because they are not evil. They can be tolerated because unlike other-regarding actions they are not the result of a harmful, immoral character. The self-regarding actor is not encroaching on the rights of others nor is he harming or cheating anyone by pursuing his preferred conduct. Even where actions have been proved as injurious to happiness they should not be prohibited. Mill asserts that individuals should consider what experience has revealed but whether or not they accept the lessons of experience is their discretion. Others must abide by their decision.

Self-regarding actions must be tolerated, however this

does not mean that others should participate in the activity, nor that they must associate with the actor. People reserve the right of association with an individual who is acting distastefully or contrary to their standards. They may avoid such a person provided that their avoidance is not intended to punish him nor to coerce him into conforming.¹¹ He does not become an enemy, only a person to be let alone. Conversely, this individual cannot expect society to associate with him if they disapprove of his conduct. He must accept avoidance as a consequence of his actions. Mill explains that this is unavoidable because:

[t]hough doing no wrong to anyone, a person may so act as to compel us to judge him, and feel to him, as a fool, or as a being of an inferior order, and since this judgement and feeling are a fact which he would prefer to avoid, it is doing him a service to warn him of it beforehand, as of any other disagreeable consequence to which he exposes himself.¹²

Out of a feeling of disinterested benevolence, others should advise the individual before judging and avoiding him. People should also caution others against associating with this person if they think the individual will have an adverse affect on them. Interference is limited to advice not punishment in self-regarding actions.

Self-regarding actions become other-regarding when, "by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons."¹³

The case then:

is taken out of the self-regarding class, and becomes amenable to moral disapprobation in the proper sense of the term. If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated, and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagance.¹⁴

The distinction that Mill is making here is that whether or not the action is wrong is not important, the consequences of it are and thus, must be punished. Where damage or definite risk of damage to others exists, an action becomes other-regarding.

Mill addressed the question of how to apply these standards to drinking directly. He labelled prohibitory measures as "infringements on the liberty" of individuals in society.¹⁵ Drinking, or even becoming intoxicated is not a punishable act because it falls into the self-regarding class of activities. He stipulates that:

No person ought to be punished simply for being drunk, but a soldier or a policeman should be punished for being drunk or duty. Whenever, in short, there is a definite damage or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.¹⁶

The act of drinking does not warrant interference with others, only a breach of duty does. The policeman, or someone else can only be punished when his actions become other-regarding.

To punish an individual for actions which are self-regarding would result in that individual pursuing the activity illic-

itly. Mill argues that it is only by allowing potentially harmful commodities to be sold legally that restrictions can be placed on sellers, and that accepted standards are met. Interfering in liquor trade and retail is not a violation of liberty: "The interest, however, of these dealers in promoting intemperance is a real evil, and justifies the state in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty."¹⁷ It is the responsibility of the state to ensure that the dealers do not encourage others to harm themselves in order that they (the dealers) may profit. This type of encouragement becomes other-regarding.

The legitimate restrictions on the sale of these commodities should not be prohibitory but should prevent abuse. Mill deems policing of public resorts as a legitimate form of interference because offences against society often originate there.¹⁸ He approves of regulated hours of opening and closing and limitation of licences to people of respectable and responsible characters. It is a legitimate exercise of authority to close a public resort if these standards are violated or it becomes a rendezvous for people planning offences against the law. However, the limitation in number of such places as beer and spirit houses to render liquor unattainable and to diminish temptation is a violation of liberty. A restriction of this nature,

not only exposes all to an inconvenience because there are some by whom the facility would be abused, but is suited only to a state of society in which the labouring classes are avowedly treated as children or savages, and

placed under an education of restraint, to fit them for future admission to the privileges of freedom. This is not the principle on which the labouring classes are professedly governed in any free country.¹⁹

To limit outlets in number or by such means as taxation is wrong because it denies individuals the right to govern themselves and gives them the status of children or savages.

J. S. Mill's principles underlie the present liquor legislation in Ontario. The purpose of the Liquor Control Board is to establish liquor stores and outlets in compliance with the licence act and to ensure that the quality of liquor manufactured is acceptable. It is concerned with the revenue generated from liquor sales. The purpose of the Liquor Licence Board is to issue licences and ensure that licencees meet the standards established by the government. The boards are not intended to prohibit liquor or make access to it difficult but to make it available to the public with control over the interests of dealers. Drinking is not condemned unless it becomes an other-regarding and harmful activity. Hence, individuals who violate the laws or their familial and social obligations while under the influence of alcohol may be interdicted from drinking. Section 35 of the Liquor Licence Act, 1975, states that:

Where it is made to appear to the satisfaction of the Board that a person, resident or sojourning in Ontario, by excessive drinking of liquor, misspends, wastes or lessens his estate, or injures his health, or interrupts the peace and happiness of his family, the Board may make an order of interdiction prohibiting the sale of liquor to him until further ordered.

The individual is affecting the interests of others prejudicial-

ly. Therefore, he may legitimately be prohibited from buying liquor. If the individual is an alcoholic, then he may be sentenced to up to ninety days in a detoxication centre.

The liquor legislation is intended to encourage individuals to exercise self-restraint and choice. Liberty in this activity is tolerated in general. However, local option is not based on tolerance and contradicts the liberal nature of the liquor laws. Local option allows individuals in society to inflict their morality on others and to interfere in a self-regarding activity. Despite the general trends of the liquor legislation and society towards becoming more permissive, local option remains a prohibitory law. It defies Mill's principles by making access to liquor outlets more difficult.

Local option originates from what Mill would censure as "one of the most universal of all human propensities," namely "to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual."²⁰ It is this tendency in humans which causes them to attempt to make others conform to their beliefs, customs and opinions. Mill condemns this human trait because it is one of the most difficult to control and the most dangerous:

this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by any-thing but want of power.²¹

Hence, this propensity to interfere with others is founded upon the best and worst sentiments. Because evil intentions can be disguised as good, this disposition to encroach on others is very dangerous and must be restrained.

Mill suggests that a strong barrier of moral conviction against the propensity to encroach on the rights of others, could prevent this "mischief" from growing.²² However, this solution is difficult if not impossible to implement in many instances. Individuals often refuse to respect the choices of another and avoid that person, parade their dislike of him, or attempt to change his behaviour through social and legal coercion. [When a society becomes polarized over ideas of conduct, the tendency of a group to interfere with another is heightened.]

Because this propensity is detrimental to Millian liberal principles encompassed by Ontario's liquor laws, it is peculiar that local option is retained. Local option permits people to submit to this tendency and not control it. Attempts to prevent prohibitionists from interfering with drinkers are not successful. The abstainers do not acknowledge drinking as a legitimate area of personal liberty; they interpret it as other-regarding. Instead of outlawing this interference and coercing abstainers to tolerate the conduct of others, the law symbolically legitimizes the conduct.

In Symbolic Crusade, J.R. Gusfield examines this propensity in the Temperance movement. He offers an interpretation of moral reform as a symbolic and status issue within a social and political context:

issues of moral reform are analyzed as one way through which a cultural group acts to preserve, defend, or enhance the dominance and prestige of its own style of living within the total society.²³

Groups attempt to reform others in order to reassure themselves of their dominance in society. They interfere with others because they believe that their inclinations or opinions are correct and that they are helping others by inducing them to accept these standards.

Gusfield notes that the tendency to dominate over the habits of others becomes more pronounced if an established group in society feels that its values and standards are being replaced by new ones. During the crusades for prohibition, the abstinent protestant native middleclass felt that their way of living was being threatened by the drinking immigrant, Catholic working class. Drinking became the symbol of the differences between the two groups. Gusfield analyzed the social conditions which makes the drinker's actions particularly irritating to the abstainer and aggravates the need to reform him:

These conditions are found in the development of threats to the socially dominant position of the Temperance adherent by those whose style of life differs from his. As his own claim to social respect and honor are diminished, the sober, abstaining citizen seeks for public acts through which he may reaffirm the dominance and prestige of his style of life. Converting the sinner is one way; law is another. Even if the law is not enforced or enforcable, the symbolic import of its passage is important to the reformer. It settles the controversies between those who represent clashing cultures. The public support of one conception of morality

at the expense of another enhances the prestige and self-esteem of the victors and degrades the culture of the losers.²⁴

The abstainer sees the traditional values of the culture upheld as the valid ones and the new values rejected when laws or public acts support his position. For abstainers in the United States and Canada, prohibition was the ultimate confirmation of their style of living. In Ontario, local option remains a confirmation of the traditional lifestyle of the old, sober middleclass, in a society that does not view abstinence as a mark of respectability and self-control.

Reformers in symbolic issues usually lack an economic incentive which makes their actions perplexing to others:

Typical of moral reform efforts, Temperance has usually been the attempt of the moral people, in this case the abstainers, to correct the behaviour of the immoral people, in this case the drinkers. The issue has appeared as a moral one, divorced from any direct economic interests in abstinence or indulgence.²⁵

In local option cases, the reformers (abstainers) do not gain monetarily from their actions. They only gain in symbolic terms; by seeing their way of life preserved. In many instances though, organized opposition to the abstainers does originate in economic interests. Indulgence in liquor means higher profits to restaurant and lounge owners. However, the actions of this group are usually restricted to encouraging people to drink, not in "reforming" abstainers.

Gusfield's interpretation of reform movements as a status defence has been subject to criticism.²⁶ Roy Wallis claimed that Gusfield's argument was fundamentally flawed because pro-

hibitionists cannot be viewed as sharing a status concern and therefore, the conclusion that this was their motive for obtaining legislative reform is misleading. Wallis does not offer an alternate explanation for their actions although he does agree with Gusfield that the effect of the legislation was not instrumental. The main thrust of Wallis' and other people's criticism is that Gusfield concentrates on the status motives to the exclusion of other equally valid ones.

Gusfield does not exclude other motives or ignore their importance. He concentrates on the status aspect of moral reform because it is worthy of study apart from other motives and has not been explored to the same depth as religious, social and economic reasons. In Symbolic Crusade, Gusfield explains that:

Our attention to the significance of drink and abstinence as symbols of membership in status groups does not imply that religious and moral beliefs have not been important in the Temperance movement. We are not reducing moral reform to something else. Instead we are adding something. Religious motives and moral fervor do not happen in vacuo, apart from a specific setting.²⁷

Other factors are not discounted but acknowledged. Gusfield's work is not intended to be a definitive history of a moral reform movement but an interpretation of causes and conditions. The purpose of his study is to offer a new framework for understanding these movements.

Because Gusfield's work influenced this study of local option I offer the same defence and explanation as Gusfield.

Local option is interpreted as a status issue to provide a basis for understanding the persistence of local option in Ontario. Analyzing local option in Gusfield's manner explains the significance attached to these laws, particularly when religious motives for prohibiting liquor are diminishing. The reformers of old (prohibitionists of the 1920's) are now the conservatives in the province. Their efforts are concentrated more upon ensuring that local option and "dry" areas are retained than in converting sections of the population to their view, or in obtaining prohibition again. But the propensity and motives remain the same as the ones studied by Gusfield. Therefore, this interpretation of local option, consistent with Gusfield's, offers a means of understanding why people will not voluntarily abide by the principles of individual liberty outlined by John Stuart Mill.

It is the intention of this thesis to explain local option by placing the issue in a symbolic context. This frame work will aid in discovering how these issues should be handled. John Stuart Mill's work provides a standard for judging the handling of these issues in societies modelled on liberal premisses: to ensure that the personal liberty and development of individuals are protected. The purpose of this thesis is to explore whether issues of moral reform can be transformed to conform to his principles.

This presentation of local option differs from other accounts of local option. There is not a great deal of material published on local option because general interest in it

has subsided as the province has moved towards a "wet" status. As a result much of the information on local option has been extracted from studies on related topics, such as prohibition, primary sources and interviews. Where the status implications of prohibition and local option are mentioned it is usually in passing or in the context of a general history. Two works, however, have presented local option and prohibition in a manner consistent with the perspective adopted here, G. A. Hallowell's Prohibition in Ontario has supplied much insight into the attitudes and motives of the prohibitionists in Ontario in the 1920's. Similarly, J.R. Burnet's study on liquor and Sunday laws in Toronto from the 1800's to the present is an informative analysis of the motivations of reformers.

Although this study focusses primarily on local option, reforms for Sunday laws will also be examined. Throughout the history of temperance reform in Ontario, Sunday reforms have been closely linked. This is not surprising because, as Mill notes, they arise out of the same propensity of humans to coerce others into accepting their beliefs and customs. Mill condemns Sabbatarian legislation as an "important example of illegitimate interference with rightful liberty of the individual."²⁸ Although he commends one day of rest per week, he cautions that this justification for legally establishing a day in common for observance does not "apply to the self-chosen occupations which a person may think fit to employ his leisure, nor does it hold good, in the smallest degree, for legal restrictions on amusements."²⁹ Because these acts are

self-regarding, an individual is entitled to liberty in choosing his occupation or Sundays.

The right of individuals to liberty in these areas was also violated during the prohibition era in Ontario. As Hallowell comments, the early twentieth century,

was also an era of 'prohibitions'; all manner of things were disapproved of, and attempts were made to legislate against the offenders. On an Ontario Sunday in 1919, for example, I was forbidden to buy ice cream, newspapers, or a cigar, to play baseball, tennis or golf, to fish or take a steamboat excursion. The Lord's Day Alliance carefully guarded against the breaking of the Sabbath. Horse-racing suffered from restrictions, 'moving pictures' were heavily censored or prohibited; the use of tobacco was increasingly attacked.³⁰

The reform efforts in these areas originated in the feelings of one group, the traditional middleclass. Breaches of sobriety, temperance or forms of moral laxity were seen as threats to their status. Legislation against these threats was interpreted as endorsing their position and conduct. As others in society increasingly rejected their habits and beliefs, their need for legal endorsement of their position increased. Their status and dominance was shaken by the influx of new customs and therefore the legislation began to assume a more than instrumental purpose; it reassured them that they were still the dominant group in society.

The anger and fears of these reformers persist and underlie local option issues. Because local option has a strong symbolic connotation, it cannot be handled like instrumental issues can be. This thesis will offer an explanation of why

local option is special and how it must be managed. The criteria for judging the handling of the law will be whether or not the feelings of individuals are respected and individual liberty is maximized.

The Local Option Law and Its Origins

The present local option law of Ontario is the product of a long history of development. The local option boundaries are based upon the municipal boundaries that were in existence in 1916, but the fight for the prohibition of liquor within municipalities extends back into the early history of the province. It is only by understanding the development and origins of this law that the law itself can be comprehended.

This chapter provides an explanation of the present law and then traces the history of the law. In the former section, voting procedures and questions in local option plebiscites, the term "dry" as it applies to municipalities, and the effect of liquor votes on boundaries are among the features of the legislation explained. In the second section, the history, the chronological development of the law is outlined to illustrate the longevity of the issue of local option and the basis for the current law. This history is divided into three main periods which correspond to the phases in the law's life: pre-Confederation to 1890; 1891 to 1916; and 1928 to the present. A brief account of the 1920's and prohibition under the Ontario Temperance Act will be provided as a bridge between the second and the third periods.

The Present Law

Local option is a central feature of the liquor legislation and is responsible for the creation of "wet" and "dry" districts in Ontario. It extends to "local communities (cities, towns, villages and townships) the right to exclude the sale of liquor by local veto."¹ However, this law does not extend the right of prohibiting personal liquor consumption and liquor manufacture to municipalities. In Ontario there are presently fifty-three municipalities which prohibit the retail of liquor within their boundaries, and two hundred and twenty-five municipalities which prohibit either stores or licences.²

The right to local option is contained in the Liquor Licence Act of Ontario. In this act the local option provisions state that subject to sections concerning votes and to regulations accompanying the act:

no licence shall be issued or government store established of a class for the sale of liquor in a municipality,

(a) in which the sale of liquor or the sale of liquor under that class of licence or store was prohibited under the law as it existed immediately before this Act comes into force; or

(b) although the sale of liquor is not prohibited by law, no licence has been issued or government store established since the 16th day of September, 1916.³

Therefore, by this act, liquor retail is prohibited in municipalities which, prior to this act and under the former one,

had voted against that class of licences or type of store; and in municipalities in which no licences have been issued prior to the enactment of the Ontario Temperance Act in 1916. In the first instance, liquor may not be sold until a vote is held in a municipality and a sixty per cent majority favours changing the status of the municipality regarding liquor. In the second case, where a licence has not been issued or a government store established since September 1916 but no by-law exists prohibiting liquor, then only forty per cent of the voters are required to approve the change of status.⁴

The voting procedure is carefully outlined in the act. Votes may be submitted to the electorate of a community in two ways: either the council of a municipality may submit one or more of the liquor questions to a vote; or, the electorate of a community may obtain one by submitting a petition, signed by twenty-five per cent of the voters, to the council. The votes determine the extent to which an area will be "dry".

There are eight questions which may be submitted to the electorate determining the liquor status or "dryness" of an area. Each question must be voted upon if that class of licence or store is to be established where it prohibited prior to the vote. The local option questions are:

1. Are you in favour of the establishment of Government stores for the sale of spirits, wine and beer?
2. Are you in favour of the establishment of Government stores for the sale of beer only for resident consumption?
3. Are you in favour of the authorization

of Ontario wine stores for the sale of Ontario wine only for resident consumption?

4. Are you in favour of licensing premises for the sale of beer only for consumption on licensed premises to which both men and women are admitted whether singly or escorted?
5. Are you in favour of the sale of beer and wine only under a dining room licence for consumption on licensed premises where food is available?
6. Are you in favour of the sale of spirits, beer and wine under a dining lounge licence for consumption on licensed premises where food is available?
7. Are you in favour of the sale of spirits, beer and wine under a lounge licence for consumption on licensed premises?
8. Are you in favour of the sale of spirits, beer and wine under an entertainment lounge licence for consumption on licensed premises?⁵

When a question is voted upon and an affirmative vote is obtained, then the municipality or part concerned becomes "wet" in that classification. For example, on December 9, 1974, question six was submitted to the electorate of the town of Ancaster in the county of Hamilton-Wentworth. Of a possible 9,165 eligible voters, 2,596 voted in the referendum, 1,608 in the affirmative, and 988 in the negative. This result changed the status of the town to "wet" on that question because 67.11 per cent of the voters favoured dining lounge licences. This was seven per cent over the required total.⁶ Dining lounge licences were then permitted subject to the approval and regulations of the Liquor Licence Board.

If the required majority is obtained in a vote on the questions concerning dining lounge licences (classification six) or entertainment lounge licences (classification seven), then a dining room licence may be issued without the formality of a vote.⁷ Again, this is illustrated in the example of Ancaster. Ancaster was formerly "dry" on the question of dining room licences, lounge licences and entertainment licences but "wet" on the question of dining lounge licences. Therefore, if an application is made to the board requesting a dining room licence, then that licence may be granted without a vote being taken. It is only for classification five that this rule applies. In all other circumstances votes must be held to change the status of an area on liquor.

A municipality may revert to a former "dry" status if it wishes. The Liquor Licence Act provides for a municipality to "submit to the electors such questions respecting the closing of the store or premises as are prescribed by the regulations."⁸ This provision is termed "the continuance clause." Questions under this section are formulated using the same classifications as for the authorization of stores and licences, but address the issue of whether or not they will be allowed to continue. If a sixty per cent majority votes against continuing the licences or stores, then "from and after the 31st day of March in the following year, any government store established in the municipality shall be closed, or licences of any class for the premises in the municipality

shall be discontinued, as the case may be, in accordance with the question or questions submitted and voted upon."⁹ This section is seldom used by municipalities.¹⁰

Liquor votes must be taken a full three years apart, regardless of whether they are continuance or allowance votes. All voting procedures are governed by the Municipal Elections Act 1977, and the persons qualified to vote in a liquor plebiscite are those persons that would be eligible voters in a municipal election.¹¹ Municipalities are allowed to delay liquor votes until they can be held in conjunction with the municipal elections in order to defray the costs of the votes.

The continuance provision is particularly important because liquor boundaries are based on the municipalities in existence in 1916. Annexations, amalgamations and boundary changes do not affect the status of an area. Changes in political boundaries since 1928 have complicated the status of municipalities and parts of municipalities because the area that is annexed to another municipality retains its status regarding liquor. Section 34(1) of the Liquor Licence Act 1975 states that:

No amalgamation of a municipality with another municipality and no annexation of the whole or a part of a municipality to another municipality affects the operation of this Act at the time of the amalgamation or annexation in the municipality amalgamated or municipality or part annexed or elsewhere until such operation is affected pursuant to a vote under this Act in the municipality amalgamated or municipality or part annexed, as the case may be.

A vote is necessary to alter the status of the area annexed

or amalgamated to another municipality. The "persons qualified to vote upon a [liquor] question or questions are the persons who would be eligible to vote at an election held in the municipality amalgamated or part annexed, as the case may be."¹² This requires that a vote be held separately for the annexed or amalgamated area. The results of the vote for that area cannot be compiled with the results of the municipality joined even if the status of the two areas coincides. Officially, the annexed or amalgamated area exists as a separate entity.¹³ If an annexed or amalgamated area so desires, it can revert to a former status different from the status of the municipality joined or the one left. The continuance clause of the Liquor Licence Act ensures this.

This section of the law has created many difficulties for the Liquor Licence Board because it must retain accurate records of the municipalities and parts annexed or amalgamated. Maps of cities and municipalities recording boundary changes have been obtained from city planning departments to supplement the written records of the Board to ensure that the status of areas is correctly recorded and is not confused in the future. The Liquor Licence office also encounters difficulties in ensuring that the electorate in communities are notified of pending votes or hearings requesting votes to change the liquor status.

The costs and difficulties in maintaining this section of the liquor legislation are high, but the liquor boundaries have been preserved and the system of local option is

unlikely to be abolished. The entrenched position of local option laws is emphasized by the long history of the law as a legal issue. The subsequent section of this chapter will trace the development of the present law to provide the historical background to local option and its peculiar features.

The History

The history of local option is embedded in the liquor reform and prohibition movements of Ontario. Social concern over liquor consumption arose in the 1820's and 1830's and has endured into the present. This history of reform and local option falls into three general periods. The first period covers early legislation which attempted to control alcohol use from the pre-confederation years to 1890. The second period, 1891 to 1916, was characterized by significant reforms in legislation at the provincial level of government and climaxed with the enactment of the Ontario Temperance Act. It was during this period that support for local option peaked. The third period covers the reinstatement of local option under the Liquor Control Act and traces the subsequent amendments made to the liquor legislation which have affected local option. The intervening years, 1916 to 1927, were the years of prohibition in which local option was suspended. Therefore, this period is only dealt with briefly.

As early as the 1820's and 1830's, the middleclass population of Ontario began to view incontinence as a problem.

In response to this view, members of the middleclass began to form groups such as the Victoria Temperance Society with the intention of reforming the drinking habits of the lower classes in society.¹⁴ The early groups, which attempted to assimilate the lower classes into accepting sobriety as a way of life, were unsuccessful. As a result, the Canada Temperance League was formed in the 1850's and like its American predecessors, concentrated on reforming drinking habits through political (coercive) means.¹⁵ The objective of the League was "to advocate the necessity for and the advantages arising from a prohibition liquor law, to petition the Legislature for such and enlist into the service all those who are willing to subscribe thereto. Although working in union with the present temperance associations, this declares as its definite object the interference of the law."¹⁶ This League and similar ones were responsible for initiating the changes in the liquor laws of Ontario.

Prior to confederation, municipalities of the Province of Canada, which became Ontario, had the right to prohibit the retail sale of liquor within their boundaries.¹⁷ In 1864, in response to public concern, the Legislature of Canada implemented the Dunkin Act whose purpose was to "amend the laws in force respecting the sale of intoxicating liquors and issues of licences therefore, and otherwise for the repression of abuses resulting from such sale."¹⁸ This act extended to counties, cities, towns, townships and villages of Ontario and Quebec the right to prohibit the retail sale of

liquor within their boundaries, by popular vote. It provided that municipal councils could pass by-laws prohibiting liquor either with or without submitting the law to the voters, or the electorate could petition for such a by-law and request that a vote be taken.¹⁹ This local option law was adopted by communities because it increased the powers of councils to control the liquor problem.

While the Dunkin Act was operative, the province of Ontario enacted the Tavern Keepers' Duty Act (1869)²⁰ which empowered municipalities with the right to issue licences within their jurisdiction. In 1871, this Act was superceded by the Liquor Licence Act (commonly known as the Crooks Act) of Ontario. The Crooks Act designated licencing as a provincial responsibility and established a board to supervise the issuance of licences and the conditions of sale.²¹ This Act provided the basis for the licensing system in Ontario.

The provincial Crooks Act was consistent with the federal Dunkin Act insofar as both acts recognised the right of municipalities to prohibit the retail sale of liquor or limit the number of liquor licences issued within their boundaries. The Crooks Act stated that:

Municipal councils also have power to limit the number of tavern and shop licences to be issued...

...Municipal councils may by by-law ratified by the electors, prohibit wholly the issue of any tavern or shop licence within the boundaries of the municipality.²²

Therefore, the Crooks Act and the Dunkin Act protected the

right of municipalities to exclude liquor by local option.

Although the provincial act was stricter than previous ones and gave municipalities the right to control liquor within their boundaries, the Temperance groups continued to petition both levels of government for further amendments. In 1878 the federal government responded to the pressure by enacting the Canada Temperance Act (Scott Act). It succeeded the Dunkin Act but was also subject to local option. To adopt the Scott Act, municipalities had to submit a petition signed by one-fourth of its electors requesting a vote to the Governor-General.²³ Where a majority vote was obtained, the Scott Act was implemented and prohibited the retail sale of liquor. The Act did not prohibit the sale of liquor for sacramental or medicinal purposes, nor the manufacturing and wholesale of liquor in more than ten gallon quantities. It was adopted by some municipalities of Ontario, but attempts to retain it were largely unsuccessful.²⁴ Of the municipalities that did adopt it, only three retained it past 1889. These counties were Huron, Peel and Perth. Huron county adopted it in 1884, revoked it in 1888, but readopted it in 1914, and did not revoke it again until 1960. Peel county adopted it in 1914 and retained it until 1950, after repealing it in 1884. Perth county rejected it in 1885, but chose to adopt it in 1915 and remained under it until 1960. In Perth county the city of Stratford did not adopt the Scott Act and therefore was not under it. In Huron and Perth the act was suspended by the Ontario Temperance Act between 1920 and 1927.

and 1934 , and in Peel the act was suspended from 1921 to 1934.²⁵

The Canada Temperance Act was challenged in 1882 in Russell v. the Queen²⁶ on the grounds that it violated section 92(13) property and civil rights, and section 92(16) matters of a local or private nature, of the British North America Act and affected the provincial right to collect revenue from taverns and public houses. The Act was upheld by the Judicial Committee of the Privy Council (J.C.P.C.) because it was conditional legislation and did not directly conflict with provincial legislation. The court conceded that the Act did infringe upon sections 92(13) and 92(16) but because it was general in intent, to protect the nation against intemperance, it was not ultra-vires. This decision was challenged but upheld in 1946 in A. -G. Ontario v. Canadian Temperance Federation.²⁷

In 1890, government legislation entered into a new phase with the initiative on liquor being assumed to a greater extent by the provincial government than by the federal government. The legislation passed between 1890 and 1916 became increasingly rigorous in response to the demands of the prohibitory groups in society. The prohibitory legislation climaxed in 1916 with prohibition throughout the province.

In 1890, Ontario enacted "An Act to Improve the Liquor Licence Acts."²⁸ This act recognized the powers given to municipalities by the Dunkin Act and restored the right of the electors to vote on whether or not the sale of liquor

would be prohibited within their community. It qualified the Crooks Act (1874) by placing the choice with the electors and removing the decision from local councils. Under the Crooks Act, local option by vote had lapsed in favour of council decisions. But by the provincial Act of 1890:

The council of every township, city, town, and incorporated village may pass by-laws for prohibiting the sale by retail of spiritous, fermented, or other manufactured liquors in any tavern, inn or other house or place of public entertainment, and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment. Provided that the by-law before the final passing thereof has been duly approved of by the electors of the municipality in the manner provided by the sections in that behalf of the Municipal Act.²⁹

This act ensured that the liquor status of communities reflected the wishes of the citizens. Like the Canada Temperance Act, this Act required that plebiscites be held three years apart.

In 1896, in *A. -G. Ontario v. A. -G. Canada*, called the Local Prohibition Case,³⁰ the Ontario government challenged the Canada Temperance (Scott) Act on the basis that it was repealed in the province by the Ontario Liquor Licence Act of 1890. The J.C.P.C. upheld both acts on the grounds that liquor was an area of law which fell under the double aspect doctrine and therefore was competent to both levels of government. By virtue of sections 92(13) and 92(16), the provincial government could regulate the retail sale of liquor and the liquor traffic within its boundaries. But because liquor was deemed an issue of national dimensions, it was within the

jurisdiction of the federal government to control liquor in the nation and to ensure that liquor did not affect the peace and security of the nation. Where the provincial and federal laws conflicted, the federal law had paramountcy.³¹ This decision was challenged in 1925 in *Toronto Electric Commissioners v. Snider*³² and in 1946 in *A. -G. Ontario v. Canada Temperance Federation*³³ but was upheld in both cases.

In 1906 the provincial legislation was modified. Municipalities were required to obtain a sixty per cent majority to prohibit liquor instead of a simple majority. Ontario was the only province to pass this requirement.³⁴ This clause affected local option by making it more difficult to obtain a "dry" vote in municipalities. This amendment, called the three-fifths clause, was protested by prohibitionists but to no avail. It remains in the liquor legislation still.

In spite of stipulations such as this, the province became increasingly "dry". During the 1914 election, liquor was an important issue. Whitney campaigned against the liberal leader, N. W. Powell, whose platform was prohibition in the province. Whitney favoured a moderate course of action. He argued that local option allowed individual municipalities to determine their own status, and he won by a sizeable majority -- 83 to 26 seats.

Upon Whitney's death in 1914, William F. Hearst, who was an active Methodist layman and a strong temperance advocate, assumed office. Three months later he tightened hours of liquor businesses and in 1915 he created a board of five commis-

sioners to oversee liquor in the province. This removed the issue from the provincial secretary's office with the intention of reducing the political intensity of the issue.³⁵

Whitney's regulations were consistent with the general trend in municipalities of the province. By April 30th, 1914, local option was in force in 346 municipalities and a further 164 municipalities did not issue licences. Only 337 municipalities were under license. Although more municipalities were under prohibition than not, the majority of the population was "wet". A breakdown of these figures reveals that local option was in force in 1 of a total 31 cities; 31 of a total 132 towns; 59 of a total 148 villages; and 255 of 546 townships.³⁶ The urban centres with the largest populations remained decidedly "wet". The support for prohibition, as revealed by the local option statistics, was located in the rural sector of the population.

In 1916, in response to the trend towards "dry" in the province, the Hearst government enacted the Ontario Temperance Act which was a prohibitory bill. This act "repealed the Liquor Licence Act 1914. The overall provisions of the Ontario Temperance Act had the effect of forbidding the sale by retail of liquor throughout the whole of the Province of Ontario."³⁷ The Act overrode local option by making the entire province "dry", regardless of the wishes of the individual municipalities. An amendment to this act placed all legitimate trade in liquor, primarily for sacramental or medicinal purposes under government control, thereby elimin-

ating the private business sector in this area and setting a precedent for government regulation of liquor.

Hearst's legislation was passed as a temporary war-time measure and was open to reconsideration at the end of the war. The plebiscite on liquor was held on October 20, 1919, the day of the provincial election. Consequently, prohibition became an issue in the campaigns of the parties. The conservatives under Hearst were divided on this issue and a number of their members openly opposed prohibition as a measure in times of normality. Traditionally, the Conservative stance had favoured local option and self-regulation, and it was only under Hearst and conditions of war that they became "dry". Although prohibition was enacted under the Conservatives, they did not have a reputation of being solidly in favour of it. The position of the Liberals was equally ambiguous: they had declared themselves in support of prohibitory measures but then had elected a "wet" leader, Hartley Dewart. Dewart did not voice his own opinion towards prohibition but made solidarity of the party platform his primary concern.³⁸ The only party which declared unequivocally for prohibition was the United Farmers of Ontario (U.F.O.).³⁹

The U.F.O. under Drury won the election. Although the liquor issue was important, it was not the single or most important cause of the victory. That it was a significant issue and did influence the election results can be ascertained from the results of the referendum. The referendum was carried by a majority of 406,676 who voted in favour of re-

taining the Ontario Temperance Act. An analysis of this vote reveals that cities with a large immigrant and francophone population favoured government control and sale of liquor.⁴⁰

The rural population favoured prohibition. Similarly, the support for the U.F.O.'s was centred in the rural areas of the province and weaker in the urban areas. The U.F.O. party embodied what the majority of voters wanted at the time of the election and abstinence was one of its appealing qualities.

During the prohibition years, prohibition was violated flagrantly and was very difficult to enforce. Forces favouring temperance (moderation not prohibition), such as the Liberty League and the Moderation League, continued to support liquor control and local option on the basis that the inability to enforce prohibition would result in contempt for the liquor laws and even the entire legal system. In a petition submitted to the Drury government, the Liberty League "reasoned that stabilized democracy depended upon the security of individual liberties properly used. If one law was not enforced, all law was brought into contempt and democracy itself might be imperilled."⁴¹ When prohibition extended to include the importation of liquor for personal use, groups feared that respect for the law would be destroyed further.

The Ontario Temperance Act was generally ineffective due to the problems and costs of enforcement and the increasing dissatisfaction of the population with the Drury government. In 1923, the U.F.O. was defeated by the Conservatives, 75 seats to 17,⁴² and Howard Ferguson came to office. Li-

quor was an issue in the election and the Conservatives were understood to support the repeal of the Temperance Act. In Hamilton on February 17, 1922, Ferguson declared:

So far as the Conservative party is concerned, no platform on the question is contemplated. The present law is not training the people to respect the law, but to defy it. We have got to find some reasonable means that will allow our people to exercise their God-given freedom under reasonable restrictions.⁴³

Ferguson clarified the stance of his party on the question of liquor on May 29, 1923:

Prohibition must prevail, and be observed until the people by their votes pronounce against it. The people must accept the situation which they themselves created, and the Government of the day must see that the law is actively and rigidly enforced. If at any time there should be a sufficiently manifested desire for a change in the law to warrant the Government in believing that there is a real public demand for such a change, it will be the duty of government to ask the people by their votes to pronounce upon the subject.⁴⁴

Ferguson's position on liquor retained him the support of the "dry" voters in his party by promising not to interfere with the Ontario Temperance Act unless he had the mandate of the electorate, but the mainstay of his strength was with the "wet" urban voters. This was where his party made their most significant gains.

Ferguson did not immediately change the Ontario Temperance Act upon assuming office but moved towards holding a plebiscite on prohibition. In 1924 a referendum was held and prohibition was favoured by a small majority of 33,000. Due to the narrowness of the margin, the Ferguson government

introduced a light beer to be sold in the province and passed a bill redistributing the electoral seats. The bill eliminated nine "dry" seats and added ten "wet" ones. Then in 1926, he called an election on the liquor issue with liquor control and local option as the Conservative platform. The Conservatives were returned to office with 72 seats. This election result legitimized the introduction of the Liquor Control Act of Ontario in 1927 which repealed the Ontario Temperance Act under section 147. Officially, the status of the province became "wet" and the retail sale of liquor was permitted in government stores.⁴⁵

Local option was re-enacted in the province by section 69(1) of the Liquor Control Act. The Control Act assured prohibitionists in the province that:

no store shall be established by the Board for the sale of liquor in any municipality or portion of a municipality in which at the time of the coming into force of the Ontario Temperance Act, by-law was passed under the Liquor Licence Act or any other act, was in force prohibiting the sale of liquor by retail unless and until a vote has been taken to establish Government stores in the manner hereinafter provided.⁴⁶

The Act established three classifications of licences to be voted upon: government stores for the sale of liquor; government stores for the sale of beer and wine; government stores for the sale of beer. The three-fifths regulation and the three year waiting period between votes were reinstated. The power of licensing was designated as a responsibility of the Liquor Board established by the Control Act. Stringent control was maintained over the consumption and manufacture of

liquor in the province under the Control Act. This was consistent with the purpose of the Control Act which was to provide liquor to people but not to encourage drinking to excess. Through control the government could ensure that its standards in manufacturing, sales and consumption of liquor were met.

The Liquor Control Act did not apply to areas which had voted "dry" prior to 1916 nor to areas which had never issued licences. These areas regained their status under the Control Act with the option to change their status by vote. In 1934, this section of the Control Act was amended to apply local option to those areas in the province which were still under the Canada Temperance Act.

During this period, 1927 to 1982, local option has remained a key section in the liquor legislation and has become entrenched through amendments, even though the legislation has become more permissive and the province has moved towards a "wet" status as a whole. In 1935, section 69(1) of the Liquor Control Act was amended to allow municipalities to vote on the sale of beer and wine in hotels and clubs with meals. The amendment loosened the liquor standards in the province and expanded the choices under the local option questions.

The local option provision was modified again in the Liquor Authority Act of 1944. The new clause stated that:

Except as provided by this Act and the regulations no government store for the sale of liquor shall be established, no Ontario wine store shall be authorized and no premises shall be licensed in any municipality or por-

tion of a municipality in which at the time of the coming into force of the Ontario Temperance Act, being Chapter 215 of R.S.O. 1914 or any other Act was in force prohibiting the sale of liquor by retail until a vote has been taken in the manner provided in section 69.⁴⁷

The local option section of the Liquor Act was widened to include "premises". This introduced lounge licences permitting the sale of spirits, wine and beer without a meal, and dining lounge licences permitting the sale of spirits, wine and beer with meals. A "necessary service clause" was included in this section which provided that municipalities with a population greater than 50,000 would not have to vote upon these questions.⁴⁸ This clause was deleted in 1950.

The Liquor Authority Act of 1944 introduced the change that once the Canada Temperance Act ceased to be in force in Huron, Peel and Perth, government stores could be established without a vote where no by-law had existed prior to the adoption of the federal legislation.⁴⁹ In all other cases, local option would apply to these areas upon repeal of the Canada Temperance Act. The significance of this change was that many of the areas concerned did not have by-laws prior to the adoption of the Canada Temperance Act in the late 1800's, and thus would be subject to government stores without local option. The areas would be "wet" on the question of stores without the necessity of a vote.

In 1960, the liquor legislation was modified further. Resorts and recreational facilities in "dry" areas were granted licences without a vote. This change was significant

because it allowed tourists to drink but not local residents. The impetus for this reform lay in the increase in tourism and added revenue to the resort areas that it was believed alcohol would attract.

A further change in the Liquor Legislation of Ontario, which had an indirect impact on local option, was the denial of special occasion permits in "dry" areas in 1975. Prior to this amendment, special occasion permits were granted in "dry" communities for functions provided that liquor was served and not sold. The denial of these permits meant that communities which only applied for licences for special functions were required to change their liquor status before they would be able to attain licences on public occasions. This increased the inducement to become "wet".

In June 1982, the Ontario government enacted a change in legislation which was consistent with local option guidelines but signalled a more permissive attitude towards liquor. The government passed a bill granting beer sales by the glass during sporting events to three sports facilities in the province on a trial basis. The facilities are all located in urban, "wet" areas: Lansdowne Park in Ottawa; Exhibition Stadium in Toronto; and Ivor Wynne Stadium in Hamilton. The licences granted to these stadiums were subject to the approval of the local councils of the areas concerned, in accordance with the Liquor Licence Act, 1975, section 46(a)(1):

The council of a municipality, including a metropolitan or regional municipality, may by by-law designate stadia, arenas and other recreational areas within the municipality owned or controlled by the muni-

cipality as places where possession of liquor is prohibited.

The councils approved the sales on a trial basis and seem inclined to accept it permanently if no problems arise. The change was consistent with the local option laws although this change is major for Ontario, it is belated when compared with such legislation in the other provinces and the United States. Ontario is one of the last areas with large sports facilities to allow beer in the ballpark. The delay in passing this legislation is indicative of Ontario's conservative stance towards liquor.

Conclusion

The modifications to local option reviewed in this chapter have indicated that the law has had a long history despite efforts to change or abolish it. The changes enacted in the liquor legislation in the past sixty years have loosened the strict standards that the province maintained regarding liquor sales and consumption. The standards were high because of the suspicion generated towards liquor in the periods preceding prohibition and during prohibition itself.

Local option by-laws remain in effect in numerous communities in the province. Because the liquor boundaries are based on the boundaries of municipalities that had local option by-laws in effect in 1916, amalgamations and annexations of municipalities have caused subsections of municipalities to have different status than the municipalities as a whole.

This system has resulted in complex records and voting procedures, but the provincial government will not abolish the status of areas upon annexations, nor will it realign the liquor boundaries with current political (municipal) ones. The liquor by-laws prohibiting liquor remain intact until changed by popular assent. Why this law is retained and why the by-laws are respected despite the practical difficulties are the issues addressed in the following chapter.

The Meaning of Local Option

The effectiveness of a law is normally evaluated in relation to the instrumental functions the law performs. This method of appraisal is valid in many instances but occasionally it fails to appreciate the complete function of the law. This omission can result in a lack of understanding or in mismanagement of the law. If certain laws are to be handled adroitly and understood, then the law must be assessed in terms of its symbolic and status functions as well as the instrumental services it performs.

This chapter explores the status and symbolic functions of the local option laws as well as their instrumental purpose in order to understand why local option is retained and why it is significant to one sector of the population despite its limited effectiveness as an instrumental law. The first section of this chapter examines local option in its present social context and looks at the effect of recent changes in the liquor legislation on local option. It then evaluates local option as a response to alcoholism and the institutions that have usurped its original function. The second section of this chapter offers an interpretation of the history of local option outlined in chapter two in order to establish the symbolic and status origins of the issue. This interpretation explains why local option is a concomitant feature of liquor control in Ontario and why it has persisted as a law without

direct changes made to it or to the liquor boundaries.

The Present Law: Its Instrumental Functions

The effectiveness of local option as an instrumental law has decreased as society has become increasingly mobile. Changes in the liquor legislation of Ontario and the growth of a more permissive attitude towards liquor and morality have undermined the effectiveness of local option by-laws in curtailing or discouraging drinking.

Local option is an effective means of controlling the type of liquor outlets and the public use of alcohol in communities. Through local option, members of the community are able to maintain the atmosphere they desire to a limited extent. The prohibition of liquor to various degrees reduces the traffic of people coming to the community and promotes an air of respectability in the opinions of advocates of a "dry" status.

This opinion is not confined to people who abstain from drinking. In many communities, residents who drink will vote "dry" in a plebiscite to ensure that liquor stores and lounges are not available to their children nor to strangers. Often they believe that allowing alcohol to be consumed publicly will set a bad example for children or will result in unruly conduct of drinkers and disturb the peace of the neighbourhood. If there are no liquor outlets in an area, then it is believed that the area is insulated to a greater degree from this type of conduct. Because people are often attracted to

these areas for their quiet, respectable atmosphere, they will tend to vote "dry" to preserve that atmosphere and thus will perpetuate "dry" communities. This tendency reassures prohibitionists because they interpret the willingness of these new people to perpetuate the "dry" status as a tacit acceptance of their norms and their definition of morality. In the opinion of "dry" people, these people accept the "dry" status because they perceive the positive influence it has on the community.

The effectiveness of local option in restricting the public use of liquor in communities has been undermined by recent amendments to the provincial liquor legislation. Although these amendments do not alter local option laws or boundaries directly, they do have an indirect impact on local option. The government of Ontario has been criticized by the opposition party for implementing these reforms while publicly declaring that it would not alter local option.

The members of the opposition party in the Ontario legislature singled out the issuance of licences to private clubs and resorts within "dry" communities as examples of attempts by the government to undercut local option by-laws without interfering with them directly. Mr. Nixon commented on these reforms in 1975 and censured the government's attitude towards local option:

that kind of a law has got to be an anachronism and from my point of view I just think it ought to be kicked right out, and the responsibility of the Liquor Licence Board expanded with all of the review procedures made available. I know it is a foundation of Toryism that local option must never be interfered with in any way,

even though they have amended the bill time and again. If it's a private club and one has the money to belong to a private club one can go there any time. One can take guests and sign them in at any time and be served in very fine surroundings.₁

After a brief interruption, Mr. Nixon continued:

The next amendment was if it was a designated tourist area, it doesn't matter whether the local township votes dry or not, a licence is available. That is called the Talisman amendment, I believe.

That great, marvellous ski resort, which is the corporate headquarters of the Tory Party I understand, had a little problem getting a local township to see eye to eye with their view of modern development and it took an amendment to the Liquor Act in order to fix it so that the people in the Talisman could be treated as I believe they want to be and should be treated.₂

Mr. Nixon's comments were direct and very aggressive but they addressed the issue. The introduction of clubs and resorts in "dry" communities through legal exemptions circumvented the local option regulations. Although this change was financially prudent because it eliminated the cost of a vote and increased the revenue in these areas, it contravened the wishes of these communities to remain "dry". The changes were advances in "wetness" which increased the availability of liquor to designated groups within the community --members of clubs and tourists. It was argued that these changes did not violate local option, but they did introduce the sale of liquor by the glass in premises without the approval of voters. Because these classifications were not included under the local option section of the laws, the government was able to intro-

duce the reforms without legal opposition.

The opposition also singled out the reforms pertaining to special occasion permits as evidence of the government's attempts to produce changes in the local option legislation. In 1975 the laws were amended so that special permits were no longer available to "dry" communities.³ The Minister of Consumer and Commercial Relations, Mr. Drea, explained that this revision was implemented to reduce the violations of these permits which had occurred in "dry" areas. Prior to 1975 special occasion permits were issued in "dry" communities with the condition that liquor would not be sold. But as Mr. Drea observed, 'there is a tendency by the community group to come in and ask for a "no sale" permit and hope that nobody casually drops in from the provincial police or nobody complains'⁴ that they are selling liquor or that people are bringing their own. He censured these practices because neither one falls:

within the meaning of the operative word in liquor policy in this province which is "control", because first of all the local authorities are not aware of the fact that alcohol is being consumed by a large number of people, and secondly, when people feel they are having an illicit drink,... being human, they tend to drink a little bit harder or longer.⁵

The violations of special occasion permits prevented the government from exercising the intended degree of control over the functions. Violations of this nature increased in communities which were waiting for a vote on their liquor status.

"Dry" communities that were not awaiting a vote also took advantage of the permits according to Mr. Drea. In order to

attain a permit for a function, local groups would claim that they were waiting for a vote to change the status of the area and only required the permit for the interim. In these circumstances, permits would be granted. But when these groups were questioned:

They'd finally level with you, and say, 'We only want one a year; we're not interested in dining rooms, or whatever.' Finally, the law told them. If you have a dry area now, I can't think of any circumstances where you would get a special occasion permit.⁶

Therefore, by Mr. Drea's account this change in the issuance of special occasion permits was intended to stop abuses of those permits from occurring in "dry" communities. By not allowing these permits in "dry" areas under any circumstances, the government claimed that it would prevent violations and this aspect of liquor policy would fall within the operative meaning of the liquor legislation -- "control".

The restriction of special occasion permits has had two consequences that the government did not publicly acknowledge. First, if a community requires liquor at a function, its status must allow licences. This change operates as an incentive for communities which are "dry" to vote "wet" in the next liquor plebiscite to be qualified to obtain permits for special occasions. Second, this change has raised the question of reducing the waiting period between votes from three to two years. Ostensibly, because groups would desire that their community be eligible for licences, this change would enable them to acquire "wet" status without undue delay. Under the

present legislation, votes must be held a minimum of three years apart and on the polling day of municipal council members unless the council and Liquor Board fix an alternate day.⁷ The two year period would reduce the delay because local option and municipal votes would coincide more regularly. This argument is reinforced by the consideration that costs of votes would be reduced because votes that are held separately could be held in conjunction with municipal elections. This change has not been enacted but is being discussed as a result of the restriction in special occasion permits. Through indirect channels, the change in permits could cause areas to vote against retaining local option by increasing the incentive to become "wet".

The impetus for eliminating local option boundaries in a direct manner has come from "wets" in the province who claim that local option is an unnecessary law which does not control alcohol abuse. Prohibitionists dispute this statement and argue that local option laws do reduce the tendency to drink by reducing the opportunities. One advocate of prohibitory laws claimed, in a public letter to the Ancaster News and the Ancaster Town Council, that prohibiting alcohol in the community was an effective means of discouraging teenagers from using alcohol:

The best way for responsible adults to curb drug abuse is to set the example. Each drink we take - or offer to others - raises the question of whether we really believe it is folly to get stoned. When we play with drugs can we expect our youth not to? Especially when they can validly

point out that theirs are not as detrimental as ours? What kind of example are we trying to set? I urge you to leave alcohol off the ballot.⁸

Therefore, by prohibiting liquor within the community and not holding a vote to change the status of the area, the stance of the community would be unequivocal. This would "set the example" that it is folly to take drugs or to drink. This argument supporting the retention of local option is common in "dry" communities.

Mr. Nixon, member for Brant, disagrees with arguments that support local option on the basis that it provides an effective example of social behaviour. In his opinion, local option does not deter young people from drinking and the dangers of not being able to drink within their community outweigh the advantages that might exist. During his career he has met:

with the young people from smaller communities in the dry townships, young people who, if they're going to have a beer with their friends, have to get in their car or borrow their dad's car, and drive to a nearby town, have a few beers. On the way home, they may get into trouble and they may be charged with impairment. Somebody else has made the decision that these kids are not going to drink in their own area and so they have to drive somewhere else, with the problems that I have just described. I'm not sure that's the reason why everybody should vote yes rather than no, but it's one of the things that many people who are so dedicated against the use of alcohol beverage in moderation perhaps don't think of.⁹

Although local option may restrict the use of alcohol, people who wish to drink must do so outside of their communities.

This consequence increases the risk of an accident, particularly where "dry" communities are not close to liquor outlets. Mr. Nixon suggested that advertising and education could convey the harmful effects of liquor to people as effectively as local option and would not force people to drink outside of their communities. In his estimation, this alternative would foster a more balanced attitude towards drinking in society.

The original intention of local option was to prevent alcohol abuse by making liquor unavailable to drinkers.¹¹ However, this intention has become redundant with the founding of groups and institutions such as the Addiction Research Foundation and Alcoholics Anonymous. These groups are more effective than local option because they offer medical attention and assistance as well as encouragement to addicts rather than stigmatizing drinkers and aggravating their problem. Because these institutions are morally neutral, they offer help to the drinker without degrading him. In contrast, local option laws do degrade the drinker by proclaiming that he is the exception in the community and has failed to meet its standards of respectability. Whereas local option may be effective in reducing the opportunities for becoming addicted to alcohol, by prohibiting liquor outlets within the community, these organizations assist the drinker in preventing further abuse once he has become addicted.

The effectiveness and usefulness of local option have been diminished by reforms to the liquor legislation and by the

rise of institutions which have assumed its functions. These reforms and institutions are more consistent with the present expectations that most people in Ontario hold concerning the manner in which liquor should be handled. Consequently, the reasons why people wish to retain local option in their communities seem obscure and irrational to people who are not sympathetic to prohibitory laws.

The reasoning underlying the retention of local option does not lie in its effectiveness as an instrumental law and that is why it seems perplexing when considered from this perspective. Local option persists because of what it represents to a section of the population. These people perceive local option as a symbolic law that reassures them of their status in their communities. To understand why these people interpret local option in this manner, it is necessary to retrace the history of local option as a status issue.

The Status and Symbolic Origins of Local Option

The origins of the temperance movement and sentiment lie in the first half of the nineteenth century, but it was not until the middle of the century that reform efforts became more organized and the movement gained impetus. These efforts at reform have continued throughout Ontario's history and fall into three characteristic periods. The first period was marked by the rise of temperance reforms from the early 1800's to 1889. During these years, groups organized, tactics changed

from persuasion to coercion but the success of reformers was limited primarily to a local level through local option. It was not until the second period, 1890 to 1919, that significant political reforms were achieved. During these years, more municipalities than ever before voted dry and feelings peaked. The passage of the Ontario Temperance Act in 1916, and its confirmation in 1919 were the climax of Temperance reform and sentiment. The third period, 1928 to the present, is characterized by the decline but persistence of temperance sentiment in the province. Temperance reforms are once again limited to municipal levels. The intervening years, 1920-27, were the years of prohibition in Ontario and merely bridge the periods of success and decline of temperance.

In response to the increasing consumption of liquor in Ontario, temperance groups began to form in Ontario as early as 1830. One society was formed in 1830 to research the facts concerning alcohol and to operate as a central organization for temperance but it had a short and sporadic history. Fraternal organizations such as the Toronto Young Men's Temperance Society which became the Toronto Temperance Society in 1855, arose but soon languished.¹²

The early societies were composed of respectable, male citizens and were influenced by the Temperance societies of Montreal and the Maritimes.¹³ Their efforts at reform were directed towards altering the lives and habits of drinkers through moral persuasion:

Through fictional accounts, personal testimonies, and instructive editorials in such periodicals as the Christian Guardian, the Canada Temperance Advocate, published in Montreal and distributed free to all ministers, justices of the peace, and school teachers in Canada West, and the Canadian Son of Temperance and Literary Gem, writers and editors sought to persuade their readers to adopt total abstinence. In addition a great deal of material was disseminated in the form of pamphlets and tracts....¹⁴

Originally this literature and the temperance meetings advocated moderate use of alcohol, but as intemperance continued total abstinence became the goal of the reformers. It was believed that moderation could only lead to excess. The meetings were not effective because they did not reach the heavy drinkers. By one account, two-thirds of those attending meetings were women and children.¹⁵

Tactics of temperance groups altered from moral persuasion to coercion in the late 1840's and early 1850's.¹⁶ This change was the result of a number of social factors. One cause was the limited effectiveness of the temperance societies in converting drinkers. By 1851 there were 1,990 inns and taverns in Canada West; one in every mile between between Barrie and the market on Toronto's waterfront. Three gallons of whiskey per capita was consumed annually in Upper Canada. This average would be higher for men than for women and children included in this figure.¹⁷ It was believed that prohibitory laws would correct this growing problem.

The influx of Irish immigrants in the late 1840's, following the famine of 1845, influenced the attitude of refor-

mers. The Irish were singled out in temperance literature as objects of reform:

In temperance stories reformed Irishmen were made to agree that alcohol made the name of an Irishman "a bye-word and reproach, instead of a glory and an honour".¹⁸

One paper was moved by

...the influx of "tens of thousands of the lowest of classes, hewers of wood and drawers of water to society"...to comment that "men under the influence of liquor, commit deeds of savagery, of inhumanity, of beastliness, or barbarity, and of fiendish cruelty, at which a savage would shudder".¹⁹

The immigrant was centred out as a beast and object of reform because he represented a different morality and code of behavior. The immigration was significant enough to accentuate the difference between their morality and that of the middle-classes. Because he was poor and drunk, the immigrant was viewed by the temperance reformers as irrational and thus a suitable object of reform. They believed that once he was introduced to their way of life, then he would become rational, conduct himself according to their standards and prosper. The anticipated result justified the use of coercive tactics in reform.

The most direct impetus to political reforms came from the passage of the Maine Law in 1846. In 1846, the state of Maine had passed a highly restrictive law and in 1858 it became prohibitory.²⁰ This law encouraged Canadian societies to attempt to secure similar legislation. Although these efforts were unsuccessful, the defeats were slender enough to

make prohibition seem attainable. The passage of the Dunkin Act by the Federal government in 1864, which allowed municipalities to exclude liquor by local option, was viewed by reformers as a major success and furthered belief in their movement.

The temperance societies in Ontario were primarily composed of members from the middleclass. After 1845, the societies opened their membership to women and increased in number.²¹ Temperance literature was directed against the working class: namely, clerks, apprentices, labourers, the poor; the immigrants, especially the Irish; and the upper class which was criticized for setting a bad example for the lower classes. In Toronto the members of societies "were predominantly middleclass, Methodist, Baptist, Congregationalist, and, especially in the Sabbatarian cause, Presbyterian; American and Scottish in ethnic background; and reform in Politics."²² This membership was reflected throughout Upper Canada and in later societies. Anglican and Catholic Churches preached restraint in liquor consumption and respect for the Sabbath, but neither church publicly endorsed prohibition. Neither church joined in Sabbath reform alliances until the late 1890's when they had subsided in fervour. Similarly, the upper classes regarded restraint as adequate to prevent alcoholic excesses.²³

Why did coercive reform of drinkers become a need to the middleclass, Protestant sector of the province? Clemens rejects the possibility that it was a reaction to a threat

posed by the growth of an alien value system to the dominance of the middle class. He argues that:

the groups actively demanding this kind of reform in the Canadas appeared to have a self-confident assumption of their rather prestigious position in the Canada West society. The temperance reformers, instead of seeking to defend their status, self-assuredly looked outward in an attempt to inculcate their values and lifestyle in other groups in the social structure. The main reason for this shift from moral persuasion to prohibitory legislation appears to lie in the adoption of a prohibitory law in the State of Maine.²⁴

This answer is inadequate because it does not account for the intensity of the temperance fight nor for the longevity of the issue. The shift to coercive reform began before the passage of the Maine Law and was inconsistent with the actions of a self-assured group which was attempting to inculcate their morals in other groups. If this group was sure of its ascendancy, then it would have been confident of its power to assimilate others.

The shift to coercive reform revealed that the position of the reformers was weakened. The influx of immigrants and the growth of different values and the lower classes posed a threat to middleclass reformers. They could not assimilate these groups because they were becoming too large and did not want to be assimilated. The middleclass was aware of its failures and the futility of attempts to reform these groups. Two distinct sets of standards were being applied to behaviour in society. The middleclass needed political reforms to establish their standards as the legitimate ones. The passage of

the Maine Law encouraged their belief that such reassurance was possible.

The enactment of the Crooks Act by the provincial legislature in 1874 was a major advance for the prohibitionists. This act removed the power of licensing from municipalities which had been extended to them by the Tavern Keeper's Duty Act of 1869. The responsibility of licensing was entrusted to a board of men for each riding. The act recognized the right of municipalities to prohibit liquor within their boundaries. This act and the subsequent amendments to it circumscribed the sale of liquor in the province²⁵ but agitation for more stringent reforms continued.

The temperance societies gained momentum during the 1870's. The Canadian Prohibitory Liquor Law League, which arose in 1853 and had promised to be successful, declined, but the Dominion Alliance for the Total Suppression of the Liquor Traffic replaced it in 1876. The Ontario Temperance and Prohibitory League reorganized itself as the Ontario Branch of the Alliance in 1877 and the Women's Christian Temperance Union became active in the fight against liquor. The efforts of these groups were directed towards securing legal reforms. their efforts were rewarded in 1878 at the federal level with the passage of the Canada Temperance Act whose purpose was to restrict liquor traffic. Its effectiveness was limited because it was contingent upon adoption by communities and was not adopted or repealed soon after adoption.

Significant reforms were not attained until "An Act to Improve the Liquor Licence Acts" was enacted in the 1890's by the provincial government. From this point forward, temperance reform gained strength. Prior to the 1890's, the temperance movement was disjointed and in the process of organization, but in the 1870's and 1880's groups aligned and stable organizations were formed, and by the 1890's, the movement was organized and in a position to effect serious reform and command public opinion.

The enactment of "An Act to Improve the Liquor Licence Acts" was significant for reformers because it restored local option votes and made the liquor licence acts stricter. C.R. W. Biggar explained how the act was more stringent than its predecessors:

The Act of 1884 had provided that the majority of the electors of any polling subdivision might forbid by means of a petition to the Licence Commissioners the issue of any new licence within the subdivision; but the Act of 1890 went further, and declared that in case of an application for any new licence, or for the transfer of an existing licence to another locality, it must be accompanied by a certificate signed by a majority of the electors entitled to vote in elections to the Legislative Assembly, declaring the applicant for the licence to be a fit and proper person to be licensed to sell liquors, and the premises where it was proposed to carry on the business for which the licence was sought to be suitable therefor and so situated that the business would not be a nuisance to the people.²⁶

The restrictions provided the prohibitionists with the means to interfere effectively with the liquor trade in communities.

The passage of this act and each vote against liquor businesses affirmed their views as the ones accepted by communities and dominant in the province.

The plebiscites from 1894, 1902, 1919 and 1924 reveal the patterns of support for prohibition. In each vote the rural areas of the province supported prohibition at a higher average than in the urban areas. The areas that were a mixture of rural and urban also favoured prohibition to a higher degree than urban areas, but less than rural ones. This pattern is particularly noticeable in the 1919 and 1924 plebiscites in which the rural figures exceeded the urban ones by 20.0 per cent and 19.7 per cent respectively.²⁷ In all but the 1919 plebiscite, Northern Ontario had a lower average supporting prohibition and a lower voter turnout.²⁸ In general the support was strongest in southern urban Ontario where the old middleclass had established themselves.

In the 1894 plebiscite, the only counties to vote "wet" were Essex, Prescott and Russell, and Waterloo.²⁹ Essex, located on the Michigan border between Lake Erie and Lake St. Clair, was in an ideal position for exporting liquor and collecting revenue from the liquor business. Prescott and Russell is on the Ottawa River and borders on Quebec, causing it to have a heavy French-Canadian influence. Waterloo is located in the centre of south-western Ontario, but it had a significant German population. For these areas to vote against prohibition is not surprising. Decarie records that:

Table 1

Rural-Urban Patterns in Prohibition Referenda*

	1894				1902			
	Dry	Wet	Turnout	N	Dry	Wet	Turnout	N
entire Province	34.9	21.1	50.0	90	32.9	17.1	50.0	97
astern Ontario	50.8	22.6	53.4	14	29.0	20.6	49.6	14
ake Ontario	35.5	18.3	53.8	16	36.1	13.1	49.2	16
eorgian Bay	36.3	18.1	54.4	13	36.0	12.4	48.4	13
olden Horseshoe	38.3	22.0	60.3	11	34.3	18.7	53.0	11
estern Ontario	38.2	22.3	61.0	30	35.2	16.8	52.0	30
ronto	26.4	21.2	47.6	3	31.3	25.6	56.9	6
orthern Ontario	25.1	16.6	41.7	3	16.6	11.7	28.3	7
urban	31.7	22.4	54.1	6	29.0	27.0	56.0	10
ixed	32.4	22.9	55.3	18	31.0	19.0	50.0	20
ural	37.3	20.1	57.4	65	34.7	13.9	48.6	67
	1919				1924			
	Dry	Wet	Turnout	N	Dry	Wet	Turnout	N
entire Province	48.7	23.2	71.9		31.1	29.3	60.4	107
astern Ontario	45.3	24.3	69.6		28.7	29.5	58.2	15
ake Ontario	57.6	15.4	73.0		42.1	22.8	64.9	16
eorgian Bay	58.9	15.7	74.6		46.3	19.7	65.0	13
olden Horseshoe	50.2	25.4	75.6		31.3	30.9	62.2	13
estern Ontario	56.1	21.6	77.7		37.5	27.6	65.1	30
ronto	36.0	27.9	63.9		21.6	33.8	55.4	8
orthern Ontario	37.9	29.4	67.3		15.2	34.4	49.6	12
urban	37.3	29.4	66.7		21.2	34.3	55.5	16
ixed	50.5	23.8	74.2		32.1	31.2	63.3	34
ural	57.3	17.2	74.5		40.9	22.0	62.9	57

*Graham White, "Social Change and Political Stability in Ontario", p. 160, Table IV-5.

Throughout the latter part of the nineteenth century, support for the liquor crusade became general among rural Ontarions. The only notable exceptions were those of French or German descent and those whose crops found an outlet in the liquor industry. In the cities, it was the middle class which stood with most of rural Ontario and it provided virtually all of the leadership in the fight against alcohol.³⁰

The cities did offer a base for prohibitionist organizations although the support was lower on average than in rural areas. Because they were central, easily accessible and had facilities necessary for organizations, they served as the locus of the groups. The only urban areas to vote "wet" in 1894 were Windsor and St. Thomas, and the separated town of Prescott. Although the voting margin was narrow in other urban areas, the prohibitionists carried the votes.

Support for prohibition was located strongly in the rural southern sector of the province because of the threats posed to them by urban expansion, industrialization and the influx of immigrants. Their population was decreasing in proportion to the rapidly expanding urban centres. Between 1890 and 1900 the rural population shrank from sixty-seven per cent to fifty-seven per cent of the total population in the province.³¹ Its size was diminished by the migrations of British immigrants to the prairies and of their sons to the city where they adopted the behaviour there. The expanding urban areas were viewed with suspicion because of the alien elements introduced by the immigrants and the more permissive behaviour associated with it. The rural populations associated drinking and unruly behaviour

with the cities because of the anonymity that could be achieved there:

The rural districts generally tended to be more in favour of prohibition than their urban counterparts. In the relative isolation of a farming community, drunkards were looked upon with contempt and pity and were known for miles around. Drunkenness was regarded as a form of corruption usually associated with big cities, it did not belong in the purity of the countryside. Drunken orgies originated in urban centers small and large. For the safety of rural districts, the cities and towns must also be under prohibition.³²

The increasing interaction of the country with the city caused rural inhabitants to fear that urban values and immorality would influence their communities. The advent of the automobile and industrialization increased the perception of this threat as serious. Because drinking was a visual representation of the difference in their customs, it was the focus of reforms to counter the urban threat.

Politicians did not legislate for provincial prohibition despite the results of the provincial plebiscites on prohibition and the increasing number of communities voting "dry". This lack of action and the introduction of the three-fifths regulation in local option votes by Whitney in 1906 angered the middleclass reformers. They interpreted these responses to their demands as affronts to their moral standards and position in society; and as tacit acceptance of the values of the lower classes, the urban dwellers and the liquor interests. The need of the middleclass reformers for general prohibition

became more acute as their self-esteem waned in the face of these rebuttals. To reassure themselves of their dominance they needed to inflict their morality on everybody by attempting to "coerce the public definition of what is moral and respectable."³³ Persuasion had failed to convince others that the middleclass definition of respectability was desirable, and therefore coercion became the necessary means of reform.

The trend towards province-wide prohibition after the 1890's was particularly evident in the attitudes of clubs towards drinkers:

by the 1890's such attitudes [condoning liquor consumption] were on the wane. Not only did many churches frown on the drinking member but many fraternal societies such as the Odd Fellows, the Knights of Pythias, and the Knights of Columbus closed their membership to those involved in the liquor business.³⁴

Not only were drinkers shunned, but dealers were also lowered in esteem. This attitude became more pronounced as the province became increasingly "dry" and the respectability of drinking diminished.

Drinking came to be regarded as a sign of unreliability and low character in men. In 1896 the Royal Commission on the Liquor Traffic reported that the general testimony of employers,

was to the effect that much time is lost by drinking employees, and that work is frequently interfered with, sometimes seriously, by the absence or incapacity of drinking men. The majority of employers expressed a decided preference for abstainers; they would not keep excessive drink-

ers in their employ, and the majority regard even moderate drinkers with suspicion.³⁵

Even employers began to close their doors to drinkers. It was believed that moderate drinking could lead to excessive drinking which would cause employees to be absent or late. Because character and reputation were critical in gaining employment and in attaining promotions, people were forced not to drink or to drink surreptitiously.

Pauperism and the ills of the lower classes were also credited to the evils of drinking. The Royal Commission on Liquor Traffic interviewed various managers of Houses of Industry to trace the source of poverty. One manager, P. Hier of Berlin (now Kitchener) Ontario, claimed that "there would be probably 75 per cent [of inmates] who had been people of intemperate habits, and that was the cause of their trouble."³⁶ Based on evidence of this nature the Report concluded:

Where in other places the commissioners made similar inquiries the evidence was all in agreement with the facts already stated, that nearly all pauperism is traceable directly or indirectly to intemperance.³⁷

Because drinking was the cause of pauperism (directly or indirectly), it was also found to be a drain on the state. The state had to support paupers in work houses and their potential productivity was lost. It was believed that if drinking was abolished, then individuals would work harder, produce higher profit yields and raise the prosperity of the state: to allow drinking decreased productivity and the wealth of society. These latter prospects were unappealing to middleclass citi-

zens who believed that Ontario had prospered through abstinence and industry.

The disparity in attitude towards drinking between the middleclass and the working class was underscored by the position of the Labour Congress in Ontario. The Labour Congress,

never committed itself to official support for prohibition and in the 1890's it ceased to express even sympathy. Critics of prohibition were quick to note working-class oppositions to the movement and frequently denounced prohibition as class legislation.

By the 1890's, then, if some Ontarions were drinking much less, others, probably the urban working-class, were drinking much more. This class distinction in the intimacy of the urban setting seems to have made the working-class drinker a highly visible problem and an irritating challenge to the lifestyle of the urban middle-class. Some of this was reflected in the arguments advanced for prohibition.³⁸

As their positions on drinking polarized, alcohol became the symbol of the differences between the two classes. The middle-class viewed intemperance as the source of the poverty and problems of the lower class and used drinking habits as an excuse not to associate with its members socially and to coerce them into adopting abstinence.

The working class was also the target of reform by the middleclass because of its behaviour with respect to the Sabbath. The middleclass protestants, in particular the Presbyterians, Methodists and Baptists, disapproved of activities and festivities that were not religious; however the working class did not disapprove of work on Sundays nor did its mem-

bers censure relaxation and recreation on their day off. By 1889, the behaviour of the lower classes was perceived as sufficiently irreverent to cause the Presbyterian General Assembly to authorize:

a conference of churches to deal with it. The outcome was the Lord's Day Alliance, formed to preserve Sunday against encroachments in the name of profit and of wordly recreation. Many churches saw that they could no longer concern themselves solely with salvation of the individual. They were caught up in the effort to preserve the life style of which they were a part against the assaults of urban and individual influences.³⁹

The middleclass and the established churches refused to accept the behaviour of lower classes on Sundays and allied to coerce them into observing their standards.

The origin of this threat was the same as the threat of drinking: it was rooted in the working class, the immigrants and in primarily non-Protestant religions. But even,

the British immigrants provided a shock. Of forty thousand Presbyterians who entered Canada in 1912-1913, for example, only some eight thousand joined the church on arrival.⁴⁰

Because these groups were closely associated with the reformers by background, their non-compliance with the standards of the reformers accentuated the concern of the reformers. The more tolerant stance of the Anglican and Catholic churches⁴¹ towards Sundays also aggravated the reformers because of the immigration of people from predominantly Catholic, southern European countries in the 1890's and early twentieth century. The Protestant churches favouring strict Sunday observance felt that the Catholic church was not ensuring that these people

observed Sunday in a strict manner and did not drink to excess.

The pressure for liquor reforms continued and by 1914 the municipalities under local option were numerous. The adoption of prohibition in 1916 was interpreted by reformers as a continuation of the trend of communities and as an affirmation of their position in society and their right to designate what was respectable and moral conduct. Gusfield explains that affirmation of a group's status is signified in three ways:

First, the affirmation of a norm as the public norm prevents recognition of the norm violator's existence by the public. The existence of law quiets and comforts those whose interests and sentiments it embodies. Second, public affirmation of a moral norm directs the major institutions of the society to its support.⁴²

For Ontario prohibitionists, their self-esteem was raised because they interpreted the law as acknowledging their sentiment as predominant and dismissing those of their "enemies." From their perspective, the law designated drinkers nonentities. Second, the Ontario Temperance Act ensured that political and social institutions were directed towards preventing drinking in Ontario. The institutions supported their goal. Affirmation is significant in a third way:

affirmation through law and governmental acts expresses the public worth of one's subculture's norms relative to those of others, demonstrating which cultures have legitimacy and public domination. Accordingly it enhances the social status of groups carrying the affirmed culture and degrades groups, carrying that which is condemned as deviant.⁴³

This last consequence was most significant for prohibition

reformers in Ontario because they interpreted prohibition as a solidification of their status and norms in Ontario. The subsequent election of Drury and the United Farmers of Ontario further confirmed the social supremacy of the rural middleclass values. The anti-liquor stance of the U.F.O.'s reassured the prohibitionists that prohibition was firmly entrenched.

Prohibition was heralded by reformers as the proper and necessary course of action for Canadians to adopt if they were to fulfill their projected role. Decarie studied racism and nativism in prohibition reform and concluded that: "Many of Ontario's prohibitionists believed that they were fashioning a society with a responsibility to the ages."⁴⁴ The Ontario Branch of the Women's Christian Temperance Union expressed concern over the threat of the immigrants to this destiny, in 1913. It called for immediate prohibition to curb the drinking habits of the immigrants:

This it felt to be essential if Canada was to be "...the land which is to give the world a civilization embodying the best features of older civilizations without their drawbacks," ... J.D. McCarthy of the Sons of Temperance laid much of the blame for the drinking problem on the immigrant population "...which has adopted the good Canadian way yet..." Alcohol, long unrespectable, had now become uncanadian, too.⁴⁵

It was only through prohibition that immigrants could be made to accept the Canadian way of life as perceived by the reformers.

The "uncanadianness" of alcohol was underscored with the advent of the First World War. Drinking posed another threat in addition to impairing Canada's ability to lead the world

socially: it undermined the discipline and regulation necessary to win a war. Even Moderates who had defended the right to drink in the past leaned towards prohibition for the sake of the war effort. Prohibitionists viewed prohibition as a means of protecting Ontario from both internal and external threats. Abstinence became the symbol of the sacrifices made for Canada and Britain and violation of the values of prohibitionists was tantamount to treason. Consequently, prohibition accorded the moral code of the prohibitionists greater worth than those of temperance advocates and anti-prohibitionists.

The 1919 liquor plebiscite was held following the war to determine whether or not prohibition would extend into peacetime. This plebiscite marked the height of the fight for prohibition. Prohibition elements in the province organized to launch a province-wide campaign against liquor and ensure that every elector understood the ballot. They educated women on the necessity and method of exercising their franchise.⁴⁶ In opposition, the Citizen's Liberty League organized support to secure "a sane moderate compromise to meet the reaction against a too drastic prohibitory measure which has resulted in all sorts of evasions and brought the law into contempt, thus tending to destroy our national life as sober, law-abiding citizens."⁴⁷ Their arguments were based on the "British tradition of liberty": namely the responsibility of the government to safeguard the right of the individual to govern his own conduct. The "drys" won the plebiscite by their largest

2
 full
 side

margin.⁴⁸

Ontario was not completely dry during the first phase of prohibition. Ontario wines were exempted from the legislation and the importation of liquor, which fell under federal jurisdiction was not prohibited. The well-to-do were able to stock their cellars through imports from Quebec. The working class bore the brunt of prohibition because they lacked the means to import their personal liquor supply. In April of 1921, Ontario voted "dry" by a reduced majority of 166,835. Bill 26, which prohibited the importation of liquor, and the Sandy Bill, which prohibited the commercial movement of liquor in the province, were introduced. Legally, Ontario was completely "dry" and the prohibitionists enjoyed a complete victory.⁴⁹

cell reports

complete dry

Although Drury and his Attorney-General Raney were "dry" people, they had much difficulty in enforcing prohibition.⁵⁰ In rural areas, where support for prohibition was high, enforcement was not a problem because people chose to abide by the law. But in the border, northern and urban areas of the province, where public opinion was not in favour of prohibition, enforcement was virtually impossible. But the law was a success for the reformers because it had reaffirmed their position in society.

even though it couldn't be enforced

The defeat of the U.F.O. party in 1923 sounded an ominous toll for the temperance advocates in the province. The conservatives who favoured the reinstatement of government control assumed office under Ferguson. The Conservative support

1

↳ from temperance

lay primarily in the cities where the U.F.O.'s lost heavily, but some incremental gains were made in the rural, southern areas of the province. Upon entering office, Ferguson called a plebiscite but failed to gain a mandate by which O.T.A. could be repealed. A majority of only 33,000 upheld prohibition.⁵¹ After two years of lax enforcement, Ferguson called an election based almost entirely on the liquor question and was returned to office without significant losses. Under his auspices the Ontario Liquor Control Act was implemented on June 1, 1927, "to promote temperance, sobriety, personal liberty and, above all, to restore respect for the law."⁵²

Prohibition was viewed as a measure that was directed against people and classes. Throughout prohibition,

a great many labour organizations, as well as many returned soldier's associations, consistently asked for the sale of beer of moderate strength. The men of northern Ontario, who perhaps knew more about the harsh realities of life than the average prohibitionist --who seems to have been predominantly comfortable, respectable, and middle-class-- also generally voted 'wet.' Prohibition was perhaps the ultimate majoritarian absurdity --the tyranny of the voting majority forcing its will on the community as a whole.⁵³

Prohibition extended the influence of the reformers beyond their legitimate areas --their personal lives; and beyond their immediate areas of influence-- their local communities. By affirming their norms, prohibition legitimized the stigmatization of people who did not conform to their moral standards. This apparent public deference to their norms assured them

of their position which they had seen as threatened. Therefore, the defeat of the U.F.O.'s and the repeal of prohibition was more than political: "It represented the loss of societal validity and the decline of social status of the Protestant, rural, native upholders of Prohibition."⁵⁴ It was a rejection of their right to define the moral code for the province.

In Gusfield's terms, repeal and the introduction of liquor control was symbol of differentiation for the reformers. By repudiating one set of norms for another (abstinence for temperance), repeal degraded the status of prohibition reformers and upheld the status of "wets". According to Gusfield:

Such gesture of differentiation are often crucial to the support or opposition of government because they state the character of an administration in moralistic terms. They indicate the kinds of people, the tastes, the moralities, and the general life styles toward which government is sympathetic or censorious.⁵⁵

govt's role

Acts are more than acts

Because these acts serve as expressions of the position of government towards groups, they can have an alienating influence on groups in society. Public disavowal of their norms can result in feelings of degradation, betrayal, anger and hostility towards the ascendant group. To counteract this consequence, government must seek to reassure the debased group that their position in society is valid and respected although no longer dominant.

The reinstatement of local option in areas which were "dry" prior to 1916 and the recognition of the right of municipalities to continue under the Scott Act performed the service

1916 dry areas and municipal Sect Act
restoration of public opinion

of reassurance for prohibitionists in Ontario. Local option was restricted in effectiveness as a prohibitory law because of the mobility in the province. It could only be effective where the public willingly supported it. Therefore, as Hose concludes, "its inclusion however in the control acts indicates a restoration to and recognition of its place in public opinion."⁵⁶ Local option was a necessity as Robert Hose explains.

Local

It was a

concomitant feature of the control system, enlarged to meet the new conditions of retailing intoxicating liquors and to include the opportunity of vetoing the establishment of government stores, brewery distribution points, and beer or club licences. This was an important expansion of priveleges though in keeping with the main object of this movement which seeks first to satisfy the opinion of the individual locality.⁵⁷

Reduction of
and increase of
public

Hose concluded these speculations with the remark that it was "perhaps reasonable that the control system which arose only upon the structure of popular demand should in turn be restrained by recourse to the same public criticism in localized areas."⁵⁸

Liquor control was introduced to restore personal liberty and local option was reinstated to restore public choice. Further, the inclusion of local option signalled that the sentiment of prohibitionists was not expelled from exercising any influence on the moral conduct of Ontarians but was only reduced in scope. By leaving prohibitionists the opportunity to influence the choice of morality in their areas and an arena to fight in, municipalities, the government rescued their esteem from being shattered. The government could make these concessions to the

prohibitionists without losing support from the "wets" and moderates because their position was secure. They now believed that they could assimilate the prohibitionists into their manner of living, and that the prohibitionists were too weak to pose a serious threat to them again. *too weak*

To balance "wet" and "dry" sentiments, the government maintained strict control over liquor laws and consumption:

There could be no advertising of spirits, wines or liquors, nor could they be served with meals in any hotel. The purchaser required a permit and must be over twenty-one. Each purchase was recorded and the privilege could be revoked if over-used. Any dry constituency, if it chose to refuse a store, could do so through the use of local option. "We are not here to push the sale of liquor," Ferguson said, "we are here to restrict it within reasonable bounds." ⁵⁹

Ferguson did restrict liquor within the province and left local option intact while he was in office. But the repeal of prohibition had marked the decline of temperance and the rise of the trend towards a more permissive system of liquor control. *upside peak*

The period lasting from repeal to the present is characterized by reforms which move the province towards a "wet" status and away from local option. Although local option has been retained throughout this period, government reforms have been directed towards undermining its support. Local option has persisted although its support has been diminished. The changing character of the population and the emphasis on tolerance of the behaviour of others have caused this trend to accelerate in recent years.

The first reform which signalled the move towards a more relaxed system of control was the implementation of the wine and beer act by Hepburn in 1934. The bill, originally introduced by Henry, permitted the sale of beer and wine in hotels and restaurants but recognized the right of municipalities to exclude them from their jurisdictions. This change met with active opposition from the prohibitionists because it provided more liquor outlets to drinkers. They perceived it as a concession to the "wets" and as an insult to them. The act was tabled by Henry prior to the provincial election with the provision that it would not be operative until after the election making it an issue that could split the Liberals. Hepburn attempted to hold the Liberals together and to simultaneously strip them of their "dry" label by encouraging everyone to vote "wet" but was unsuccessful. The Liberals divided on the legislation and it was passed unanimously by the Conservatives enhancing their solidarity going into the election. Although the Liberals were divided on this question, they won the election.⁶⁰ Hepburn implemented the bill against the opposition from "dry" party members, his allies the "dry" Progressives, and the prohibitionists in the province. In this election, the provincial "drys" lost the hope of regaining the support of a major political party for their cause.

Liquor receded as a political issue after 1934. During the second world war, restrictive measures were passed but the ban on liquor advertising was lifted so that liquor manufacturers would promote the war effort. In this war, liquor in-

terests were associated with the war effort and were not associated with the enemy by society.⁶¹ The fight did not erupt until 1948:

The immediate cause was a dormant revision of the licensing act, framed and passed by the government in 1946. Since it permitted the sale of liquor in cocktail bars and hotels, it was a new advance in wetness. For two years dry pressure had prevented the proclamation, but it had not prevented drinking. What seemed to have become apparent out of the usual cloud of statistics and confusion of competing claims was that, without the projected change, boot-legging, hotelroom drinking and general flouting of the law would increase rather than wane. This was loudly disputed by all the temperance forces but Drew proclaimed the act.⁶²

The act altered local option by increasing the choices of establishments that municipalities could adopt. Government control seemed to be favouring the desires of drinkers not abstainers. People could now drink in cocktail lounges and hotels without an accompanying meal.

The affluence of the fifties and sixties and the increase in leisure time have influenced liquor reform and Sabbath reforms. The reforms have been directed towards accommodating people in their desired leisure activities. Abstainers and Sabbath reformers have not ignored these changes:

The officers of the Canadian and Ontario Temperance Federations, the Women's Christian Temperance Union, and some church groups have opposed each successive relaxation of the laws; just after the lounges were opened a mass temperance rally was held in Massey Hall, and periodically ministerial conventions have denounced the lounges and the emergence of Yonge Street as "Rum Row". But there has been no large-scale

opposition.⁶³

The temperance organizations have become less aggressive and concentrate more on lobbying and education about alcohol. The intense fights are confined to a municipal level. One of the signs of the decreasing strength of the temperance fight occurred in 1960: "The General Council of the United Church, still urging abstinence as 'the wisest and safest course,' accepted the right of members to a moderate use of alcohol."⁶⁴

In this period, liquor consumption has been accepted as the norm of behavior in society. However, the feelings of the prohibitionists are still a factor in the province:

there survived in Ontario attitudes and laws designed to control social conduct and enforce what the current generation of Ontarians would regard as a Puritan code of ethics. Not even the twin forces of industrialization and urbanization, however powerful their impact, could destroy the ideological and value systems which had been shaped over a century and more. It would take another world war and the tumultuous changes of the post-1945 era to do that -- and even now old Ontario has not disappeared completely.⁶⁵

"Old Ontario" is evident in the liquor plebiscites. In the local option votes, the "drys" continue to fight to have their morality accepted. In this arena the liquor issue is still intense.

Gusfield offers an explanation of why the temperance fight in the United States persists:

Social systems and cultures die slowly, leaving their rear guards behind to fight the delaying action. Even after they have ceased to be relevant economic groups, the old middle classes of America

are still searching for some way to restore a sense of lost respect. The dishonoring of their values is a part of the process of cultural and social change. A heightened stress on the importance of tradition is a major response of such "doomed classes".⁶⁶

The Ontario advocates of prohibition continue to fight in local option votes because it is the means they possess to restore their sense of lost respect. Like their American counterparts, the "drys" perceive that their values are being dishonoured in the process of cultural and social change. But unlike the American groups, prohibitionists in Ontario are still able to assert themselves and their values through local option. For these people, each time a municipality votes "wet" the loss is significant. The changes towards "wetness" heightens their sense of lost respect. Changes to "dry" or the retention of a "dry" status has the reverse effect: they heighten their self-esteem.

The government of Ontario has chosen to uphold the right of prohibitionists to keep liquor out of their communities by retaining local option. Not wishing to antagonize the old middle class nor to appear as disrespectful of tradition, the government declared in 1962 that:

It is our firm conviction that this province must uphold the traditional right of the people to decide for themselves whether they will have the public sale of liquor in their own communities. We believe that the principle of local option must be preserved and that the people of Ontario have no sympathy for those in this House who would impose upon them the undemocratic policy of ramming public liquor outlets into communi-

ties that simply do not want them.⁶⁷

Throughout the 1970's and into the 1980's, the provincial governments have retained this policy of protection of local option. In 1979 Mr. Drea reconfirmed the policy of 1962 when he stated the stance of the government on local option: "local option as it exists cannot be interfered with."⁶⁸

The government recognizes the sensitivity of this issue and retains the legislation and in doing so preserves the self-esteem and self-respect of the "old Ontarians". Because its reforms in the liquor legislation have circumvented the local option clause, the government has been accused of adopting a hypocritical stance. In 1976, Mr. Drea refuted this accusation:

Coming back to the local option thing and the principle of Toryism and the hypocrisy the member suggests, I suggest that it's the other way around. When he opened his speech he attacked my minister. He said he was trying to interfere with local autonomy and democratically-elected council. What is more democratic than to let people in an area decide whether they want liquor? Whether they want it sold? Whether they want stores? Whether they want hotels? What is more democratic? You can't have it both ways.⁶⁹

By refusing to alter local option directly, the government allows an area of choice to exist which would not exist otherwise. If local option was abolished, then communities would be denied the right to choose what standards would apply to them and the position of the "drys" would be denied as valid. The "drys" are sufficiently active and a large enough group to

prevent this from occurring. The Conservative government can only "nibble away" at local option through indirect reforms.

Conclusion

Local option is an entrenched aspect of Ontario's liquor laws because of what it has come to represent to the "drys" in the province. To them it is a symbol of the validity of their status in society. Moderates have come to support local option also because it allows them to choose the degree to which their community will be "wet". Local option is the means by which these groups are able to coerce others into adopting their morality and their definition of respectability. For the "drys" this is particularly important because of the loss of respect they experience as the province votes to become "wet" and its moral standards become more permissive. Local option insulates their position and permits them to believe that their views are not dismissed. Because of its symbolic connotation and origins, local option cannot be changed directly despite the present trend towards accommodation of people's desires. It remains an anomaly in this period of the decline of prohibition.

The Boundaries: Local Option and Similar Laws

It is difficult to amend legislation which has acquired a symbolic meaning. Unlike instrumental laws, laws governing symbolic issues cannot be amended without arousing public sentiment even if the change will yield positive results from the standpoint of the government. Because changes are difficult to implement, governments which are politically astute avoid changes in such legislation and are often content to leave the laws as they are.

In Ontario, the government tends to endorse laws with a symbolic connotation and has not directly interfered with local option laws or boundaries. Through acting in this manner, the government has acknowledged the special status of these laws and the careful consideration that must be given to handling them. This attitude towards local option is underscored by the government's manner of dealing with similar laws. Local option has been treated differently than the liquor legislation in general and the other boundary laws in the province. Although this is not unexpected where purely instrumental laws are concerned, it is surprising that even Sunday legislation, which has been closely associated with prohibition and the liquor issue throughout Ontario's history, has been accorded a different status than local option. However, the handling of these two areas of law, Sunday and local option laws, has been comparable in certain important respects. The advocates

and opponents of change in these laws and the reasons underlying their positions are similar. In both areas of law, changes are made gradually and are usually indirect.

The difference in the government's treatment of local option and the liquor legislation was highlighted in 1975 by Bills 44 and 45. These two bills significantly changed the Liquor Licence Act. On May 7, 1976, Mr. Handleman, speaking on behalf of the government, praised the changes effected by the bills:

There've been more substantive changes and improvements in the administration of liquor policy in this province during the past 12 months than in the previous 28 years. I know some people say, "What were you doing for the previous 28 years?" We were making improvements, but I think we've moved quite a bit more quickly in the past 12 months. I'm quite proud of that record because it's an initiative that I inherited from John Clement, who really did most of the leg-work and the tough political negotiating that had to be done before this type of procedure could be initiated in the province.

I believe that this type of progress has won the Liquor Licence Board respect and cooperation from all of those different groups and associations and I've said on more than one occasion I've found nothing in this province on which there is more ambivalent opinion than liquor.¹

The scope of the changes was wide and they were only introduced after they had been carefully researched. These changes corresponded to the needs and opinions of the public as perceived by the government and they reflected diverse interests in the province.

The purpose of the changes introduced by Bills 44 and 45

was to make the legislation more effective and accessible to the public. The language of the legislation was clarified to ensure that a minimum of misinterpretations would occur. To improve public relations and increase positive interaction between the Licence Board and the public, the Appeal Tribunal was established and put into effect on April 2, 1976. The greatest area of improvement, which caused concern in the legislature, was the reorganization of the control and regulatory authority of the Liquor Control and Liquor Licence Boards. The Liquor Control Board became a marketing agency and lost its powers to implement policy changes and regulate liquor. Licensing became the prerogative of the Licence Board.² This change increased the efficiency of the boards by eliminating areas of dual authority and concentrating the responsibilities of each board in different areas. To ensure that confusion would not result from these changes, the powers of both boards were enumerated and previously unwritten rules and policies were recorded. The changes were intended to benefit applicants for licences by streamlining the process, and the general public by reducing costs and clarifying the powers of the boards.

In order to satisfy public curiosity and demands, as well as opposition criticism in the legislature, Bills 44 and 45 introduced structural changes which would clarify the financial status of both boards. The finances of the Liquor Licence Board remained in the estimates of the Ministry of Consumer and Commercial Relations. Although the Control Board remained

within the Ministry of Consumer and Commercial Relations, its finances were included separately in the Treasurer's report.³ This change corresponded to the Control Board's new status and powers.

Other major areas of concern, which were amended, included the powers of inspectors over safety requirements and entertainment in liquor outlets. Under Bills 44 and 45, the Licence Board relinquished its powers to censor entertainment in licensed establishments and to revoke licences on the basis of the quality of entertainment⁴ or the standards of safety. The loss of power to censor entertainment loosened the control of the liquor board over the standards of respectability in establishments. Although this change entailed a reduction in the authority of inspectors, it was consistent with the general aim of the legislation. The role of the inspector, which had been considered a "policing" role, was modified to emphasize the "consultant" aspect of the inspectors' work. This change of emphasis was intended to establish the relations between the licence board and officers and the establishment owners on a more productive basis. To produce this result, the power of inspectors to revoke licences on questionable grounds had to be curtailed.

The Ministry was concerned with altering the image of inspectors for two principal reasons. First, charges of corruption had been made against inspectors⁶ and it was believed that a reduction of their powers would silence these charges. Inspectors were no longer permitted to revoke licences auto-

matically upon perceiving a contravention of the licence or safety regulations. Instead, the inspectors were to report any violations to the board and the board would then issue a warning to the offender. Second, the board intended to use the inspectors to create a more positive public image. In the past, licencing boards were regarded as austere, rigid agencies which viewed drinking as immoral and whose purpose was to stringently control drinking. The withdrawal of censorship powers and the implementation of a review procedure were intended to convey a less censorious attitude towards liquor, and to impress upon licencees the board's concern for their interests.

The tone of the government altered where local option was indirectly implicated. The alteration in special occasion permits affected local option indirectly by forbidding them from being issued in "dry" areas. Despite its caution in initiating and announcing this change, the government was criticized by the opposition for acting too hastily and irresponsibly. One member of the legislature, Mr. Moffat claimed that the government had not given "dry" communities proper notice of this change which had seriously affected them:

...a number of municipalities, or a number of public service associations or charities or whatever you will, have run into difficulties with the changes in the Act, because people who in the past 12 months had special occasion permits really received no notice that there was to be a change in status, except sort of by word of mouth... sic .7

Mr. Moffat singled out Newcastle in Durham county and St.

George in Brant county as examples of communities which encountered difficulties because of this change. The denial of these permits angered communities because many desired to retain their "dry" status but required special occasion permits for various organizations and functions held in the community. The loss of permits entailed a loss of revenue for them.

Mr. Handleman responded in a guarded manner and attributed the necessity for change in the issuance of permits to a court decision on the legality of them. Although the change in special occasion permits affected "dry" areas, he denied that it caused a revision of the local option provisions of the liquor act:

There was no change, absolutely none. What we were faced with was court decision that said the previous practice under the existing law and regulations, was illegal.

I don't think you can suggest to anybody they continue a practice which the court has said is illegal. There is no way that the board or the government had any way of knowing that the court was going to hold that in the case of the sale of liquor in dry areas to put this on the ministry or on the board, I think, is completely unfair.

There were no changes. It was obviously a court decision which required a change in the administration.⁸

Mr. Handleman's response deflected responsibility for the change from the government and was intended to curtail further criticism. The reference to the court decision, which declared the issuance of special occasion permits to dry areas invalid, conveyed the impression that the government had only changed the law to ensure the legality of its policies. On

these grounds, the government was safe from criticism.

On two separate occasions⁹ Mr. Moffat pressed the government concerning the changes to special occasion permits and the difficulties that had arisen because of these changes. In addition to not issuing adequate notice, Mr. Moffat claimed that the government had not fully considered the ramifications of these changes. He claimed that they had caused confusion where amalgamations and annexations had taken place. In one instance, concerning Newcastle, this confusion was heightened by the discovery of the discrepancy between the status for the area recorded by the board and the one by the town. The records of the board had prevailed and a vote was required to change the status to the one recorded in the local records. As a result of the cancellation of permits and the misunderstanding concerning the status, the people of Newcastle were convinced that the board had acted improperly. This misunderstanding and the feelings of the people of Newcastle were cited as typical throughout local option areas in the province.

In response to this criticism, Mr. Handleman stressed that the notification concerning permits was extensive and that several months before they became operative, proposals of the change had been sent to every municipal agency through the Provincial-Municipal Liason Committee. In return these agencies had recommended changes which were incorporated into the new legislation. He admitted that:

There is no question that after it went into effect, we found some problems in it. I

want to make it quite clear that there was absolutely no change between the new local option provisions and the old ones. This was primarily because most of the people who are involved with local option said, "Leave it alone." We felt that there were some defects in the old provisions but we didn't touch local option provisions and there were no new ones there.¹⁰

The essence of Handleman's remarks is that the alterations to special occasion permits did not cause changes in the local option provisions even though problems had arisen concerning "dry" communities. Under the advice of ministry staff, the local option provisions had remained intact. On the second occasion that Mr. Moffat pressed him, Mr. Handleman reiterated that:

there were absolutely no changes whatsoever in either the law or the regulations of the administration of local option rules. We didn't touch them in Bill 44, we didn't touch them in the new regulations. They remained exactly as they have been for a number of years.¹¹

The local option provisions have not been directly altered nor will they be. The confusion in "dry" communities was not due to changes in local option but in special occasion permits. The government was adamant on this point.

There have only been three instances where the local option privileges of areas have been suspended or revoked upon annexation. These have occurred in the last ten years. The first was in July of 1975, when the town of Palmerston in the County of Wellington annexed part of the township of Wallace in the County of Perth.¹² The second was in June of 1977, when the town of Fergus in the County of Wellington annexed part of the

township of West Garafraxa.¹³ In these two instances, section 26 of the Liquor Licence Act, the local option section, and in the latter case section 33(3), concerning special occasion permits, were declared not to apply to the premises located in the annexed area. Similarly, when the town of Napanee annexed part of the Township of Napanee, local option did not apply to the premises located in the annexed area.¹⁴ In each instance, the local option provisions were revoked because of a lack of population. The areas annexed were all small lots holding buildings which the towns wanted for liquor functions. To waive the local option by-laws, the terms of annexations in Palmerston and Fergus were recorded in the liquor regulations. The Napanee annexation was drafted by the legal department of the Liquor Licence Board and the Mayor and town council of Napanee. The status of these areas could be eliminated because no residents were involved in the annexations, but even then legal sanction was required. In annexations where liquor is not involved, the laws are not so strict.

In Ontario, municipal boundaries are regulated by Part I of the Municipal Act¹⁵ which encompasses the formation, erection, alteration of boundaries and annexations, amalgamations or dissolution of municipalities. According to this act,

The amalgamation of two or more municipalities does not affect the by-laws then in force in each former municipality until repealed by the council of the new municipality.¹⁶

Therefore, by-laws remain in effect in municipalities that

amalgamate until they are altered by councils. However, the act proceeds to stipulate that:

Nothing in this section authorizes the amendment or repeal of a by-law that the council by which it was passed could not lawfully amend or repeal.¹⁷

Councils may not alter by-laws that the previous councils were prohibited from amending or repealing. Although councils can change the majority of by-laws some, such as local option by-laws, are outside of its jurisdiction. Under this Act, local option by-laws are protected. By-laws which cannot be changed are outlined in the section concerning annexations.

In the case of annexations, most by-laws cease to be in effect in an area upon annexation. This practice deviates from the treatment of by-laws in amalgamated areas and of local option by-laws. The Municipal Act explains that in the case of annexed municipalities or portions of municipalities:

Except where otherwise ordered by the Municipal Board, where a locality or a municipality is annexed to a municipality, the by-laws of the latter municipality extend to the locality or annexed municipality and the by-law then in force in the locality or annexed municipality cease to apply to it, except by-laws relating to highways, by-laws passed under section e9 of the Planning Act or a predecessor of subsection 13(3) of The Municipal Amendment Act, 1941, and by-laws passed under section 41 of the Planning Act, which shall remain in force until repealed by the council of the annexing municipality, and by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the council that passed them.¹⁸

Therefore, the by-laws of an annexed area are superceded in

authority by the by-laws of the annexing municipality. By-laws relating to highways, restricted areas, buildings and land use (section 39 of the Planning Act), park land use and sale (section 41 of the Planning Act), remain in force in the areas until the council of the annexing area alters them. By-laws which confer rights, privileges, franchises, immunities, or exemptions from the jurisdiction of the previous council are not changed upon annexation. Where these by-laws conferring rights, privileges, franchises and immunities are within the legal authority of the previous municipality to alter, they may be altered pending a council decision; Sunday by-laws are an example of by-laws which may be changed by a council. By-laws which are exempted from change by municipal councils under the order from the Municipal Board, may be changed by reference to that Board if it deems the change necessary.

It is only by-laws which touch upon the central interests or rights of citizens that are not subject to change by councils upon annexation or amalgamation of municipalities. These by-laws are invested with a special status and given an immunity not granted to other by-laws which regulate services and functions in communities. These "special" by-laws are treated in a manner similar to local option by-laws with the exception that local option by-laws can only be altered by reference to a plebiscite. In this respect, they gain a certain uniqueness that other by-laws lack. To understand the relation between local option by-laws and other by-laws representing symbolic issues, it is feasible to study a specific law. Since Sunday

laws and local option have comparable histories, they will be focussed upon.

Unlike local option by-laws, Sunday by-laws are not granted this immunity from change by the town council upon annexation or amalgamation. The Lord's Day (Ontario) Act¹⁹ is subject to local option but is adopted through by-laws passed by the councils of cities, villages, towns or townships and not by local referendum. Consequently it can be changed by councils when an area is joined with another. This treatment of the by-laws distinguishes Sunday and local option legislation and designates local option as a more sensitive area than Sunday laws. Local option by-laws are granted a permanency that Sunday laws do not possess.

This difference in the treatment of Sunday and liquor by-laws is unusual because of their closely associated history and origins of support. But the two areas of law are similar in that they have become symbolic issues in the province. Sunday laws are maintained in spite of opposition from economic interests and religious groups which do not worship on Sundays. To understand the similarities between local option laws and Sunday laws as symbolic issues, it is necessary to examine the treatment of Sunday legislation.

Municipalities choose their by-laws in accordance with either the federal Lord's Day Act (Canada) or the provincial Lord's Day (Ontario) Act. The federal act has two main categories of prohibition: one concerning business and employment

activities; the other concerning commercial sports and entertainment. This act prohibits business transactions and performances, public meetings for money or attendance at meetings and performances for gain on Sundays.²⁰ The provincial act is more permissive and enables municipalities to permit Sunday sports, movies, concerts, horse-racing and agricultural, horticultural or trade exhibitions and shows within its boundaries, or section of the municipality. Under this act, the province can only regulate work, business or labour where it is connected with the activities mentioned above.

The federal Lord's Day Act was originally enacted to compensate for a decision of the Privy Council which struck down Ontario's Lord's Day Act. Peter Hogg offers this interpretation of the case and legislation:

The decision was *A. -G. Ontario v. Hamilton Street Railway* (1903), in which the Privy Council struck down Ontario's Lord's Day Act, on the basis that the prohibition of work on Sundays was a "criminal law" within exclusive federal jurisdiction under s. 91(27) of the B.N.A. Act. Before this decision it had been widely assumed that Sunday Observance was within provincial competence as a matter of "property and civil rights in the province" (s. 92(13)) or as a matter of a "merely local or private nature in the province" (s. 92(16)). Several provinces had Sunday observance statutes, and the Dominion had none.²¹

In response to pressure to compensate for this lack of legislation, the federal parliament enacted its Lord's Day Act with the provision that the provinces could "opt out" or classify activities as "works of necessity or mercy" and exempt them from the restrictions.²² In effect, the federal government

waived its paramountcy in this area.

The effect of this decision and others upholding it was to establish that prohibitions on work and recreation which are imposed for religious reasons are criminal laws within the competence of federal Parliament. Provincial acts which are religious in purpose are invalid because they encroach upon federal jurisdiction. The federal legislation was religious in purpose because it was passed to prevent people from profaning Sundays by working or pursuing activities that were not religious in nature. The act also ensured, as did the provincial ones, that the working man had one day of leisure with his family.²³ The legislation was the result of a compromise between religious groups represented by the Lord's Day Alliance which was composed of the major Protestant religions and predominantly from Ontario. The Roman Catholic Church encouraged the Alliance but was not represented by it.²⁴ As with the issue of prohibition, Anglicans and Catholics were less supportive of restrictive measures.

The Ontario Sunday Laws, which were reinforced by the Dominion Statute, continued in force into the mid-twentieth century. In 1922, Ontario enacted The One Day's Rest in Seven Act which provided "at least twenty-four consecutive hours of rest in every seven days, and wherever possible... on a Sunday"²⁵ for employees of hotels and restaurants. This act was consistent with the federal legislation and upheld Sunday as the preferable day of rest.

Sabbath restrictions were rigidly upheld in the province

in the 1920's and 1930's.²⁶ But by the 1940's,

there had been a gradual easing of Sabbath restrictions to permit the opening of the Museum and the Art Gallery, and the sale of foreign newspapers and articles other than drugs. But in the 1940's, the rate of change accelerated in Toronto as in other Canadian cities and resort areas. The dissatisfaction of members of the services who spent weekends in Toronto provoked much discussion, but the only action taken was for individuals, churches and a few voluntary agencies to provide hospitality and non-commercial recreation.²⁷

The restrictions were upheld, but beginning to loosen. Before the war ended, bowling on Sundays for non-profit organizations was permitted by an Ontario Justice, and in 1948, pre-confederation legislation, with the possible exception of one act, was repealed.²⁸

In 1950, Ontario legislation entered a new phase when it opted out of the federal legislation and enacted The Lord's Day (Ontario) Act. The Act:

was mainly permissive in nature, giving to municipalities the right to have sports which they specified by bylaw between the hours of 1:30 and 6 pm. on Sundays provided the municipal council had first obtained the assent of a majority of municipal electors voting on the specific question.²⁹

Once a majority vote was obtained then a by-law allowing that sport could be passed. It could not be repealed until subsequent vote ratified it. Votes to pass or repeal Sunday by-laws could be initiated by a petition signed by ten per-cent of the electorate.

This Act was challenged by the Lord's Day Alliance of On-

tario. It attempted to have the Act repealed under the Constitutional Questions Act, but failed. The Lord's Day Alliance most likely would have lost the case had it reached the Supreme Court because in 1958, the Dominion Board of the Lord's Day Alliance entered a case against the City of Vancouver for permitting commercial Sunday sport. It lost in both the B.C. court of appeal and the Supreme Court of Canada.³⁰ The British Columbia legislation was declared valid and by association, the Ontario legislation was valid.

In 1960-1961 the Lord's Day (Ontario) Act was amended giving municipalities the right to pass by-laws allowing moving pictures, concerts and theatrical performances. In 1960 a further amendment permitted admission fees to be charged at concerts and music recitals held by non-profit organizations.³¹ Premier Frost supported these changes in spite of opposition by Sunday organizations on the grounds that sports on a local option basis had not resulted in an open Sunday throughout the province and therefore was consistent with the Sunday Act. The 1961 amendment also removed the 6 p. m. restriction on activities. Premier Frost explained the reasons for these amendments:

From a religious aspect, it should be noted that there are differing customs in various parts of the province. As a matter of fact, there are differing customs as between municipalities which may be contiguous. In some places there are religious observances in the afternoons; in some places there are religious observances in the evenings.

...In other cases, no doubt, there will

be the desire on the part of the people to have no such operations at all.³²

It was believed that local option in Sunday laws would accommodate most people and communities, except the interests of Jewish and other religious groups who worship on days other than Sundays and the interests of people who advocated strict Sunday observance. The legislation continued to favour the Sabbath of the major Protestant religions but not in the manner that they had defended earlier in the century.

In 1968 three significant amendments were made to The Lord's Day (Ontario) Act. First, municipalities were allowed to enact by-laws permitting agricultural, horticultural or trade shows and scientific exhibitions. Second, horse racing, which had always been censured by Sabbath observances, was also permitted subject to municipal by-laws. The most significant of the three changes was that the necessity of a vote of the municipal electors as a precedent condition to the passing of a municipal by-law was removed. Votes were not prohibited but left to the discretion of the municipal council.³³ As the Attorney General of Ontario explained, the legislation was in accordance with the desire of the people in the province for Sunday afternoons to be a time of recreation, and the legislation did not interfere with Sunday church services.³⁴ The "puritan" way of life associated with the evangelical protestant religions and the established middleclass was being replaced by the more tolerant customs and habits of the new middleclass. The changes in the Sabbatarian legislation in

Ontario since 1950, have reflected the decline in the dominance of the established Methodist, Presbyterian and Baptist middle-class groups to maintain a "closed" Sunday in the province. In 1950, the Canadian Forum captured the decline in influence of this group:

People are increasingly unable to believe in the disinterestedness of the churches, or in their ability to distinguish a moral issue from one that merely appears to threaten their social and economic position. That the churches are spending far too much of their energies in an inglorious rear-guard action against the incidental vices of society; that they cannot distinguish cause from effect in social evil; that they have not only tended to retreat into the propertied middle class, but are no longer coming to grips with the real needs of even that class.³⁵

The efforts of the church and the once dominant middleclass are largely unsuccessful because they are inconsistent with the needs of the new middleclass composed of the people they tried to reform through prohibition and Sunday legislation. The efforts at Sunday reform, as in liquor reform have been moved out of provincial politics to a municipal level. In their communities, Sabbatarian reformers continue to fight for restrictive legislation but their position has been weakened by the loss of local option. That their influence has not been entirely eradicated is evident by the retention of strict Sunday legislation. However, their desire in ensuring that Sunday is strictly observed has been replaced by the desire of people to pursue leisure and recreation. The current atti-

tude towards Sunday worship, like the prevalent attitude towards liquor, is more tolerant and permissive of laxity in others.

In recent years the criticism of Sunday laws has originated from two primary sources: from religious groups whose Sabbath is not Sunday and claim that the law is discriminatory; and from business interests who claim that Sunday closings harm them. A third group could be comprised of the first two groups, namely religious people with business interests. In spite of criticism that legislation making Sunday the official pause day is discriminatory, changes have not been made to correct this bias.

In 1970, the Ontario Law Reform Commission Report on Sunday observance addressed the issue of changing the legal pause day or making the pause day optional. Its conclusion was that adopting Saturday as the pause day,

would not be in accordance with the traditions, customs and practices followed by the vast majority of Ontarions for many years... To suggest a day other than Sunday as a uniform day of pause for Ontario society would be to ignore history.³⁶

Therefore, the possibility of altering the day was dismissed because it would not correspond to the established tradition of Ontario. The commission did acknowledge that the selection of Sunday "as a uniform pause day does have an incidental religious effect"³⁷ but did not advocate change because the effect was not serious enough and was only incidental to the purpose of legislation. To avoid conflict with federal legislation

provincial legislation is secular in purpose,³⁸ and therefore, to amend the law to accommodate religious practices in the province would violate the nature and legitimate scope of the provincial legislation. A law of this nature would be struck down by the Supreme Court for being ultra-vires, just as the Quebec law requiring the closing of shops on six Roman Catholic holidays was, in the Henry Birks case [1955].³⁹ Laws of this nature are deemed to be Sunday observance (criminal) laws and are within the jurisdiction of the federal government.

The option of incorporating a provision into the Ontario Lord's Day Act which would allow people to choose whether they would worship on Saturdays or Sundays was discussed in the Ontario legislature in the mid-1970's. The opposition suggested that this solution would incorporate the interests of Jewish people, Seventh Day Adventists and other groups who worship on Saturdays into the provincial legislation. Mr. Singer remarked that this was what was done in practice in Toronto and therefore should be given serious consideration:

I think what has been going on, insofar as the Jewish segment of the community is concerned, is that where the police are convinced they are actual observers and they do close down on Saturday, they let them carry on, probably outside the law, but they let them carry on their businesses on Sunday without any disturbance.⁴⁰

Mr. Kerr, who was the Provincial Secretary for justice and was responsible for publishing the Green Paper⁴¹ which made recommendations and proposals for legislation dealing with Sunday as a common day of rest and with uniform store hours,

replied to Mr. Singer,

But you see that would be hard to put in the law, otherwise we're involved in a religious aspect.

Mr. Singer; You are, you are. But both those groups have very deep religious convictions about the use of Saturday and the use of Sunday; and I think they deserve very serious consideration.⁴²

These changes were dismissed on practical and legal grounds, just as in the Green Paper, the possibility of "liberalized" or more permissive Sunday shopping laws was dismissed.⁴³ Although the position of Saturday observers was submitted to the committee compiling the Green Paper, the option of allowing Saturday closings in place of Sunday closings was not recommended.

The import of these refusals to change the day of closings, to lessen the restrictions on Sundays, and retain Sunday as the only pause day, has been to uphold Sunday as the legitimate day of worship in the province. Simultaneously, the right of religions which worship on Saturdays to be represented in this area has been denied. By not making concessions to these religions, the provincial government is symbolically differentiating between their position and rights in society and that of the established Protestants. However, as the exchange between Mr. Singer and Mr. Kerr reveals, violations of Sabbath closings are tolerated in urban centres.

The other major source of challenge to the Sunday laws is posed by the economic sector. Larger stores are particularly responsible for protesting and violating the Sunday

Closing legislation in Ontario. When the government was questioned in the legislature or the violations, Mr. Bales replied that an increasing number of stores were being prosecuted and fined for remaining open on Sundays:

There is an argument, of course, that the fine for staying open really represents sort of a charge for opening for the day. But I think it is having an effect, generally.⁴⁴

Enforcement was also hampered by the qualification that the Department of Justice could not prosecute a violator unless charges were laid against him. The opposition feared that this would result in one or more of the chain stores attempting to "pressure a change in public opinion by something called a breach of the law."⁴⁵ Instances where the law had been altered because of violations were cited in support of this fear.

The demands for change of economic interests and religious interests are related. Since 1906, both groups have opposed the law and attempted to change it through petitions and violations. The government has consistently refused on the basis that Sunday legislation regarding closings and the Lord's Day (Ontario) Act are secular and therefore cannot implement the necessary changes, but as the Canadian Jewish Congress remarked: "The remedy is within the competence of the province to provide, for the Ontario Lord's Day Act was enacted for the very purpose of carving out areas of exemption."⁴⁶ The provincial government will not alter its legislation concerning Sundays substantially.

Municipalities are increasingly adopting the Lord's Day (Ontario) Act and becoming more tolerant of Sunday activities. In urban centres which tend to favour less restrictive legislation, the prosecutions of violations of store closing by-laws are not systematic nor effective. However, the nature of the Act, to preserve worship on Sundays, has not been significantly altered, as Sunday activities are restricted to after 1:30 p.m., and municipalities reserve the right to designate what activities will be permitted. The legislation symbolically endorses the traditional customs of the province and denies other customs legal status. Symbolically, Sunday laws like liquor by-laws coerce people into accepting the established habits of the community.

Sunday laws are still significant to certain groups in society. Mel Lastman commented on the ideas associated with Sunday legislation in the Globe and Mail:

Politicians are scared to touch it. They are afraid people would be forced to work if Sundays were opened up a bit. And, generally, the fear is that Sunday would become a wide-open day.⁴⁷

He considered these fears to be nonsense, but former mayor of Toronto, John Sewell, suggested that open Sundays would significantly alter Toronto's character:

The question is how much we want to change the character of this city to accommodate tourists... We could say we want the Shriners here every weekend, but that's not the sort of city I want to live in.⁴⁸

Sunday legislation would alter Toronto by making it encourag-

ing to tourists and conventions to go there. This would cause it to become busier and livelier on weekends.

Sewell's concerns were echoed by religious groups, labour unions and labour organizations like P.U.S.H. (Provincial Uniform Store Hours) in the province, often in stronger terms. One opponent of loosening Sunday restrictions, was quoted in the Globe and Mail: "In California we see where wide-open Sundays lead to moral laxity, crime, promiscuity, and the decay of social mores."⁴⁹ Other groups were concerned that more permissive Sunday laws would lead to the break-down of the family because members would have to work to provide entertainment for others. The central fear seemed to be that relaxation of Sunday laws would lead to a breakdown of accepted customs and habits. Consequently, the provincial government retains Sunday closing laws and protects the rights of municipalities to retain restrictive by-laws even though they violate the liberties of individuals. In these respects, Sunday laws are like local option by-laws.

Local option and Sunday legislation are accorded a special status by the provincial government because of their symbolic meanings. Both areas of law are protected from major changes by the provincial government despite criticism that they infringe on personal liberties. Local option is protected to a greater extent than Sunday laws although Sunday laws have a religious significance. To reduce the political pressure for change in these areas the provincial government has continued to relegate the responsibility of adopting or rejecting pro-

hibitory legislation to the municipalities. This has enabled individuals to preserve these by-laws and to continue coercing others into conforming to the traditions of their community.

The impetus for change in both Sunday and local option laws has come from urban areas, immigrant groups and the new middleclass which has accepted tolerance of other's weaknesses as respectable. The opposition to reforms rests with rural communities and with the traditional groups who look upon abstinence as marks of respectability. According to Burnet, Sunday and liquor laws have been upheld by the working-class and a diminished middleclass. He argues that as the old Puritan middleclass has entered the upper class, their place in the ranks of moral reform has not been replenished:

As Toronto has grown to metropolitan status, its middleclasses have ceased to uphold themselves and to impose upon others with fervour and unanimity the norms of temperance and sabbatarianism. A few people, chiefly in the lower middle classes, cling to the old standards. Many more, particularly in the ranks of business executives, salesmen, and professionals, are less imbued with puritanism than their predecessors and do not consider drinking behaviour and Sunday observance as grave moral issues. Some regard teetotalism and rigid sabbatarianism as intolerance and bigotry, to them forms of immorality more reprehensible than lack of self-discipline.⁵⁰

The traditional standards of the "old Ontarions" are being replaced by new ones. This has caused the supporters of traditional values to attempt to preserve their standards through local option and Sunday legislation. The provincial government

has recognized the importance of the legislation to these groups and has resisted pressure to enact changes. Instead it is content to let communities alter these laws as their characters change.

Conclusion

Local option by-laws are an unique area of law in the province. Treatment of these by-laws distinguishes them from purely instrumental laws, the general nature of liquor control, and by-laws conferring rights, privileges and immunities. The boundaries created by local option remain intact and will not be altered until the electorate of each "dry" community votes to obtain a "wet" status, or the policy of government undergoes a drastic change. These possibilities seem unlikely because of the history of local option and the position it now holds in the provincial legislation.

It is a complex law that performs instrumental and symbolic functions. Because it possesses this dual purpose, it is supported by both "wets" and "drys" in many communities. Local option is an entrenched area of law because of its symbolic status not its instrumental purpose. It is limited in effectiveness owing to reforms, new institutions and the changing society, but these very threats to its instrumentality increase its symbolic meaning to "drys". As these threats continue, support for local option will also persist.

Laws as Rhetoric

Laws governing symbolic issues cannot be merely instrumental in intent. They must operate as rhetoric does in the sphere of opinion. If laws are to be effective, then they must appear differently to different people simultaneously and convince each person that it is to his advantage to obey the law. If the laws operate in this manner, then they will be able to effect results without people realizing that they are being manipulated. Gradually a symbolic issue can be transformed without individuals being antagonized by the changes. The behaviour of people can be altered provided that they do not discover that their position is being undermined by the law instead of upheld as they had believed.

If John Stuart Mill's principles of illegitimate and legitimate interference with others are to be applied to local option with success, then the legislation and government actions concerning liquor must function in a manner similar to rhetoric. They must covertly persuade prohibitionists to accept these standards. This chapter examines the reasons why Mill's application of these principles to society are inadequate in addressing issues like local option although they apply to the general liquor legislation with positive results. Local option is then examined to discover what techniques can be employed to reduce the political intensity of symbolic issues, and to transform them to avoid confrontations and alienation of prohibitionists in society. If the laws are used

effectively, then prohibitionists can be induced into desiring to abide by self-regarding and other-regarding classifications.

In chapter one, parallels between Mill's theory and liquor legislation in Ontario were drawn to illustrate the liberal nature of the laws. Local option clauses were cited as the anomalies in this legislation because they were not liberal. Whereas drinking was viewed as a legitimate activity in the province and was facilitated but controlled by the general legislation, local option entitled people who abstained to impose their morality on other people. Local option laws signalled that intolerance of drinking was a legitimate mode of behaviour. It was concluded that Mill's principles could not be applied in an issue such as local option because the abstainers were unwilling to respect the habits of drinkers in society and were militant enough to effect legal recognition of their intolerance. For Mill, such a disregard of the division between self-regarding and other-regarding actions was reprehensible.

Mill wrote On Liberty with the intention of defining the legitimate spheres of political and social authority over individuals in a liberal-democratic society. He considered social tyranny to be even more repressive than political tyranny. The former threat is more serious because a bad ruler or government can be isolated and purged but when the fault lies within the people themselves it cannot be so easily exorcised. Mill warns that:

Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression.¹

Social tyranny of the majority is more dangerous because it extends into the realm of individual liberty and represses the individual by confining his growth and actions. Protection against political infringements in society is not sufficient:

There needs protection also against the tyranny of prevailing opinion and feeling, against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and if possible prevent the formation of any individuality not in harmony with its ways and compels all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.²

Mill perceives the dangers inherent in people imposing their opinions on others and attempts to limit this interference of individuals with others. However, he does not outline the method for implementing this limit in areas where people do not observe the limit willingly and pressure the government for reforms enabling them to exceed the limit. Mill merely decrees that people should not interfere with the personal liberties of others and explains why it is wrong to do so.

Mill recognizes that there will be people in society who

object to self-regarding conduct on the basis that it offends them, but neglects to adequately address the question of how to alleviate the anxieties of these people or to silence them. Mill characterizes these people as "bigots" and defines them as individuals who,

consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings by persisting in their abominable worship or creed.³

This argument bears a close resemblance to the one used by many advocates of local option in Ontario who object to drinking on the basis that it is evil and that people who drink offend them. The bigot is not injured in an immediate sense, but he insists that watching another person engage in what he considers a despicable activity warrants interference with the actor because of the disgust it causes him.

Mill dismisses this excuse for interference with another as being inadequate. He states that:

there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse.⁴

The offended person does not have reasonable grounds to justify infringing on the rights of others. Perception of an offence is not a valid justification because it can be used to interfere with the liberties and personal choices of individuals

where no one but the immediate person is implicated. Accepting these grounds as a legitimate reason for interference would have two serious consequences. First, it would allow individuals to impose their opinions on others which would deny the right and ability of that person to govern himself. In a society with laws premised on the assumption that men are rational enough to govern themselves and to participate in the governing of others through elections, the denial of the right and ability of self-governance would undermine the fundamental premiss of the society. Second, interference based on a perceived offence would erode the basis of liberty in society. Personal choice would become subject to the questionable opinions of others. This would harm the opportunities individuals have to develop and to revitalize society through their original ideas and actions. Society, by tolerating illegitimate interference, would be ignoring one avenue of growth and stimulation.

Mill censured the Maine Law (1815) because it legitimized interfering with the personal liberties of others and arose out of the propensity of men to "extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual."⁵ This law was directed towards curtailing the sale of liquor within the state but had the effect of a prohibitory law. Mill did not criticize the law for its intent because liquor retail is classified as "trading, and trading is a social act"⁶ subject-

to regulation. His objection was that the "infringement complained of is not on the liberty of the seller, but on that of the consumer."⁷ Because liquor use was curtailed through the restrictions on the trade, the liberty of the drinker was violated. Similarly with local option, prohibition of liquor outlets within communities infringes on the liberty of others to drink. Although this interference may be defended by arguments that the drinker endangers his life on the highways, sets a bad example or by other instrumental arguments, Mill maintains that it is illegitimate until the drinker actually harms the other or poses a serious threat to him. The use of alcohol should not be interfered with because it does not directly affect or threaten others.

Mill anticipates another objection to his division of legitimate and illegitimate spheres of authority:

How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them.⁸

People will interfere with others who are acting within the sphere of self-regarding actions if they disapprove of the conduct on the grounds that the conduct of one member of society necessarily affects the other members. These people believe that such conduct which is not accepted by society will affect them adversely. This form of perceived harm is

more difficult to handle than actual harm in society. Whereas actual harm can be concretely defined and isolated, perceived harm cannot be. The latter exists in the minds and opinions of others and therefore its seriousness cannot be judged accurately. This intangible form of harm is not a valid basis for interfering with self-regarding actions because it could be used to eradicate personal liberty entirely.

In local option issues people often view drinkers as depreciating the value of their property and threatening their way of life by introducing different habits into their community. In the estimation of the abstainers, their happiness and well-being are threatened by this "degeneracy" paraded before them. Furthermore, they view the alcoholic as a liability that society must support, and thus see themselves as ultimately paying for his folly. Therefore, they will not consent to permitting others to drink because they view drinking as extending beyond the realm of personal choice. The abstainers will not abide by Mill's guidelines because they define self-regarding and other-regarding categories differently. They define them in relation to themselves.

To coerce either group into relinquishing their values and beliefs or to control their self-regarding behaviour would be an unwarranted infringement of personal liberty. However, as long as people view their behaviour as correct and their neighbour's as wrong and as affecting them adversely (albeit indirectly), they will interfere with their neighbour. They will-

attempt to induce him to accept their morality whether by assimilative or coercive means. Because these areas are felt to affect them and threaten their morality and standards, legislation is ineffective in restraining this tendency. The legislation itself would be viewed as part of the "enemy" and become the target of criticism and abuse. They would attempt to change it, not abide by it. Therefore, the issue must be recast in a different form if people are going to respect personal liberty in areas with strong symbolic connotations such as liquor consumption.

The first step in preventing illegitimate interference with others in an area with a symbolic meaning is to erode the basis for claims that the activity directly affects others. In the liquor issue this can be achieved by strictly enforcing laws where drinking exceeds the self-regarding classification. For example, if laws against driving under the influence of alcohol are rigidly enforced and heavy penalties are imposed on violators, then the claim of prohibitionists that drinkers endanger their lives becomes less effective. Two immediate results are achieved from maintaining strict standards. First, the legislation symbolically confirms the position of the abstainer. It concedes that the abstainer was right, drinking can be dangerous, and therefore should be controlled. This reassures the abstainer that his views and welfare are being protected. The abstainer can no longer use this claim effectively against drinking. Second, the government's assumption-

of the responsibility of controlling drinking when it becomes other-regarding, alleviates the need of individuals in society to interfere in actions which could become other-regarding. Their interference can be limited to disapproval and warnings against this conduct more easily.

If symbolic issues are to be handled effectively and people are to be induced into accepting the actions of others as legitimate, then the political intensity of the issue must be reduced. An effective legislator, like a skillful rhetorician, will achieve this by using the laws to remove the black and white nature of the issue and then will repaint it in shades of grey. The issue must be obscured to prevent polarization in society over it.

One of the dangers in a symbolic issue is that people become polarized and cannot reconcile their differences without losing face. In his discussion of evocative symbols in American political life, Murray Edelman noted that the political consequence of these symbols was "to harden both the dogma and the heresy."⁹ This hardening of position resulted in a polarization of people in society and the strict definition of roles in relation to their stance. Unlike threats that exist in times of war or national crisis, the threats perceived in symbolic issues are intangible and not easily defined. As a result the symbolic issue can become more exaggerated and require government intervention to clarify it and reduce the tension between the antagonists. Or, because the response to the issue

is intense and the threat is not clearly observable but sensed, government intervention can further the polarization and cause a realignment of positions. In these issues, the government and its agencies must choose their roles carefully. This is not the effect government intervention tends to have in more tangible (less symbolic) issues. As Edelman comments, if the threat posed to the population is "clearly observable and subject to systematic study, perception of its character and of techniques for dealing with it converge. Polarization and exaggeration become less feasible."¹⁰ The government role and response are dictated more directly by the issue and the threat does not cause rifts in society as readily.

Polarization occurred in local option because the established middleclass perceived the introduction and acceptance of alien values into society by immigrants and lower classes as a threat to their position. During the First World War, the association of liquor with the enemy caused the role of the government to become clearly outlined. Consequently, liquor was expelled from the province with majority approval. But once the war was over and the threat was not as clear, polarization on the issue intensified. The role the government chose, to accommodate the new, majoritarian values, was symbolized by the repeal of prohibition in Ontario. This action increased the antagonism between the "wets" and the "drys" but the alignment of government with the "wets" and the weakened solidarity and strength of the "drys" prevented

prohibition from continuing as a crucial issue in provincial politics. However, the recognition of local option by-laws ensured that polarization and hostility over liquor would continue in the municipal arena.

The populations of "dry" communities are still polarized to a certain extent over local option issues. It would be misleading to assume that these groups are polarized in the full sense of the term because polarization would mean that the two groups

within the society are sharply separated from each other. They hold different values, live in different areas, are affiliated with different political orientations. There is little cross membership. As a result the lines of group differentiation are clearly drawn. Cultural polarization refers to the process in which cultural groups --ethnic communities, religious groups, status groups of other kinds-- are sharply separated. Polarization implies a situation of conflict rather than one of dominant and subordinated groups. In a polarized society there is little middle ground.¹¹

Drinkers and abstainers are distinguished in social environments and "dry" communities are perceivably different from "wet" ones, but they are not as distinct as they were in the past. Drinkers and abstainers mix on social occasions and in jobs, belong to the same clubs and live in the same areas. This intermingling aids in reducing the tendency to polarize by enabling the groups to observe and become accustomed to each other. Because they are interacting so closely, it becomes more difficult for them to stereotype each other and their behaviour. The proximity provides them with the opportunity to understand each

others views and therefore, should be encouraged.

The provincial government has encouraged a compromise between the two positions by creating a middle ground through the creation of the eight categories of "dryness". Areas are no longer presented with an absolute issue. People are not forced to say either "yes, we want liquor" or "no, we do not". This has effected a compromise because licences or stores are obtainable without an area having to become completely "wet". The degrees of "wetness" allow liquor to be introduced gradually into "dry" areas, giving residents time to adjust. Because the province is "wet" with exceptions being the "dry" areas, the government is able to support the position of "drys" by publicly endorsing local option. The government lessens the polarization over local option by telling the drinkers that liquor is widely available and becoming moreso as the local option legislation is amended to allow exceptions in "dry" areas. Conversely, the government reduces the anxiety of "drys" by retaining local option and professing that it will not alter the law. "Wets" or drinkers find "drys" less offensive because their needs are met although with discomfort sometimes, and "drys" become less hostile because their centre of focus and protection, local option laws, is secure. Although the objects and feelings of the two groups are opposed, the intensity and distance of their positions is lessened because the apprehended threat of the "drys" is reduced in scope.

The increase in the number of categories was resisted by -

proponents of a "dry" status. Many realized that it is difficult to maintain their position in a community where drinking can be made a legitimate form of behaviour by being combined with another activity such as eating. In communities where the "dry" status rests on a number of factors, the introduction of degrees of "wetness" can threaten it. Often drinkers in a community will vote against liquor because they feel that its introduction would change the atmosphere of the community and they do not want their children exposed to bars, the abuse of alcohol, and associated evils. They object to drinking establishments because they could increase the noise and traffic in a neighbourhood, and the threat of vandalism. There are a number of such factors which can influence a vote when combined with the positions of abstainers. However, if bars are not the issue but only licenced restaurants, then these people may be persuaded to vote "wet" on the question. Because licenced restaurants seem more respectable than taverns or bars, they do not pose a similar threat to the atmosphere of the community. Drinkers may even be enticed by the prospect of having a drink with dinner in their community.

The success of this move in blurring the issue is mirrored in the number of areas which are totally "dry" as compared to those which are partially "dry". In chapter two it was noted that of approximately 795 municipalities in Ontario, only 53 were completely "dry" as of October 1981. In contrast, 225 permitted some form of liquor outlet. Although allowance

must be made for other factors, it can be assumed that the introduction of a number of degrees of "wetness" has resulted in the decrease in number of municipalities that are completely "dry". The increase in choices has induced people to compromise on the liquor issue.

Changes of this nature decrease the chances of polarization in issues because they prevent people from rigidly defining their roles or stances. The tendency to polarize has been decreased further by the government's affirmation of the position of "drys" in public. By refusing to change local option, often for the reason that any alterations would weaken the moral fabric of communities,¹² the government has removed the cause for "drys" to assume a more defensive position.

Edelman comments that such government actions have a psychological effect on groups in society:

Practically every political act that is controversial or regarded as really important is bound to serve in part as a condemnation symbol. It evokes a quiescent or an aroused mass response because it symbolized a threat or reassurance.¹³

Affirmation of a group's stance on an issue like local option serves as a condensation symbol by evoking a quiescent response from "drys". This assurance is necessary because it reduces the fears of this group and symbolizes their acceptance in society.

Gusfield agrees that psychological assurance is necessary but qualifies Edelman's statement by stressing that something very real is at stake in issues of status reform:

These can be specified in two different types of ways in which status interests enter into political issues. First any governmental action can be an act of deference because it confers power on one group and limits some other group. It bolsters or diminishes the claim of a group to differential treatments. Second, the specific status order, as distinct from the constellation of classes is affected by actions which bear upon styles of life.¹⁴

Not every government act is an act of deference or power transfer, but some are. Certain acts of government can cause feelings of quiescence or arousal based on whether a group feels that it is being praised or denigrated in relation to the opposing group. Therefore, when the Ontario government publicly endorses the position of "drys", they are reassured. "Wets" accept this because they are dominant and can afford to be charitable; but this charity only results because of their security. A quiescent response is evoked from the abstainers because they no longer perceive a direct threat to their status.

If local option was abolished then the issue would be forced to a confrontation causing the abstainers to polarize and become alienated. This act would pose a direct threat to the validity of their position. They would perceive the changes as an injustice perpetrated by a government hostile to them. These feelings of antagonism could persist for many years. Therefore, the answer does not lie in forcing the issue to a crisis point, but in transforming it. To challenge "drys" outright would only cause the issue to become entrenched. Instead, by introducing liquor into areas gradually and increasing the incentives for areas to become "wet", the government can man-

ipulate individuals into eventually accepting drinking as a legitimate area of self-regarding actions.

The primary difficulty in handling an issue in this manner lies in maintaining strict standards when liquor has been introduced into areas, and over drinking where it begins to affect others directly. The government cannot permit liquor outlets to correspond to the stereotype "drys" have of them. If the standards of outlets are permitted to slip and they become disreputable, then the belief that liquor leads to moral laxity and depravity will be confirmed. The Ontario government has maintained strict control over the appearance of their stores to avoid this from happening. As Mr. Nixon commented in the legislature:

the Liquor Control Board has the finest building in town. It sometimes shocks me, when I go into a community where they are working very hard for a new arena, where there are other buildings of a public nature that have been put up, supported largely by the efforts of the local community, that the most impressive piece of real estate, with a big parking lot with "in" and "out" signs --that's the liquor store.¹⁵

Mr. Edighoffer confirmed his remarks:

My leader said there is some concern about the big, expensive-looking buildings in some areas. I know I have been in some areas where it looks as if it is the most predominant building in that area.¹⁶

As both members noted, the buildings are sometimes impressive, but moreover, they are very clean and orderly. Clerks tend to be older, tidy middleclass people who are considered respectable members of the community. Liquor is sold in a respectable atmosphere and gains credibility as an acceptable

commodity by association.

In response to these comments, Mr. Drea declared that the government would be remiss in its duties to the people, "if it were to sell alcohol out of second-rate stores on the back streets of communities."¹⁷ He claimed that government "has a responsibility to upgrade the community in the particular function it serves. One of the ways that you stimulate and upgrade a community is by the quality of your building."¹⁸ Liquor outlets can no longer be accused of degrading the community, they have become the standard by which other buildings are judged. This has the effect of making liquor more palatable because it is not associated with undesirable ways of life.

Drea went on to attack the system used in the United States and emphasized the orderliness and efficiency of the Canadian system of control by comparison. He commented wryly that the American all-night liquor stores were hardly the pieces of imagination and vitality in business selling that some people declare they are:

As a matter of fact, if you go into some of them late at night, it comes as a great shock to you that you can dicker over the counter for how much you're going to pay for the bottle. There doesn't seem to be any established price. At some of them, too, they will give you a sample of what you are buying to make sure that the vodka, or the tequila is up to your standard. The labels look as if they were stuck on the day before. However, that is enough about quality control.¹⁹

The picture he paints is one of surreptitious and disrespectful conduct which takes place in the middle of the night in

corner liquor stores. This is an association that the government cannot afford to have made if liquor is to become more acceptable to abstainers. Therefore, the standards of stores, and also lounges and drinking establishments, must be fairly high. It is by the same logic that drinking in parks is not condoned. If it were, then drinking would be seen as infringing on what is regarded as the domain of families. The attitudes of people towards liquor would harden if they felt that their children were exposed to drinkers and drunks in respectable areas.

The government censures names of liquor establishments which have an adverse connotation for liquor to reduce negative associations with drinking. The word "bar" is not allowed to be advertised in signs on drinking establishments. This is not just a question of semantics, but serves a purpose. In 1976, in the Ontario Legislature, Mr. Handleman, successor to Mr. Drea, commented that:

Bars are not allowed in Ontario. You will never see a neon sign saying "Bar". There are bars in dining establishments but there are no bars serving liquor.²⁰

Moreover, he stressed that:

There are no licences issued to bars. We have had many people say, "We go to the states and we can walk off the street on 3rd Avenue and there it is --bar, bar, bar-- and you can go bar-hopping." Bars aren't permitted.²¹

Bar-hopping is associated with the lax system of liquor retail in the states. By comparison, Canada seems to be more disciplined and hence, more respectable. Canadians do not go "bar-

hopping". The word "lounge" has a more respectable connotation than the word "bar". The former is associated with a quiet place of leisure, whereas the latter word, "bar", is generally associated with a lower class of activity and hard drinking. It has a disreputable connotation. Since this is the type of association that the government is attempting to avoid, it censures the name.

Therefore, symbolic issues, like local option, must be manipulated to reduce the response they evoke from people. The laws can be used to reassure prohibitionists that their position is being protected while they are being unconsciously persuaded and enticed into accepting the right of others to drink. The reassurance will decrease the chances of polarization and the maintenance of strict standards and tight control over liquor offences will help transform the issue. The concern of people becomes focussed upon the control of liquor instead of whether or not it is harmful. The fact that liquor can be destructive is conceded to "drys", therefore "drys" feel that their view is accepted. If the liquor laws were used even more effectively, then "drys" would feel secure enough to tolerate drinking in society. This would entail passing laws which maintain strict control over liquor while making it more available to suit the desires of the majority of the population. The laws would be operating as effectively as rhetoric if they could achieve this task of satisfying "wets" and "drys" simultaneously. "Wets" can be made to accept strict enforcement of liquor laws because the prevailing opinion accepts that

liquor is potentially dangerous. Provided that their right to drink is not violated, then drinkers will accept the limits imposed on that right: that they may drink unless they affect another adversely. The "drys" can be persuaded to tolerate drinking if their view of liquor as disreputable is upheld and their attention is drawn to control. The key lies in fashioning the law so that it will address both groups differently at the same time and in presenting liquor as a respectable commodity, while conceding that drinking is disreputable. If a government manages to accomplish this, it will be using the laws as a rhetorician uses speech. The issue is transformed through tolerance and by giving it a cloak of decency. People cannot fight when there is no opposition, their arguments are praised and where the enemy and contempt are supposed to be, there is a smiling government that echoes their feelings and a commodity that is used even within their prescribed standards of decency.

This method of handling local option is not confined to it but may also be applied to other symbolic issues with success. Sunday observance laws have been treated in a similar manner. The issue has been confined to a local level. As in the case of liquor, this has aided in diffusing the issue. Because people may determine the conduct in their communities, the threat to their position is diminished. The issue is not being fought at a provincial level where the feebleness of the position of Sunday observances is apparent or where they could possibly incite others to support them temporarily if their

position was rejected outright. The localization of the issue confines it and prevents intense responses from being evoked in mass proportions.

In Sunday observance issues, the government seems partial to the position of observers because it retains a system of local option and opposes Sunday openings. The Sunday laws are protected and enforced in municipalities that restrict activities. However, the government is tolerant of some breaches in the law in communities, like Toronto, where less restrictive laws are desired. The government has introduced changes gradually, allowing municipalities to decide when and if they will accept them. By not prosecuting Sunday violators where they do not offend people and by making changes slight, the government accommodates the positions of both groups. The effect of the actions is to appease the traditional middleclass and to convince others who want Sunday amusements that concessions are being made to them.

One means of transforming this issue is very similar to one used with local option. The Ontario Law Reform Commission recommended that the name of the act be changed from "The Lord's Day (Ontario) Act" to a title with a more secular connotation such as "The Sunday Leisure Act". This change would eliminate the automatic association of Sunday legislation with religion. The secular title would inspire images of leisure and recreation instead of images of piety and Sunday observance. This change could be implemented provided that it was perceived by advocates of restrictive legislation as a nominal one. If the

change were introduced by degrees then opposition to them could be avoided. The name could be changed to "The Sunday Act" before introducing the word "leisure". This would provide a transition to the secular title because it would be a more neutral name.

Regulation of Sunday laws should remain the responsibility of the Ministry of Justice and not transferred to the Ministry of Labour relations if changes in Sunday legislation are to be made effectively. The location of these laws in the Justice department conveys the impression that the position of proponents of Sunday observance is being upheld by representing Sunday laws as a serious area of law bordering on criminal law. For the opponents, the location would not be as important provided that they were reassured that the intent of the legislation was to ensure that they had a common day of rest and that changes were allowing them to engage in their desired activities.

Therefore, by providing the means for municipalities to "opt out" of the restrictive federal legislation by degrees while appearing tolerant of restrictions and assuring advocates of restrictions that their views are being considered, the government can amend the law to reduce infringements on the liberties of others. To be successful in obtaining the observance of the right to self-regarding actions, the government must portray itself as acting for the benefit and welfare of society by enforcing strict standards and opposing rapid changes. By assuming this stance it is able to resist pressure

to enact changes making the laws more permissive at a rapid rate. However, it must appear to be making concessions to the people favouring loosening of the restrictions if they are to accept the laws and abide by them.

This method of implementing changes decreases the chances of polarization on symbolic issues. It requires the government to act as adroitly as a rhetorician does, exercising tact and diplomacy. If the technique is skillfully used, then the laws, like words, can be used as rhetorical devices and will address different people differently. The result will be an increasing tolerance in society of the right of people to govern themselves in actions which are self-regarding. By removing the threat, or at least the perception of it, to the status of Mill's "bigots" and refocussing their attention away from the symbol, these people who now feel cornered will be able to afford the luxury of tolerance.

Conclusion

John Stuart Mill's limit of the legitimate power that can be exercised over an individual in society is applaudable but is difficult to implement in symbolic areas. The laws governing conduct in these areas acquire a special significance for elements of society and therefore cannot be as restricted or amended as easily as purely instrumental laws. If these symbolic laws are treated like instrumental laws, then the feelings of people who view these laws as special will be disregarded. Because they interpret the law as upholding their position in symbolic areas, they would view casual treatment of the law as an insult to their status and their feelings. A prudent government or politician will instinctively gauge the sensitivity of laws and issues and handle them accordingly. In laws, like local option, the clever politician will act to preserve the dignity of those citizens who associate their status in society with the issue and the law.

In order to apply John Stuart Mill's principle of legitimate and illegitimate interference with others to symbolic issues, it is necessary to transform the issue. If the issue is not transformed, then people will attempt to impose their sense of what is right on others. In the area of local option "drys" would not accept Mill's guidelines and tolerate the drinking of "wets" in society because they viewed this action as a challenge to their morality and definition of respectability. To induce them to accept Mill's standards, it is necessary

to refocus their attention and alter the issue so they do not interpret the action or the changes in local option as threats towards them.

A symbolic issue can be effectively transformed by using the laws and government actions as a rhetorician uses words and meanings. The people must be persuaded to respect the actions of others through reassurance and then by basing changes to the law on a prejudice that is common to its observers. In local option this can be achieved by reassuring "drys" that liquor by-laws will not be altered directly and that their standards of behaviour are respected, while implementing changes in related fields of the liquor legislation which erode local option gradually. The common prejudice, that can be used to appease "drys" and convince them that their feelings are respected, while satisfying "wets" that the slow rate of change is necessary, is the belief that liquor is a potentially harmful commodity and therefore, must be strictly controlled for the protection of society. By acknowledging this characteristic of liquor and enacting strict regulations to govern drinking where it affects others, the government will be confirming the position and opinions of "drys" in society. This will reduce their need to encroach upon the personal liberties of others and will enable the government to induce "drys" and "wets" to tolerate each other's positions.

This solution was arrived at by examining local option as a symbolic and instrumental issue in various contexts. Chapter

one outlined the framework for the thesis. John Stuart Mill's principles were compared to the liquor control system in Ontario and the similarities in purpose, and procedure were highlighted. Mill's guidelines for dealing with potentially harmful commodities were presented as a desirable method of legislating over these areas because they encouraged tolerance of the actions of others to produce individuality and originality which are necessary to the growth of society. But, because they could not be applied to symbolic areas of law like local option, it was determined that local option should be explored in order to discover if and how Mill's formula could be applied to symbolic issues.

Local option was explored in chapter two in order to ascertain what local option is and how it developed. The lack of direct change to local option throughout its history was emphasized. Municipalities retain the right to restrict the retail sale of liquor within their boundaries and these boundaries and these boundaries have not altered since 1927.

This study of local option raised the question of why local option has persisted as a law and an issue in Ontario despite the changes in society. This question was the focal point of chapter three. The effect of recent amendments to the liquor legislation on local option was explored and it was determined that the instrumental functions of local option are being eroded or replaced. By many, local option was considered an unnecessary and a redundant field of legislation. An interpretation of the history of local option was offered to explain

why it has remained an entrenched area of law. This interpretation revealed that local option is upheld because it is a symbol of the values and morality of one section of the population which is no longer dominant. In response to their decline in status and dominance in society, these people resorted to coercive reform to reassure themselves that they were still a prominent and respected class. They identify their values with the tradition and establishment of Ontario and therefore, resist changes that threaten their definition of the respectable conduct of citizens of Ontario.

The uniqueness of local option was presented in chapter four through a comparison with the handling of other liquor laws, boundary laws and another symbolic issue, Sunday legislation. The handling of Sunday laws bore the closest resemblance to local option. However, even Sunday legislation, which has been closely related to local option throughout its history, has not been accorded the equivalent degree of respect. Local option by-laws are special in that they can only be altered through referenda. They remain in force even if an area is annexed or amalgamates with another municipality.

Chapter five explored the means of managing local option to induce "drys" to adhere to Mill's standards of tolerance. To arrive at the conclusion outlined at the beginning of this summary, the methods that the provincial government has employed in neutralizing local option and Sunday laws were examined.

These techniques are effective within a limited range.

Local option has been eroded as a symbolic issue in the province however, the persistence of sensitivity reveals that these techniques are not entirely adequate. Local option will exist in perpetuity unless the liquor laws can convince adherents of local option that it is unnecessary for protecting their status in society --a difficult task that requires the skill of a master rhetorician.

Notes

Chapter One

1. John Stuart Mill. On Liberty. Edited by David Spitz. (New York: W.W. Norton and Company, Inc., 1975), p. 78.
2. The Liquor Control Act prohibits the sale of liquor to minors (people below the age of nineteen), interdicted persons and intoxicated persons. These people are not considered rational users.
3. Mill, pp. 10-11.
4. Ibid., p. 11.
5. Ibid., p. 11. Mill also believes that members of "backward states of society" should not have liberty to govern themselves. Like children, they are irrational in his opinion. Despotism must be employed to educate and improve them before they should be granted this liberty (p. 11).
6. One problem with implementing this criteria is that it is difficult to assess whether or not a person engaging in self-destruction is sane. Presumably a person who drinks, takes or takes risks can be considered rational if their actions are moderate. But, if a person becomes addicted to a harmful activity and pursues it to the exclusion of other things, is he rational? If interference is legitimate, with a "fanatic", then at what point can society interfere --that is, at what point is the person considered irrational?
7. Mill, p. 70.
8. Ibid., p. 70. For a stricter definition of self-regarding acts and a critique of Mill, see William C. Powers, Jr., "Autonomy and the Legal Control of Self-Regarding Conduct," Washington Law Review, 51 (November, 1975) pp. 33-59. He also cites the Hart-Devlin controversy over these actions. See R.A. Samek, "The Enforcement of Morals," Canadian Bar Review, 49 (May, 1971) pp. 188-221, for an examination of this controversy in an historical context. He concludes that laws should not legislate morality but should be derived from it.
9. Mill, p. 13.
10. Ibid., p. 73.
11. Ibid., p. 72.

12. Ibid., p. 72.
13. Ibid., p. 75.
14. Ibid., pp. 75-76.
15. Ibid., p. 88.
16. Ibid., p. 76.
17. Ibid., p. 93.
18. Ibid., p. 94.
19. Ibid., p. 94.
20. Ibid., p. 79.
21. Ibid., p. 15.
22. Ibid., p. 15.
23. Joseph R. Gusfield, Symbolic Crusade: Status Politics and the American Temperance Movement. (Chicago: University of Chicago Press, 1970), p. 3.
24. Ibid., pp. 4-5.
25. Ibid., p. 2.
26. For Wallis' criticism of Gusfield see, "A Critique of Moral Crusades as Status Defense," Scottish Journal of Sociology, 1 (April 1, 1977), pp. 195-203. He also criticizes L. Zurcher's and R. Kirkpatrick's study, Anti-pornography Crusades as Status Defense, (Austin: University of Texas Press, 1976) for their ambiguous use of phrases such as "symbolic" and "covert ideological bias" of groups. Zurcher and Kirkpatrick were influenced by Gusfield's study and thus their work shares the same faults according to Wallis. Wallis' earlier article "Moral Indignation and the Media: An Analysis of the N.V.A.L.A.," Sociology, 10 (May, 1976), pp. 271-295 shares the faults he attributes to Gusfield and which he now feels confident enough to recognize and refute.
Zurcher and Kirkpatrick responded to Wallis in "Status Discount and Anti-Pornography Crusades: A Rejoinder to Roy Wallis' Critique," Scottish Journal of Sociology, 2 (November, 1977), pp. 105-113, and a similar defence to the one I have offered for Gusfield.
27. Gusfield, p. 4.
28. Mill, p. 84.

29. Ibid., p. 84.
30. Gerald Hallowell, Prohibition in Ontario, 1919-1923, (Ottawa: Ontario Historical Society, 1972), p. 5.

NotesChapter Two

1. Robert Hose, Prohibition or Control? (New York: Longmans, Green and Co., 1928), p. 12.
2. Ontario, Liquor Licence Board of Ontario, Records. (Toronto, June 6, 1981).

The Liquor Licence Board of Ontario has approximate records of the status of the municipalities in the province. Its records contain the following information:

Of approximately 795 municipalities;

53 are completely dry

75 permit stores, public houses and dining rooms

10 permit stores only and no licences

108 permit dining lounges but no lounges. Some of these also prohibit stores and/or public houses.

32 permit lounges but not dining lounges and may also prohibit stores and/or public houses.

278 Total.

The other 517 permit dining lounges and lounges and some permit public houses or stores. Many of these still prohibit one or more stores although they permit licenced establishments. There are also numerous parts of municipalities which have been annexed or amalgamated from neighbouring municipalities that prohibit stores or classes of licences.

To obtain the exact numbers and status of municipalities or parts, it would be necessary to check each file of the municipalities. This information was accurate as of October 1981.

3. Ontario. The Liquor Licence Act, 1975. Statutes of Ontario, c. 40, as amended by 1978, c. 42, s. 26.
4. Liquor Licence Act, 1975. Statutes of Ontario, c. 40, s. 27(2) and s. 27(3).
5. Liquor Licence Act, 1975. Ontario Regulation 1008/75 as amended to O. Reg. 565/80, s. 52.

6. Ancaster, Municipal Records of the Township of Ancaster concerning Liquor Votes.
7. Liquor Licence Act, 1975. Ontario Regulation 1008/75 as amended to O. Reg. 565/80, s. 50(2)(b).
8. Liquor Licence Act, 1975. Statutes of Ontario, c. 40, s. 28(1). For the actual continuance questions see L.L.A., 1975, O. Reg. s. 52(2).
9. Liquor Licence Act, 1975. Statutes of Ontario, c. 40, s. 28(2).
10. One area which has used the continuance clause is North Dumfries annexed by the city of Galt (now Cambridge) in the county of Waterloo. From 1949 to 1967 North Dumfries was "wet" on the questions of dining room, dining lounge and lounge licences. In 1967 a liquor referendum was held and the community voted to withdraw dining lounge and lounge licences. Dining room licences were permitted in the area although no vote had been taken by virtue of the other two licences issued, but after 1967 this type of licence was also withdrawn. The municipality reverted to a completely "dry" status.
11. Liquor Licence Act, 1975. Statutes of Ontario, c. 40, ss. 31(1) and (2) and s. 32.
12. Liquor Licence Act, 1975. Statutes of Ontario, c.40, s. 34(3).
13. Interview, Laurel Woods, Liquor Licence Officer in charge of liquor boundaries, Toronto, 26 June 1981. For example, in January 1962 Trafalgar and Oakville in Halton county amalgamated. Oakville was "wet" on all questions but Trafalgar was "dry" on classifications 2, 3, 4, and 5. All subsequent votes to change Trafalgar's status had to be held within its boundaries prior to the amalgamation. Its status could not be altered by holding a vote which included the entire new municipality.
14. See F. R. Burnet, "The Urban Community and Changing Moral Standards," in Urbanism and the Changing Canadian Society, S. D. Clark ed., (Toronto: University of Toronto Press, 1961), pp. 71, 74-77, for an account of these attempts at reform in Toronto.
15. F. R. Burnet, "The Urban Community and Changing Moral Standards," p. 78. The Canada Temperance League became the Canadian Prohibitory Liquor Law League.
16. Ruth E. Spence, Prohibition in Canada, (Toronto: 1919), p. 88.

17. Royal Commission on the Liquor Traffic, 1896. The Dominion Alliance for the Total Suppression of the Liquor Traffic, F. S. Spence Secretary (Toronto: Newton & Treloar, 1896), p. 181.
18. Ruth E. Spence, op. cit., p. 92.
19. Ibid., pp. 92-93.
20. [1868] 31 Vict. c. 5. Revised 1869 32 Vict.
21. Personal Letter from S. A. Grannum, Legal Counsel to the Liquor Licence Board of Ontario, May 20, 1981.
22. Crooks Act (1874) as cited in Royal Commission on the Liquor Traffic, op. cit., pp. 99-100.
23. Canada Temperance Act (1878) as cited in Royal Commission on the Liquor Traffic, op. cit., p.92.
24. The reasons why this act was unsuccessful in Ontario are explored in the Royal Commission on the Liquor Traffic, op. cit., pp. 160-161.
25. Personal Letter from S. A. Grannum, Legal Counsel to the Liquor Licence Board of Ontario, May 20, 1981.
26. [1882] 7 A.C. 829, 835. See also, A.-G Ontario v. A.-G Canada 1896 A.C. 348 P.C., Gold Seal Ltd. v. Dominion Express Co. (1921) 62 S.C.R. 424, [1921] 3 W.W.R. 710, 62 D.L.R. 62, ante R. v. Nadan 1925 , W.W.R. 97, affirmed [1926] A.C. 482 (P.C.); and R. v. Ruddick (1928), 62 O.L.R. 248; re Hudson's Bay Co. and Hefferian, [1918] 3 W.W.R. 167 (Sask. C.A.); Graham and Strang v. Dome Express Co. (1920); 48 O.L.R. 83; R. v. Tokarchuk (1929), 51 C.C.C. 380 (Man.). Compare R. v. Varley, [1936] 1 D.L.R. 771 (Ontario, holding that Canada Temperance Act is ultra vires and that Liquor Control Act is intra vires); R. v. Jones [1937] 1 D.L.R. 193 (N.B. C.A.); A.-G. Ontario v. Canadian Temperance Federation 1946 A.C. 193 (P.C.).
27. [1946] A.C. 193. Peter W. Hogg discusses the controversy between federal and provincial legislation in Constitutional Law of Canada (Toronto: The Carswell Company Limited, 1977) see pp. 84-5, 233-4, 246-8, 249-50, 257-8. Conditional legislation is legislation which does not become operative until a specified provision is met. The Canada Temperance Act was conditional upon adoption by communities.
28. Ontario Acts 53 Vict. C. 56.
29. An Act to Improve the Liquor Licence Acts, s. 18 as cited in A.-G. for Ontario v. A.-G. for Canada, Local Prohibition

within the power of the Province. Prohibition is an integral part of the Farmer's Platform, and the U.F.O. will use its influence in that direction.' (Hallowell, pp. 49-50).

40. Ibid., pp. 71-72. See also Graham White "Social Change and Political Stability in Ontario: Electoral Forces 1867-1977" unpublished Ph.D. dissertation. McMaster University, March 1979, pp. 157, 162-3, 164.
41. Hallowell, p. 81. This group declared that temperance and democracy could be best served by individual liberty in drinking under a control system.
42. Loren M. Simmerl, "A Survey of Canadian Provincial Election Results, 1905-76", in Politics: Canada 4th edition, Paul Fox ed. (Toronto: McGraw-Hill Ryerson Ltd., 1977), pp. 618-19.
43. Hallowell, p. 134.
44. Ibid., p.136.
45. Ibid., p. 156.
46. Personal letter from S.A. Grannum, Legal Counsel to L.C.B.O., May 20, 1981.
47. L.L.A., 1944, s. 68. This amendment created categories 6 (dining lounge licences) and 7 (lounge licences) under the present Liquor Licence Act.
48. Personal letter from S.A. Grannum, Legal Counsel to L.C.B.O., May 20, 1981.
49. Personal letter from S.A. Grannum, Legal Counsel to L.C.B.O., May 20, 1981.

NotesChapter Three

1. Robert Nixon. Ontario Legislative Debates. March 30, 1976, pp. 766-767.
2. Robert Nixon. Ontario Legislative Debates. March 30, 1976, p. 767
3. Special occasion permits fall under sections 8, 9, 10, 11, 12 and 18 of the Liquor Licence Act, 1975. Statutes of Ontario, c. 40. As of October 1981, section 9, which deals with the continuance of licences, permits and applications under this act, was deleted.
4. Frank Drea. Ontario Legislative Debates. March 30, 1976, p. 774.
5. Frank Drea. Ontario Legislative Debates. March, 30, 1976, p. 774.
6. Frank Drea. Justice Committee Debates. Ontario Legislature. October 25, 1979, pp. J294-J295
7. Liquor Licence Act, 1975. Statutes of Ontario, c. 40, s. 31.
8. Letter submitted to the Ancaster Township Council, May 2, 1981. Ancaster Municipal Records. This letter was published in the Ancaster News, the local newspaper.
9. Robert Nixon. Ontario Legislative Debates. March 30, 1976, p. 765.
10. Robert Nixon. Ontario Legislative Debates. March 30, 1976, p. 764.
11. This argument is repeated throughout the Ontario Legislature Debates. See November 5, 1970, pp. 6047-6049 and June 3, 1975, pp. 2505-2506 in particular.
12. J.R. Burnet, "The Urban Community and Changing Moral Standards," op. cit., p. 71.
13. Royal Commission on the Liquor Traffic, 1896, op. cit., pp. 87-88. See also Burnet, "The Urban Community and Changing Moral Standards," op. cit., p. 71.
14. J.M. Clemens, "Taste Not; Touch Not; A Study of the Social Assumptions of the Temperance Literature and Tem-

- perance Supporters in Canada West Between 1839 and 1859," Ontario History, 64 (September, 1972), p. 156.
15. Ibid., p. 157.
 16. Clemens asserts that reform changed from persuasion to coercion in 1851 (p. 157), but Burnet contends that 1846 marked the change towards securing prohibitory legislation (p. 79). However, because a number of factors caused this shift in tactics, it is more accurate to assume that the shift was gradual and occurred in the late 1840's and early 1850's. Burnet does note that the shift was gradual but anchors it in the forties.
 17. Clemens, pp. 142-143.
 18. Ibid., p. 148.
 19. Ibid., p. 148.
 20. Burnet, "The Urban Community and Changing Moral Standards," op. cit., p. 79. The state of Maine was under prohibition longer than most areas of that size and thus was used as a standard for judging prohibitory laws. In 1846 liquor was restricted and in 1851 prohibition was repealed and a licensing system introduced. But in 1858 prohibition was reinstated and continued into the 1900's. These facts are recorded by J. Rowntree and Arthur Sherwell, The Temperance Problem and Social Reform, (London: Hodder and Stoughton, 1899), pp. 149-153.
 21. See Burnet, "The Urban Community and Changing Moral Standards," p. 78, and Clemens, "Taste Not; Touch Not," p. 157. See also Clemens for the subsequent information on Temperance Literature, pp. 144-145.
 22. Burnet, "The Urban Community and Changing Moral Standards," p. 73.
 23. Ibid., p. 75.
 24. Clemens, "Taste Not; Touch Not," p. 159.
 25. Burnet, "The Urban Community and Changing Moral Standards," p. 79.
 26. C.R.W. Biggar, Sir Oliver Mowat, (Toronto: Warwick Brothers and Rutter Ltd., 1905), pp. 519-520.
 27. See Table 1 for the plebiscite percentages.

In "Something Old, Something New...: Aspects of Prohibitionism in Ontario in the 1890's," in Oliver Mowat's Ontario, Donald Swainson editor, (Toronto: MacMillan Com-

pany of Canada Ltd., 1972), Graeme Decarie noted a further pattern in the 1894 plebiscite. He cited the support for Prohibition as higher in two blocs of counties: the east-central region bloc of Hastings, Durham, Northumberland and Peterborough; and the west of Toronto to Niagara peninsula bloc of Brant, Norfolk, Dufferin, Oxford, Halton, Peel, Lambton, Wentworth and Middlesex. These counties are all in southern Ontario with the exception of Peterborough and North Hastings. Areas with lower averages of support were: Prescott and Russell, Renfrew and Frontenac in the east; and Waterloo and Essex in the west. Support was higher in the south and in areas bordering urban communities (p. 156). He used Peel as an example of the latter areas but there is a discrepancy between the average he records for Peel and the one recorded by the Royal Commission on the Liquor Traffic, 1896. According to Decarie, 88 per cent of Peel voters favoured prohibition, the Royal Commission records that in Peel 2,491 men and 168 women voted "dry" and 1,475 men and 26 women voted "wet". Therefore, only 63.7 per cent favoured prohibition (Commission, p. 306). This is not significantly higher. Durham, located on the east border of Toronto did have a substantially higher percentage: in Northumberland and Durham 7,490 voted "dry" as opposed to 2,608 "wet" (Commission, p. 306). This tends to verify Decarie's conclusion. For the location of these counties see Map 1.

28. The District of Nipissing voted "dry" by a majority of 21 out of a total 1,147 votes cast (Royal Commission on the Liquor Traffic, p. 307).
29. Royal Commission on the Liquor Traffic, 1896, *op. cit.*, pp. 306-307.
30. M.G. Decarie, "Paved with Good Intentions: The Prohibitionists' Road to Racism in Ontario," Ontario History, 66 (1974 March), pp. 15-16.
31. Joseph Schull, Ontario Since 1867, (Toronto: McClelland and Stewart Ltd., 1978), p. 134.
32. Hallowell, *op. cit.*, p.12.
33. Joseph R. Gusfield, Symbolic Crusade, *op. cit.*, p. 7. This explanation that Gusfield applies to American Prohibition Reformers is equally valid for reformers in Ontario.
34. Decarie, "Something Old, Something New...", *op. cit.*, p. 157. He writes that: "So strong had the medical case against alcohol become that many life insurance companies offered preferential rates to non-drinkers. This

was a reversal of their earlier refusal to insure non-drinkers on the grounds that abstinence was an unhealthy abnormality" (pp. 160-161).

35. Royal Commission on the Liquor Traffic, 1896, *op. cit.*, p.33.
36. *Ibid.*, p. 65.
37. *Ibid.*, p. 65.
38. Decarie, "Something Old, Something New...", *op. cit.*, p. 158.
39. *Ibid.*, p. 167.
40. Decarie, "Paved with Good Intentions," *op. cit.*, pp. 18-19.
41. The Anglican church was represented in the Alliance but was less avid than the other Protestant churches. Later, the Roman Catholic church was also represented. The Roman Catholic church was the only church not to oppose the operation of streetcars in Toronto on Sundays in the 1890's (Burnet, p. 83).
42. J.R. Gusfield, "On Legislating Morals: The Symbolic Process of Designating Deviance," California Law Review, 56 (1968), p. 58.
43. *Ibid.*, p. 58.
44. Decarie, "Paved with Good Intentions," *op. cit.*, p.20.
45. *Ibid.*, p. 20.
46. Hallowell, *op. cit.*, pp. 62-63. Four questions were asked: whether the elector was in favour of the repeal of Prohibition; whether the voter was in favour of the sale of light beer (2.51 per cent alcohol) through government agencies; whether the voter favoured the sale of light beer in communities that did not prohibit it; and whether the voter favoured the sale of spiritous and malt beverages through government agencies. Accusations were made after the vote that the ballot was too complicated and had exaggerated the results.

Women were granted the provincial and municipal franchise in 1917. Cornell et. al., Canada: Unity in Diversity, (Toronto: Holt, Rinehart and Winston of Canada Ltd., 1967), p. 378. In 1917 the "female next of kin of men in the armed forces" were enfranchised at the fed-

- eral level. M.J. Brodie and J. Jinson "The Party System," Canadian Politics in the 1980's, M.S. Whittington and G. Williams editors, (Toronto: Methuen Publications, 1981), p. 199.
47. Hallowell, op. cit., pp. 69-70.
 48. The results were: question one, 772,041 to 365,365; two, 733,691 to 408,266; three, 747,920 to 383,727; four, 693,829 to 447,146; all favouring the "dry" status, (Hallowell, p. 71-72).
 49. Ibid., p. 91.
 50. Ibid., pp. 112-128.
 51. Ibid., p. 156.
 52. Ibid., p. 156. Prohibition was a success in two ways that are usually overlooked. First, it was responsible for the introduction of a socially conscious and responsible system of government control. Second, the temperance movement and prohibition slowed the rate of change in the province and thus allowed people to adapt to the changes in society between the late 1800's and the 1930's.
 53. Ibid., p. 165.
 54. Gusfield, Symbolic Crusade, op. cit., pp. 116-117.
 55. Ibid., p. 172. Symbolic gestures of differentiation and cohesion are discussed informatively in Roger Cobb's and Charles Elder's article "Political Uses of Symbolism", American Politics Quarterly 1 (July, 1973), pp. 305-338. Their bibliography is particularly helpful in locating other sources which interpret government actions in a symbolic context.
 56. R. Hose, op. cit., p. 15.
 57. Hose, p. 14.
 58. Ibid., p. 14.
 59. Schull, op. cit., p. 277.
 60. Neil McKenty. Mitch Hepburn. (Toronto: McClelland and Stewart Ltd., 1967), pp. 47-48. See also Schull, p. 292.
 61. Burnet, p. 90.

62. Ibid., p. 329.
63. Burnet, pp. 90-91.
64. Schull, pp. 357-358.
65. Peter Oliver, op. cit., p. 14.
66. Gusfield, Symbolic Crusade, p. 9.
67. Honourable Mr. Robarts as quoted in Hansard on April 18, 1962 and reported in the Ontario Legislature on November 5, 1970 by Mr. Singer (members of the opposition for Downsview).
68. Honourable Mr. Drea, October 25, 1979 in Ontario Legislature as reported in Justice Committee Debates 31st Legislature 3rd session, p. 1-294.
69. Committee of Supply. Ontario Legislature. 30th Legislature, 3rd session, March 20, 1976, p. 773.

NotesChapter Four

1. Mr. Handleman. Ontario Legislature. Supply Committee Debates. May 7, 1976, p. s-666.
2. Mr. Handleman. Ontario Legislature. Supply Committee Debates. May 7, 1976, p. s-665.
3. Mr. Handleman. Ontario Legislature. Supply Committee Debates. May 7, 1976, p. s-665.
4. Mr. Handleman. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1388.
5. Mr. Handleman. Ontario Legislature. Supply Committee Debates. May 7, 1976, p. s-665.
6. On June 3, 1976, in the Supply Committee Debates of the Ontario Legislature, Mr. Breaugh raised the question of corruption among the liquor inspectors with the Minister of Consumer and Commercial Relations, see pp. s-1393-s-1395.
7. Mr. Moffat. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1386.
8. Mr. Handleman. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1386.
9. See the Supply Committee Debates in the Ontario Legislature, June 3, 1976, pp. s-1385 - s-1387, and May 7, 1976, pp. s-670 - s-673.
10. Mr. Handleman. Ontario Legislature. Supply Committee Debates. May 7, 1976, p. s-673.
11. Mr. Handleman. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1386.
12. Liquor Licence Act, 1975. Ontario Regulation 1008/75 as amended to O. Reg. 565/80, s. 49(a). For the location of these counties see Map 1.
13. Liquor Licence Act, 1975. Ontario Regulation 1008/75 as amended to Ont. Reg. 565/80, s. 49(d). See Map 1 for the location of this county. West Garafraxa is also located in the county of Wellington.
14. Information on this annexation was supplied by Mr. Bill Bible, successor to Mrs. Laurel Woods as licensing of-

ficer in charge of local option, in a telephone interview, Toronto, April 10, 1982. He also supplied information concerning the Palmerston and Fergus annexations.

Napanee is located in the county of Lennox and Addington. See Map 1 for the location of this county.

15. R.S.O., 1980, chapter 302.
16. Municipal Act. R.S.O., 1980, c. 302, s. 17(2).
17. Municipal Act. R.S.O., 1980, c. 302, s. 17(3).
18. Municipal Act. R.S.O., 1980, c. 302, s. 18.
19. R.S.O., chapter 259, 1970.
20. Ontario, Ministry of Justice, Green Paper on Sunday as a Common Day of Rest and Uniform Store Hours (Toronto, 1973), pp. 5-6.
21. P.W. Hogg, op. cit., pp. 234-235. This decision was upheld in Henry Birks and Sons v. Montreal [1955] S.C.R. 799.
22. Law Reform Commission of Canada. Report on Sunday Observance. Ministry of Supply and Services Canada, Ottawa, 1976, p. 1.
23. Ibid., p. 1.
24. Ibid., p. 14.
25. Ontario Law Reform Commission. Report on Sunday Observance Legislation. Toronto, Department of Justice, 1970, p. 268.
25. Ibid., p. 63.
26. Burnet, op. cit., p. 90.
27. Ibid., p. 91.
28. Ibid., pp. 91-92.
29. Ontario Law Reform Commission. Report on Sunday Observance Legislation. Toronto, Department of Justice, 1970, p. 64.
30. Burnet, op. cit., p. 92.
31. Canadian Jewish Congress, Central Region. Brief to Ontario Law Reform Commission on Sunday Observance Laws, April 29, 1970, p. 5.

32. Ontario Law Reform Commission. Report on Sunday Observance Legislation. Toronto, Department of Justice, 1970, p. 65.
33. Ibid., p. 66.
34. Ibid., p.p. 66-67.
35. Burnet, op. cit., p. 96.
36. Ontario Law Reform Commission. Report on Sunday Observance Legislation. Toronto, Department of Justice, 1970, p. 268.
37. Ibid., p. 269.
38. Law Reform Commission of Canada, op. cit., p. 37.
39. Henry Birks and Sons v. Montreal [1955] S.C.R. 799.
40. Mr. Singer. Ontario Legislature. Debates. May 2, 1974, p. 323.
41. Supra footnote 20.
42. George Kerr. Legislature of Ontario. Debates. May 2, 1974, p. 323. On November 6, 1975 in the Legislature, Mr. Macbeth echoed Mr. Kerr's remarks when he maintained that the purpose of Bill 5, An Act to Regulate Holiday Closings for Retail Businesses, was not to suggest that everyone should have one holiday per week, but to ensure that there would one day when people can holiday together (p. 330).
43. Ministry of Justice, Green Paper, op. cit., p. 13.
44. Mr. Bales. Ontario Legislature. Supply Committee Debates. May 1, 1973, p. s-78.
45. Mr. Renwick. Ontario Legislature. Supply Committee Debates. May 1, 1973, p. s-79.
46. Canadian Jewish Congress, Central Region. Brief to Ontario Law Reform Commission on Sunday Observance Laws, April 29, 1970, p. 7.
47. As quoted by Bart Testa in "Never on a Sunday in Toronto," Globe and Mail, June 13, 1981, p. Fanfare 2.
48. Ibid., p. Fanfare 2.
49. Ibid., p. Fanfare 2.
50. Burnet, op. cit., p. 99.

NotesChapter Five

1. Mill, On Liberty, p. 6.
2. Ibid., p. 6.
3. Ibid., p. 78.
4. Ibid., p. 78.
5. Ibid., p. 79.
6. Ibid., p. 83.
7. Ibid., p. 83.
8. Ibid., p. 74.
9. Edelman, op. cit., p. 70.
10. Ibid., p. 71.
11. Gusfield, Symbolic Crusade, p. 87.
12. See Ontario Legislature Debates, June 3, 1975, pp. 2524-2525 for example.
13. Edelman, p. 7.
14. Gusfield, Symbolic Crusade, pp. 182-183.
15. Mr. Nixon. Ontario Legislature. Debates. June 3, 1975, p. 2504.
16. Mr. Edighoffer. Ontario Legislature. Debates. June 3, 1975, p. 2509.
17. Mr. Drea. Ontario Legislature. Debates. June 3, 1975, p. 2525.
18. Mr. Drea. Ontario Legislature. Debates. June 3, 1975, p. 2525.
19. Mr. Drea. Ontario Legislature. Debates. June 3, 1975, p. 2525.
20. Mr. Handleman. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1396.
21. Mr. Handleman. Ontario Legislature. Supply Committee Debates. June 3, 1976, p. s-1396.

Selected Bibliography

I. Primary Sources

Books

Edelman, Murray. The Symbolic Uses of Politics. Chicago: University of Illinois Press, 1980.

Gusfield, Joseph R. Symbolic Crusade: Status Politics and the American Temperance Movement. Chicago: University of Illinois Press, 1970.

Mill, John Stuart. On Liberty. Edited by David Spitz. New York: W.W. Norton and Company, Inc., 1975.

Government Publications

Ancaster. Municipal Records of the Township of Ancaster. Liquor Votes.

Canada. Ministry of Supply and Services. Law Reform Commission of Canada Report on Sunday Observance. Ottawa: 1976.

Ontario. Department of Justice. Ontario Law Reform Commission Report on Sunday Observance. Toronto: 1970.

----- . Justice Committee. Debates.

----- . Legislature of Ontario. Debates.

----- . Liquor Licence Board of Ontario. Records on Local Option.

----- . Supply Committee. Debates.

II. Secondary Sources

Brodie, M.J. and J. Jenson. "The Party System." Canadian Politics in the 1980's. M.S. Whittington and G. Williams editors. Toronto: Methuen Publications, 1981.

Burnet, F.R. "The Urban Community and Changing Moral Standards." Urbanism and the Changing Canadian Society. Edited by S.D. Clark. Toronto: University of Toronto Press, 1961.

Canadian Jewish Congress, Central Region. Brief to Ontario Law Reform Commission on Sunday Observance Laws. April 29, 1970.

Clemens, James M. "Taste Not; Touch Not: A Study of the Social Assumptions of the Temperance Literature and Temperance Supporters in Canada West Between 1839 and 1859," Ontario History, 64 (September, 1972).

Cobb, Roger and Charles Elder. "Political Uses of Symbolism," American Politics Quarterly, 1 (July, 1963).

Cornell, Paul; Hamelin, Jean; Ouellet, Fernand; Trudel, Marcel. Canada: Unity in Diversity. Toronto: Holt, Rinehart and Winston of Canada, Ltd., 1967.

Decarie, Graeme. "Paved with Good Intentions: The Prohibitionists' Road to Racism in Ontario," Ontario History, 66 (March, 1974).

----- . "Something Old, Something New...: Aspects of Prohibitionism in Ontario in the 1890's." Oliver Mowat's Ontario. Edited by Donald Swainson. Toronto; MacMillan Company of Canada Ltd., 1972.

Gusfield, Joseph R. "Moral Passage: Symbolic Process in Public Designations of Deviance," Social Problems, 15 (Fall, 1967).

----- . "On Legislating Morals: The Symbolic Process of Designating Deviance," California Law Review, 56 (1968).

Hallowell, Gerald A. Prohibition in Ontario, 1919-1923. Ottawa: Ontario Historical Society, 1972.

Hogg, Peter W. Constitutional Law of Canada. Toronto: The Carswell Company Ltd., 1977.

Hose, Robert. Prohibition or Control? New York: Longmans, Green and Company, 1928.

McKenty, Neil. Mitch Hepburn. Toronto: McClelland and Stewart Ltd., 1967.

Mill, John Stuart. Considerations on Representative Government. South Bend, Indiana: Gateway Editions Ltd., 1962.

Oliver, P. Public and Private Persons. Toronto: Clark Irwin and Company Ltd., 1975.

Perly's Detail Atlas: Province of Ontario. Perly's Variprint Ltd., Toronto, 1978.

Powers Jr., William C. "Autonomy and the Legal Control of

- Self-Regarding Conduct," Washington Law Review, 51 (November, 1975).
- Rowntree, J. and Arthur Sherwell. The Temperance Problem and Social Reform. London: Hodder and Stoughton, 1899.
- Royal Commission on the Liquor Traffic 1896. The Dominion Alliance for the Total Suppression of the Liquor Traffic. F.C. Spence, Secretary. Toronto: Newton and Treloar, 1896.
- Russell, Peter H. Leading Constitutional Decisions. Toronto: McClelland and Stewart Ltd., 1965.
- Samek, R.A. "The Endorcement of Morals," Canadian Bar Review, 49 (May, 1971).
- Schull, Joseph. Ontario Since 1867. Toronto: McClelland and Stewart Ltd., 1978.
- Simmerl, Loren M. "A Survey of Canadian Provincial Election Results, 1905-1976." Politics Canada 4th Edition. Edited by Paul Fox. Toronto: McGraw-Hill Ryerson Ltd., 1977.
- Spence, Ruth E. Prohibition in Canada. Toronto: 1919.
- Tennyson, Brian Douglas. "Premier Hearst, The War and Votes for Women," Ontario History, 57 (September, 1965).
- . "Sir William Hearst and the Ontario Temperance Act," Ontario History, 55 (December, 1963).
- Tenszen, Michael. "'Temperance Willie' fights to keep West Toronto dry," The Globe and Mail, Thursday January 28, 1982.
- Testa, Bart. "Never on a Sunday in Toronto," The Globe and Mail, June 13, 1981.
- Waite, P.B. "Sir Oliver Mowat's Canada: Reflections on an Un-Victorian Society." Oliver Mowat's Ontario. Edited by Donald Swainson. Toronto: MacMillan Company of Canada Ltd., 1972.
- Wallis, Roy. "A Critique of Moral Crusades as Status Defence," Scottish Journal of Sociology, 1 (April, 1977).
- . "Moral Indignation and the Media: An Analysis of the NVALA," Sociology, 10 (May, 1976).
- . "On Misunderstanding 'Status': A Reply to Zurcher and Kirkpatrick," Scottish Journal of Sociology, 2 (April, 1978).

- White, Graham. "Social Change and Political Stability in Ontario: Electoral Forces 1867-1977," unpublished Ph.D. dissertation. McMaster University, March, 1979.
- Zurcher, L. and Kirkpatrick. Anti-pornography Crusades as Status Defence. Austin, Texas: University of Texas Press, 1976.
- . "Status Discount and Anti-pornography Crusades: A Rejoinder to Roy Wallis' Critique," Scottish Journal of Sociology, 2 (April, 1978).