National Commission
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ON
Law Observance and Enforcement

Reports
No. 2

Report on the Enforcement
OF THE
Prohibition Laws of the United States

Dated, January 7, 1931

CONTENTS

PRELIMINARY

1

Scope of the Report

In the First Deficiency Act, fiscal year 1929, under which this Commission was appointed, its purpose was stated as follows: "A thorough inquiry into the problem of the enforcement of prohibition under the provisions of the Eighteenth Amendment of the Constitution and laws enacted in pursuance thereof, together with the enforcement of other laws." This statement of purpose is repeated in the Second Deficiency Act, fiscal year 1930, in these words: "For continuing the inquiry into the problem of the enforcement of the prohibition laws of the United States, together with enforcement of other laws, pursuant to the provisions therefor contained in the First Deficiency Act, fiscal year 1929." Such being the purpose, the method of inquiry was stated by the President in his address at the beginning of the work of the Commission: "It is my hope that the Commission shall secure an accurate determination of fact and cause, following them with constructive, courageous conclusions." In such a connection it is impossible to divorce the problem of enforcement from that of enforceability. Hence in order to conduct a thorough inquiry, so as to lead to constructive conclusions, we have felt bound to go into the whole subject of enforcement of the Eighteenth Amendment and the National Prohibition Act; the present condition as to observance and enforcement of that Act and its causes; whether and how far the amendment in its present form is enforceable; whether it should be retained, or repealed, or revised, and a constructive program of improvement.

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Materials Used

As the basis of our conclusions, we have used the following materials:

1. *Reports of investigators.* Under the direction of Mr. Henry S. Dennison, Mr. Albert E. Sawyer, assisted by a number of investigators and statisticians, made a survey and report covering the organization, personnel and methods of federal prohibition enforcement, the personnel management of the bureau of prohibtion prior to the transfer to the Department of Justice, and the operation of the permit system. Mr. James J. Forrester made investigations and reports on the effects of prohibition in industry and on the condition of wage earners and their families. Mr. A. W. W. Woodcock, now Director of Prohibition in the Department of Justice, before his appointment to that position submitted a number of reports based on study of the materials before us and of materials gathered by personal investigation in different localities. Also an investigator was employed to go over the law reports and the statistical and other information published by the several states bearing on the extent of state co-operation and state enforcement.

2. *Statements of Officials.* Statements were made before the commission by the Secretary of the Treasury, the Attorney General, the Assistant Attorney General in charge of prohibition cases, a former Assistant Attorney-General in charge of prohibition cases, the Assistant Secretary of the Treasury, the present Director of Prohibition, the Commissioner of Prohibition (before the Prohibition Reorganization Act of 1930) and Chief Law Officer of the Prohibition Bureau

(before that reorganization), the Assistant Secretary of Labor, the Assistant Commissioner General of Immigration, and the Supervising Examiner of the Civil Service Commission.

3. *Surveys.* Under the direction of the Commissioner of Prohibition (prior to the transfer to the Department of Justice) surveys were made of the conditions as to observance and enforcement of the National Prohibition Act in substantially all of the states. These surveys were put at our disposal.

4. *Examination of witnesses before the committee on prohibition or the commission.* The committee on prohibition examined witnesses, often obtaining additional written statements. Among those heard were prohibition administrators and former prohibition administrators in important centers, United States attorneys and former United States attorneys having experience in cases under the National Prohibition Act, investigators for district attorneys, high police officials, economists and statisticians, physicians and heads of hospitals, educators, social workers, employers, labor leaders, leaders in civic organizations interested in enforcement of law, and persons specially interested in or prominent in connection with each side of the controversy as to prohibition. The Commission had no power to subpoena or swear witnesses, but no one requested by the Commission so to do failed to make an oral or written statement.

5. *Letters in answer to questions or questionnaires.* Letters were received from the governors of states, from judges, state and federal, throughout the country, from United States attorneys and state prosecuting officers, from chiefs of police, from the heads of colleges and high schools and persons prominent in edu-

cation (procured with the assistance of officials of the National Education Association), from charity organizations and social workers, and from large employers of labor.

6. *Memoranda from bureaus, federal and state.* Memoranda, chiefly as to statistics, bearing on disputed questions of fact, were furnished freely by state and federal bureaus.

7. *Reports of Congressional hearings.* The reports of the hearings before the Judiciary Committee of the Senate in 1926 and of those before the Judiciary Committee of the House in 1930, were before us and were carefully collated with our other material.

8. *Reports and statistics from foreign countries.* Through the Department of State we were able to procure reports made specially by persons in the diplomatic and consular service of the United States, as well as official reports, printed documents, and statistics, bearing on systems of manufacture and distribution of liquor and the working of systems of liquor control in foreign lands.

9. *Statements and suggestions volunteered.* Manuscript statements, plans, proposals, and suggestions have been sent to us by volunteers from every quarter and have received due consideration.

10. *Printed books, papers, and pamphlets.* The voluminous literature on every aspect of prohibition and liquor control has been gone over carefully and collated with the other material before us.

Members of the Commission have also interviewed well informed persons in substantially every part of the country and have availed themselves of their personal observation and experience.

Our conclusions are derived from a critical study of these materials.

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The Problem of Liquor Control

Laws against drunkenness are to be found very generally in antiquity. But the economic organization of the ancient world did not bring about the conditions of production and distribution with which attempts to control the use of alcohol must now wrestle. In the modern world, commercialized production and distribution, especially of distilled spirits, called for legislative action early in the history of most of the modern nations. In England, what may fairly be regarded as restrictive, as distinguished from primarily economic legislation, begins in the fourteenth century. In the eighteenth century, following repeal of earlier restrictive statutes, the general use of distilled liquors called for legislation, and from that time there is a continuous history of legislative control in Great Britain. In Germany, sale of distilled liquor began to be regulated at the end of the fifteenth century. In France, regulation as distinguished from taxing legislation begins in 1816. In America, the history of liquor control begins with colonial legislation as to sale to Indians and closing hours, followed by a resolution of the Continental Congress in 1777 against distilled liquor. Over one hundred and fifty years of experimenting with systems of restriction, through taxation and excise, closing hours, prohibition of selling to certain types of person, high license, local option, state dispensaries, state prohibition, and finally national prohibition, have not disposed of the subject. It remains one of acrimonious debate, with the most zealous adherents of the latest solution compelled to

admit grave difficulties and serious resulting abuses. The necessity of liquor control is universally admitted in civilized countries. But this necessity of control gives rise to a problem of how to bring it about which has vexed society for centuries and now gives concern in all lands and very likely will persist whatever regimes of regulation are set up.

To some extent the problem of liquor control is interwoven with the whole problem of the relation of an ordered society to the individual life. Much of the difficulty encountered by every system of control and much of the difficulty encountered in enforcement of the National Prohibition Act is involved in all social control through law. The National Prohibition Act has brought into sharp relief features of this wider problem which had not attracted general attention. But there are special and intrinsic difficulties in liquor control and particularly in a regime of absolute prohibition. Settled habits and social customs do not yield readily to legislative fiats. Lawmaking which seeks to overturn such habits and customs, even indirectly by cutting off the sources of satisfying them, necessarily approaches the limits of effective legal action. The long history of legislative liquor control is one of struggle against this inherent difficulty. It could not be expected that legislation seeking to make a whole people at one stroke into enforced total abstainers would escape it.

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History of Liquor Control Before the Eighteenth Amendment

A study of the problem of prohibition enforcement requires a brief review of the history of the abuses

which led to the adoption of the Eighteenth Amendment and of the evils which the amendment was designed to remove.

The evils resulting from the production, sale and use of intoxicating liquors have troubled communities and legislatures increasingly in modern times. Legislation on the subject was enacted in the American Colonies, primarily for the purpose of preventing the sale of liquor to Indians and also for the purpose of preventing as well as for punishing drunkenness. The Continental Congress, on February 27, 1777, adopted a resolution:

> "that it be recommended to the several legislatures of the United States immediately to pass laws the most effectual for putting an immediate stop to the pernicious practice of distilling grain, by which the most extensive evils are likely to be derived, if not quickly prevented."

The Congress of the United States, at its first session under the Constitution, passed a law, approved July 4, 1789, placing a tax on the importation of ale, beer, porter, cider, malt, molasses, spirits, and wines. The purposes of the Congress in adopting this law were revenue, protection, and incidentally encouragement of temperance. By an act approved March 3, 1791, import duties on liquors were raised and an excise tax was placed on all spirits distilled within the United States, but not on malt liquors. Opposition to this tax was manifested in many places and produced what is known in history as the Whisky Insurrection in Western Pennsylvania, which was not placated by an act of May, 1792 (raising the duty on imports and reducing the excise tax), and which was suppressed only by the use of federal troops. In the period there-

after to 1861 various acts were enacted by Congress from time to time imposing excise or *ad valorem* taxes upon various forms of intoxicating liquors. After the outbreak of the Civil War on July 1, 1862, a comprehensive act was adopted imposing a tax on the sale of liquor and providing for the issuance of federal licenses. From 1862 until the World War every brewery and distillery in the United States was operated under a federal license, subject to policing by the federal government and required to maintain and file elaborate records. Subject to these provisions, the liquor traffic was conducted with the sanction of the federal government, which profited from the business to the extent of depending upon it for over one-fourth of the national revenue over a long series of years.

Without entering into a detailed review of the long history of the efforts to grapple with the liquor traffic, it may be observed that failure to secure compliance with state regulatory laws and the influence exercised by organized liquor interests in political affairs greatly stimulated the movement towards national prohibition. As early as 1885 amendments were proposed in Congress prohibiting the manufacture and dealing in intoxicating liquor. In the reports of senate committees in both the 49th Congress (1886) and the 50th Congress (1888) reference was made to a growing body of opinion that the evil wrought by the use of alcohol as a beverage and its effect upon the life, health and morals of the American people could only be removed by national legislation enforced by the national will in cooperation with the efforts of the states.

The police powers of the states, upon which state prohibition laws had been held valid, were declared by the Supreme Court of the United States ineffective to prevent importation of liquor from a wet state into a dry state and impotent to stay the sale and delivery

within a prohibition state of liquor in the original package in which shipped from another state. As a result Congress, by the Webb-Kenyon Act of 1913, prohibited the shipment of liquor from one state into another to be used in violation of the laws of the latter, and thus enabled the dry states to make their prohibition laws effective against liquor shipped in interstate commerce.

When the United States entered the World War in April, 1917, it was universally recognized that one of the most essential steps in winning the war was to suspend the liquor traffic. Accordingly, in May, 1917, Congress prohibited the sale of liquor to soldiers. In September, 1917, the Food Control Bill was passed containing a provision prohibiting the manufacture and importation of distilled liquor for beverage purposes and authorizing the President at his discretion to reduce the alcoholic content of beer and wine and to limit, prohibit and reduce the manufacture of beer and wine. In 1918, the Agricultural Bill, which became a law on November 21st of that year, provided for the prohibition of the manufacture of beer and wine after May 1, 1919, and prohibition of the sale of all liquors after June 30, 1919. The period of war prohibition was continued until the conclusion of the war, and, thereafter, until after the termination of demobilization.

On April 4, 1917, a joint resolution was introduced in the Senate, proposing an amendment to the Constitution prohibiting the manufacture, the sale or transportation of intoxicating liquors within, the importation thereof into, and the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes. In the course of the debate over this resolution, reference was made to the fact that twenty-six states had enacted state pro-

hibition laws, that more than 60 per cent of our people and 80 per cent of the territory of the United States at that time were living under prohibition.

Two features of the history of liquor control in the United States are of special importance for our present purpose, namely, the effect of industrial organization and consequent methods of manufacture and sale upon production and consumption of liquor and the effect of this and of organizations of producers upon politics. Much of the failure of the systems of liquor control devised in nineteenth-century America was due to their presupposing an economic situation which was ceasing to exist. For example, the high license system sought to insure responsible local sellers of good character and standing who might reasonably be expected to conform to the regulations imposed by local opinion and expressed in local laws. But the days of the old independent local tavern keeper were gone. The business of brewing and that of distilling came to be organized. The local brewer and local distiller supplying a limited local trade gave way to great corporations, organized on modern lines, each prepared to do a huge business and seeking to expand by finding new markets and increasing their business in old markets. Competition between these corporations was keen. Methods of production and distribution were improved continually. Sales organization was developed. More and more the local seller ceased to be independent and became a mere creature of some producer. Thus there was every pressure upon the seller to sell as much as possible and to as many as possible. Legislation preventing such corporations from holding licenses was not hard to evade and ran counter to the settled economic current. Commercialized production and distribution, under the economic order of the twentieth century, became a great evil.

No less an evil grew up through the political activities and influence of organizations of producers, working through their local dependents. The corrupting influence upon legislation and upon administration and police in our large cities was conspicuous and growing. The steady progress of state prohibition and local option was largely coincident with the growing power of these organizations and due to public resentment thereat.

Probably the institution which most strongly aroused public sentiment against the liquor traffic was the licensed saloon. The number of saloons was increasing in many states. In general, they were either owned or controlled by brewers or wholesale liquor dealers. The saloon keepers were under constant pressure to increase the sale of liquors. It was a business necessity for a saloon keeper to stimulate the sale of all the kinds of liquor he dealt in.

The saloons were generally centers of political activity, and a large number of saloon keepers were local political leaders. Organized liquor interests contributed to the campaign expenses of candidates for national, state and local offices. They were extensive advertisers in the newspapers. Laws and ordinances regulatory of saloons were constantly and notoriously violated in many localities. The corruption of the police by the liquor interests was widespread. Commercialized vice and gambling went hand in hand with the saloons. When proceedings were taken to forfeit saloon licenses because of violation of the law, it was a common practice for the brewers to procure surety company bonds and provide counsel to resist forfeiture. The liquor organizations raised large funds to defeat the nomination or election of legislators who opposed their interests. The liquor vote was the largest

unified, deliverable vote. The result of advertising by the brewers was a substantial increase in the consumption of beer, which was followed by some increase in the consumption of whisky, as shown by the statistics published by the Bureau of the Census.

In three five-year periods prior to 1914, the per capita consumption in gallons of distilled spirits and beer increased as follows:

	Spirits	*Beer*
1910-1914	1.46	20.38
1905-1909	1.43	19.46
1900-1904	1.36	16.94

In a general way the alcoholic content of spirits is from six to seven times that of beer.

In many cities, saloons occupied at least two and sometimes all four corners at the intersection of important streets. They also held strategic positions near entrances to large factories and industrial plants. They furnished open invitations to wage workers, as they left their places of employment, to enter and spend their money. Many left the saloons for their homes in a state of intoxication and with only the remnants of their wages in their pockets.

The United States Brewers Association, which was one of the dominant factors in the liquor situation from the time of its organization on November 12, 1862, in the annual address of its president in 1914 quotes the "American Grocer", the liquor dealers' organ, to the effect that despite the adoption of prohibition in some states and local option in others, the per capita consumption of alcoholic drinks had increased nearly three gallons over a ten-year period. The Year Book of the association for that year contains arguments against national prohibition based

upon the asserted fact that this would destroy a capital investment in the liquor industry in the United States which had reached the "huge sum of $1,294,583,426". The United States Census Bureau reports fixed the amount of capital so invested at that time at $915,715,000.

The evils of the liquor system most responsible for the formation of public opinion leading to the adoption of the Eighteenth Amendment, were the saloon and the corrupt influence of liquor dealers in politics, the latter being linked closely with the former. It is significant that almost all of the bodies at the present time seeking the repeal of the Eighteenth Amendment concede that under no circumstances should the licensed saloon be restored. Admittedly, the great achievement of the Eighteenth Amendment has been the abolition of the saloon.

I

NATIONAL PROHIBITION

1

The Eighteenth Amendment and the National Prohibition Act

On December 18, 1917, the joint resolution was adopted by both houses with the required constitutional majority and was transmitted to the states for their consideration. On January 29, 1919, the Secretary of State, by proclamation, announced that on January 16th thirty-six states had ratified the amendment and therefore it had become a part of the Constitution. It was subsequently ratified by ten additional states. It became effective on January 16, 1920, as

the Eighteenth Amendment to the Constitution, the pertinent sections of which are as follows:

> "Sec. 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
>
> "Sec. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation."

The absolute prohibitions of the Amendment extend only to the manufacture, sale, transportation, importation, or exportation of intoxicating liquors for beverage purposes. The Amendment does not prohibit the manufacture, sale, transportation, importation, or exportation of alcoholic liquors which are not intoxicating, or of intoxicating liquors for other than beverage purposes. It does not define intoxicating liquors or directly prohibit the purchase, possession by the purchaser, or use of any liquor, whether intoxicating or otherwise. The power to deal with these questions is vested in Congress under the provisions of Section 2 of the Amendment, or left to the several states.

In pursuance of this authority, in October, 1919 Congress passed the National Prohibition Act. In the title to this act three distinct pursoses are stated: (1) to "prohibit intoxicating beverages," (2) to "regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes," and (3) to "insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries."

The law is divided into three titles. Title I deals with war-time prohibition and is not material to this inquiry; Title II with the prohibition of intoxicating beverages; and Title III with industrial alcohol.

By Section 3 of Title II it is declared that "all of the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." This language has been criticized as extending the purpose of the Act beyond that of the Amendment of the Constitution. The criticism seems rather technical. The Amendment did not expressly prohibit the use of intoxicating liquors as a beverage, but without this use, the things prohibited would not exist. On the other hand, if the direct prohibitions of the Amendment were effective there could be no use for beverage purposes except as to the limited supply on hand when the Amendment became operative. The direct and expressed purpose was to prohibit the sources and processes of supply; the ultimate purpose and, if successful, the inevitable effect was to prohibit and prevent the use of such liquor as a beverage.

It has been observed that the Eighteenth Amendment did not define intoxicating liquors which were prohibited for beverage purposes. In the absence of any definition this would, of course, mean liquors which were in fact intoxicating, a matter practically impossible of accurate determination, since it would depend upon the amount and conditions of consumption, the physiology of the consumer, and other factors which vary in each case. The definition of this term to be effective must necessarily fix a somewhat arbitrary standard. It was left to the legislative discretion of Congress.

In Title II, Section 2, of the National Prohibition Act it was declared that the phrase "intoxicating liquors" should be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, "containing one-half of one per centum or more of alcohol by volume which are fit for use for beverage purposes."

The validity of the provision and the definition of alcoholic liquor therein were challenged in the courts and were sustained by the Supreme Court of the United States as being within the powers conferred upon Congress by the Amendment.

To this general limitation of less than one-half of one per cent alcoholic content by volume there is in the Act one exception as applied to manufacture.

This appears in Section 29 of Title II, which, after prescribing penalties for certain violations of the Act, including illegal manufacture and sale, declares that "the penalties provided in this Act against the manufacture of liquor without permit shall not apply to a person for manufacturing non-intoxicating cider and fruit juices exclusively for use in his home, but such cider or fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar."

The amendment does not directly prohibit the purchase or possession of alcholic liquor for beverage purposes. Nor does the National Prohibition Act prohibit the purchase for such purpose, although prohibitions against purchase are contained in many state laws. Section 25, Title II of the Act does expressly declare it to be unlawful to have or possess any liquor

or property designed for the manufacture of liquor intended for use in violation of the Act or which has been so used and makes such property subject to confiscation. Section 33 provides that after February 1, 1920 the possession of liquor not legally permitted shall be *prima facie* evidence that such liquor is kept for disposition in violation of the law. This latter section excepts from its operation liquor in one's private dwelling, while the same is occupied as his dwelling only provided such liquors are for use only for the personal consumption of the owner thereof and of his family residing therein and of his *bona fide* guests when entertained by him therein, placing the burden of proof upon the possessor to prove that such liquor was lawfully acquired, possessed and used.

The penalties prescribed for violations of the Act vary as to different offenses. For violation of an injunction against maintaining a place of manufacture or sale, declared to be a nuisance, the penalty is fixed at a fine of not less than $500 nor more than $1,000 or imprisonment of not less than thirty days nor more than twelve months, or both. For illegal manufacture or sale, the penalty prescribed for the first offense is a fine of not more than $1,000 or imprisonment not exceeding six months; and for a second or subsequent offense a fine of not less than $200 nor more than $2,000 and imprisonment of not less than one month nor more than five years. By the Increased Penalties Act approved March 2, 1929, it was provided that wherever any penalty was prescribed for the illegal manufacture, sale, transportation, importation, or exportation of intoxicating liquor as defined in the Act, the penalty imposed for each such offense should be a fine not to exceed $10,000 or imprisonment not to exceed five years, or both, but that this Act should not operate to

repeal any minimum penalties then prescribed by law. It is further declared by this Act that it was the intent of Congress that the courts in passing sentence under this Act should discriminate between "casual and slight" violations, and habitual sales of intoxicating liquor or attempts to commercialize violations of the law.

In addition to these basic provisions, which are in a sense supplemental to the Amendment, the Act contained elaborate provisions for the enforcement of the prohibition against the manufacture, sale, transportation, importation, exportation, or possession of alcoholic liquors as defined therein for beverage purposes; the regulation of the manufacture, sale, transportation, importation and use of alcoholic liquors for non-beverage purposes and of alcohol for industrial purposes, with numerous administrative provisions intended to make the law effective.

It is not deemed appropriate to encumber this report with further analysis of the Act. Other pertinent provisions will be stated to such extent as may seem necessary in connection with the discussion of the problem of enforcement as applied to the various subjects which come within the scope of the law.

2

History of Prohibition Enforcement Before the Bureau of Prohibition Act 1927

(a) Original Organization

The Amendment and the National Prohibition Act inaugurated one of the most extensive and sweeping efforts to change the social habits of an entire nation recorded in history. It would naturally have been assumed that the enforcement of such a novel and sweeping reform in a democracy would have been under-

taken cautiously, with a carefully selected and specially trained force adequately organized and compensated, accompanied by efforts to arouse to its support public sympathy and aid. No opportunity for such a course was allowed.

As already noted, it was necessary to leave the definition of intoxicating liquor to the legislature, and also necessary for the legislature to fix a somewhat arbitrary standard. Considerable public sentiment was, however, antagonized by the legislative fixing of the permissible content of alcohol at a percentage substantially below the possibility of intoxication. This gave offense to a number of people who perhaps did not give adequate consideration to the administrative difficulties which might be involved by permitting a larger alcoholic content. Instant compliance was necessarily required from the date the amendment became effective. Scant opportunity was allowed for the organization of a force to carry out the Congressional mandates. There was no time or opportunity for careful selection of personnel. The officials charged with the execution of the law realized grave difficulties in the task thus imposed upon them.

The Commissioner of Internal Revenue, in his Annual Report to the Secretary of the Treasury for the fiscal year ending June 30, 1919, made while the National Prohibition Act was pending in Congress, referred to the fact that that bill placed the responsibility for the enforcement of its provisions upon the Bureau of Internal Revenue of the Treasury Department, which already was burdened with the fiscal and revenue problems of the government. "Not to enforce prohibition thoroughly and effectively", said the Commissioner, "would reflect upon our form of government, and would bring into disrepute the reputation of

the American people as law-abiding citizens. No law can be effectively enforced except with the assistance and cooperation of the law-abiding element. The Bureau will accordingly put into operation at once the necessary organization to cooperate with the states and the public in the rigid enforcement of the prohibition law, and appeals to every law-abiding citizen for support. This contemplated end requires the closest cooperation between the Federal officers and all other law-enforcing officers, state, county, and municipal."

"The Bureau naturally expects unreserved cooperation also from those moral agencies which are so vitally interested in the proper administration of this law. Such agencies include churches, civic organizations, educational societies, charitable and philanthropic societies, and other welfare bodies. The Bureau further expects cooperation and support from the law-abiding citizens of the United States who may have been opposed to the adoption of the Constitutional amendment and the law, which in pursuance of that amendment makes unlawful certain acts and privileges which were formerly not unlawful. Thus, it is the right of the Government officers charged with the enforcement of this law to expect the assistance and moral support of every citizen, in upholding the law, regardless of personal conviction."

If the cooperation thus referred to had been cordially given and the Bureau had been adequately and efficiently organized for the purpose of discharging the responsibilities laid upon it by the National Prohibition Act, it is probable that many problems of the character existing at the present time, would not have arisen. As a matter of fact, very little cooperation was given by the agencies referred to and the organized bodies which had been instrumental in procuring the adoption of prohibition apparently abandoned all effort to convince the public of its advantages and placed all their reliance upon the power of the national government to enforce the law. The proponents of the law paid no heed to the admonition that "no law can be effectively enforced except with the assistance and cooperation of the law-abiding element." On the contrary, the passage of the act and its enforcement were urged with a spirit of intolerant zeal that awakened an equally intolerant opposition and the difficulties now being experienced in rallying public sentiment in support of the Eighteenth Amendment result largely from that spirit of intolerance.

On the passage of the law, the Bureau of Internal Revenue proceeded to organize departments under supervising Federal prohibition agents for the enforcement work and to create in each state an organization under a Federal prohibition director for the regulation and control of the nonbeverage traffic in alcohol by a system of permits The appointment of prohibition directors and agents was not subject to the Civil Service laws. The salaries of prohibition agents were too low to be attractive. There has been much criticism of the character, intelligence and ability of many of the force originally appointed and many of their successors, and it is probably true that to their reputation for general unfitness may be ascribed in large measure the public disfavor into which prohibition fell. Allegations of corruption were freely made, and, in fact, a substantial number of prohibition agents and employees actually were indicted and convicted of various crimes. The facts are given more in detail by the Assistant Secretary of the Treasury in his testimony before the Senate Committee hereinafter referred to.

When the new national administration came in, in 1921, a committee was appointed, consisting of two members of the cabinet and an assistant secretary, who made a study of the subject, and recommended the transfer of certain activities from one department to the other where they appropriately belonged, including the transfer of the prohibition enforcement unit to the Department of Justice. That transfer, which also was recommended by this Commission in its preliminary report in November 1929, was authorized by Congress and carried out in this present year, 1930.

The organization set up under the Bureau of Internal Revenue was headed by a Commissioner of Prohibition. The original appointee, served from November 17, 1919, to June 11, 1921. His successor served until May 20, 1927, but the latter's authority was curtailed on November 1, 1925, by the appointment of a Director of Prohibition with equal power, who also served until May 20, 1927. On that date the offices were reconsolidated and a new Commissioner appointed who served until July 1, 1930.

The Bureau of Internal Revenue charged with the enforcement of prohibition as well as the Customs Bureau and the Coast Guard, were directly under the supervision of an Assistant Secretary of the Treasury. Five persons held that office between January 1920 and April 1925, and for eight months there was a vacancy in the office and no Assistant Secretary appears to have been especially charged with the supervision of the prohibition forces or the coordination of the three services.

During the period prior to July, 1921, the enforcement and permissive features of the law were administered separately, with supervising federal prohibition agents in charge of the former, and state directors,

who were permitted to chose their own personnel, in charge of the latter. During the short life of this system, an unusually large number of supervising agents saw service as heads of the twelve departments into which the country was divided. In July, 1921, the office of supervising federal prohibition agent was abolished, and enforcement placed under the state directors, 48 in number. The occupants of these positions were constantly changing, and 184 men were in and out of these 48 positions during the years 1921 to 1925, when the office was abolished. The enforcement agents, inspectors and attorneys, as was authorized in section 38 of the National Prohibition Act, were appointed without regard to the Civil Service rules. A force so constituted presented a situation conducive to bribery and official indifference to enforcement. It is common knowledge that large amounts of liquor were imported into the country or manufactured and sold, despite the law, with the connivance of agents of the law.

April 1, 1925, General Lincoln C. Andrews, a retired army officer, was appointed Assistant Secretary of the Treasury and assigned to the supervision of Customs, Coast Guard and Prohibition. He reorganized the whole prohibition enforcement machinery, using the federal judicial district as the geographical unit, and grouping those units into districts, making in all twenty-four prohibition districts, in each of which was placed an administrator, who was given the authority and was to be held responsible for the law's enforcement.

General Andrews, in a letter dated March 31, 1926, which was put in evidence at the hearing before the Senate Judiciary Committee, stated that 875 employees had been separated from the service for cause,

from the commencement of prohibition to February 1, 1926, and of that number 658 separations had been effected since June 11, 1921. During substantially the same period, January 16, 1920, to March 30, 1926, 148 officers and employees, including enforcement agents, inspectors, attorneys, clerks, etc., except narcotic officers, were convicted on charges of criminality, including drunkenness and disorderly conduct.

While the number of convictions had in the federal courts for violation of provisions of the act, increased from 17,962 in the fiscal year ending June 30, 1921, to 37,018 in the fiscal year ending June 30, 1926, there was growing dissatisfaction with the results of the administration of the law, and an increasing volume of complaints against the service. These led to the introduction in Congress of a large variety of bills proposing amendments to the Eighteenth Amendment or to the National Prohibition Act and finally to demands for an investigation into the workings of the law.

(b) Senatorial Investigation, 1926

In April, 1926, an inquiry was opened before a subcommittee of the Judiciary Committee of the United States Senate, charged with the duty of investigating and making a report to the full Judiciary Committee on all of these proposals. The report of the hearings before that committee fills two volumes, aggregating about 1,650 pages. The hearings lasted from April 5 to 24, 1926. It appeared from the evidence adduced that, despite the prosecutions referred to, and seizures of a large amount of liquor, a very great deal of industrial alcohol was being diverted and sold illicitly for unlawful purposes. General Andrews testified that the sources of illicit liquor at that time were smuggling, the diversion of medicinal spirits, the diversion of industrial alcohol, (which was the principal source

or the backbone of bootleg liquor that was then sold), and in the south and middle west moonshine liquor.

General Andrews further testified that his assignment as Assistant Secretary of the Treasury in April, 1925, was to take charge of customs, coast guard, and the prohibition unit and try to bring about cooperation between the three for the purpose of enforcement of the prohibition laws, it being naturally the function of Customs to stop smuggling on the land and of the Coast Guard to stop smuggling by the sea. He found only about 170 patrolmen in the customs service; a very insufficient number. He needed more patrolmen than he could possibly supply. His entire border patrol force was 170 customs men on both land borders, Canada and Mexico, and 110 prohibition enforcement agents, making 280 in all. With certain contemplated additions, he expected his total force to be something like fifteen or sixteen hundred to patrol the whole of the Canadian border from the Atlantic to the Pacific, and the whole of the Mexican border from the Gulf to the Pacific. He thought that would stop the smuggling of liquor, although it would not materially reduce the supply in the country, because, as he had stated, he thought the greater source of supply was from diverted alcohol and medicinal spirits.

In March, 1927, General Andrews resigned and Mr. Seymour Lowman, the present incumbent of the office, was appointed Assistant Secretary of the Treasury to succeed him, effective April 1, 1927.

3

Prohibition Enforcement Since 1927

(a) The Bureau of Prohibition Act, 1927

Following the hearings before the Senate Committee, Congress, by act of March 3, 1927, known as "the

Bureau of Prohibition Act", (44 Stats. 1381), created in the Department of the Treasury two bureaus, a Bureau of Customs and a Bureau of Prohibition, each under a commissioner; authorized the Secretary of the Treasury to appoint in each bureau one assistant commissioner, two deputy commissioners, one chief clerk, and such other officers and employes as he might deem necessary, and provided that the appointments should be subject to the provisions of the Civil Service laws and the salaries be fixed in accordance with the classification act of 1923. The Commissioner of Prohibition, with the approval of the Secretary of the Treasury, was authorized to appoint in the Bureau of Prohibition such employees in the field service as he might deem necessary, but it was expressly enacted that all appointments of such employees were to be made subject to the provisions of the Civil Service laws, notwithstanding the provisions of Section 38 of the National Prohibition Act. The term of office of any person who was transferred under this section to the Bureau of Prohibition, and who was not appointed subject to the provision of the Civil Service laws, was made to expire on the expiration of six months from the effective date of the Act, i. e., April 1, 1927.

From the time of enacting this law until the end of the year 1929, the tedious task of replacing men declared ineligible under the terms of the 1927 law was taking place.

In April, 1927, the members of the force of the Bureau of Prohibition, exclusive of clerks in the field offices and clerks and administrative officials in the Washington headquarters (already serving under Civil Service regulations) were subjected to examination to determine their eligibility to continue in the service.

As a result, 41% of those of the force who took the examinations received therein passing marks by virtue of which they continued to hold their positions, and 59% failed.

(b) Changes in Personnel and in Organization

The original organization set up in the Bureau of Internal Revenue at the beginning of prohibition did not last long, and experimentation with organization during the first few years was carried to a point which undoubtedly must have caused a feeling of insecurity and uncertainty in the force and detracted from the heartiness and confidence necessary to the effective working of any organization. During the eighteen months from January 1920 to July 1921, several hundred incumbents held the positions of agents for varying periods of time. There were constant changes in the prohibition administrators. In all but six of the twenty-four prohibition districts, during the period April 1, 1925 to March 31, 1927 there were two or more administrators; two in each of ten districts, three in each of five districts and five in each of three districts. After the passage of the act of March 3, 1927, and during the subsequent period until July 1, 1930, in the twenty-seven prohibition districts there were two administrators in each of eleven districts, three in one district, four in each of four districts, and five in one district. Not only were all of these changes made in the principal officers of the districts, but the boundaries of the districts themselves were frequently changed. Three districts underwent four territorial reorganizations, eight of them three, and nine of them two. Only seven districts remained substantially as originally outlined.

Among the district administrators, during the period April 1, 1927, to July 1, 1930, there were ninety-one changes in the twenty-seven districts, and in some of the districts the average length of service was only six months. It is quite obvious that no organization could function efficiently and harmoniously in such a state of upheaval, with its leadership continually shifting and its plan of field organization subject to constant revision.

Of 2,278 persons in the service on April 30, 1930, the number appointed in each calendar year since the passage of the National Prohibition Act is shown as follows:

1919.....	20	1925.....	185
1920.....	90	1926.....	184
1921.....	102	1927.....	242
1922.....	126	1928.....	390
1923.....	63	1929.....	575
1924.....	99	1930.....	202

Of the 943 prohibition agents in the service on July 1, 1920, the salaries of 839 ranged from $1,200 to $2,000 per annum. Of the remainder, 89 were paid from $2,000 to $2,500; 12, from $2,500 to $3,000, and only three received more than $3,000. At the present time the prohibition agents receive a salary of $2,300 upon entering the service. This is gradually increased to a maximum of $2,800 per annum. The annual turnover in personnel has been large. Eliminating any increase or decrease in the aggregate and considering only positions vacated and refilled, the figures furnished us show the following annual turnover in personnel, by groups, for the fiscal years 1920 to 1930, inclusive (less narcotic field force):

	Enforcement group %	*Clerical group* %	*Administrative group* %	*Total all groups* %
1920	15.94	12.70	7.69	14.83
1921	96.28	30.08	43.75	76.15
1922	50.27	25.44	27.70	42.40
1923	47.51	26.24	37.50	43.70
1924	27.64	19.81	15.71	25.79
1925	24.18	24.48	18.05	26.40
1926	49.53	36.03	58.75	45.37
1927	38.06	23.19	47.31	33.38
1928	34.14	19.37	29.88	31.07
1929	31.29	19.38	22.00	27.10
1930	22.78	17.99	14.77	21.09

The turnover in the higher administrative posts averaged 29.37 per cent per annum during the period of eleven years, the peak being 58.75 per cent in 1926. The turnover in the enforcement branch during the years 1920 to 1930 averaged 39.78 per cent. The effect of the application of the Civil Service laws marked a reduction but in 1930, the turnover was still too high, being 22.78 per cent.

One of the most unpleasant aspects of the problem of prohibition enforcement which relates directly to the matter of organization and personnel arises out of the charges of bribery and corruption. A general charge of this character against any organization is easily made but difficult of proof. It is obviously unjust to those in the organization who are not only honest but are diligent and patriotic in the discharge of their public duties. Yet to the extent that these conditions have existed or may now exist they constitute important factors in the problem of prohibition

enforcement and are vital considerations as affecting the government generally.

From statements furnished, it appears that from the beginning of national prohibition to June 30, 1930 there were 17,972 appointments to the prohibition service, 11,982 separations from the service without prejudice, 1,604 dismissals for cause. These figures apply only to the prohibition organization and do not include Customs, Coast Guard, and other agencies directly or indirectly concerned with the enforcement of the prohibition laws. The grounds for these dismissals for cause include bribery, extortion, theft, violation of the National Prohibition Act, falsification of records, conspiracy, forgery, perjury and other causes which constitute a stigma upon the record of the employe. The total number of employes in the service at the end of each fiscal year, the number in the enforcement group, and the number of dismissals therefrom for cause each year are given as follows (less narcotic field force):

Year	*Total Number Employees*	*Total enforcement group*	*Total dismissal for cause*
1920	2,239	1,512	30
1921	2,285	1,372	194
1922	3,573	2,435	158
1923	3,288	2,012	197
1924	3,261	1,939	159
1925	3,564	2,320	182
1926	3,390	2,150	108
1927	3,981	2,577	196
1928	3,846	2,355	197
1929	4,325	2,784	98
1930	4,386	2,836	85

These figures do not, of course, represent the total delinquencies of the character named which actually occurred. They only show those which are actually discovered and admitted or proved to such an extent as to justify dismissal. What proportion of the total they really represent it is impossible to say. Bribery and similar offenses are from their nature extremely difficult of discovery and proof.

Improvements in organization and methods of selecting personnel under Civil Service should operate to reduce the number of such offenses.

(c) Training of Prohibition Agents

Not until the year 1927, was any effort made to furnish even the key men in the prohibition enforcement organization with special training in the work they were expected to perform. In the fall of 1927, a plan for giving training periods, each of two weeks' duration, to agents and prohibition employes, was inaugurated. This was followed by an extensive tour by the Washington officials in charge of personnel training through every district in the country. This was begun early in 1928 and was continued in January 1929. In February 1930, the Prohibition Bureau school of instruction established a correspondence course for instruction in the duties of the office, the elements of criminal investigation, constitutional law, etc.

Since the extension of the Civil Service laws over it, there has been continued improvement in organization and effort for enforcement, which is reflected in an attitude of greater confidence in the prohibition agents on the part of United States attorneys and judges.

(d) Appropriations for Prohibition Enforcement

In the following statement of appropriations and expenditures the appropriations for the narcotic unit,

which was operated as a part of the prohibition unit or bureau but with a separate personnel, are included, since in the data furnished the expenditures for the two services are combined. The appropriation for the narcotic unit averaged about 10 per cent of the total.

Year	*Total Appropriations*[1]	*Total Expenditures*	*Total Unexpended*
1920	$3,100,000.00[2]	$2,965,522.09	$134,477.91
1921	7,100,000.00	7,034,517.87	65,482.13
1922	7,500,000.00	7,327,074.51	172,925.49
1923	9,250,000.99	8,994,390.49	255,610.50
1924	9,000,003.83	8,456,606.41	543,397.42
1925	11,341,770.00	10,499,255.50	842,514.50
1926	11,050,000.00	10,994,981.78	55,018.22
1927	13,272,445.00	12,464,836.91	807,608.09
1928	13,320,405.00	12,938,622.49	381,782.51
1929	13,752,060.00	13,645,239.17	106,820.83[4]
1930	14,985,744.00	14,948,799.89[3]	36,944.11[5]

These figures do not represent the total expenditures for prohibition enforcement. The expenditures for the Bureau of Customs, Coast Guard and other services directly or indirectly connected with prohibition enforcement, many of which have been necessarily increased to a greater or less extent to meet the additional burdens imposed by the National Prohibition Act, do not appear in the foregoing figures.

[1]These figures are taken from an annual publication of the Treasury Department "Combined Statement of Receipts, Disbursements, Balances et cetera of the United States" and represent balances of each appropriation adjusted as of June 30, 1930, except as noted.

[2]Includes $800,000.00 transferred to War Revenue for the enforcement of Title I of the National Prohibition Act.

[3]This is the amount shown in Annual Report of Commissioner of Prohibition for 1930 as expended, and includes estimate of commitments outstanding and unpaid June 30, 1930.

[4] and [5] Estimated—subject to adjustment. Actual cash balances reported by Treasury Department, Division of Bookkeeping and Accounts, as of June 30, 1930 are: For the 1930 appropriation, $79,662.09; for the 1929 appropriation $6,820.83; 1929-30 deficiency appropriation $676,730.65.

(e) Cooperation With Other Federal Agencies

Cooperation of the Prohibition Bureau forces with the Customs and Coast Guard forces was imperfect, despite the fact that all three services were subject to the same department of government and directly under the control of an Assistant Secretary of the Treasury until July 1, 1930. Long experience had accustomed the officials and men of the Customs Service and the Coast Guard to work together. They did not readily cooperate with the prohibition forces. Despite the efforts of the Assistant Secretary, constructive cooperation between the three branches was not established.

The problem of preventing the smuggling of liquor into the United States at many points on our land and water borders—nearly nineteen thousand miles in extent—was added to the other duties of the prohibition force and the limited customs and coast guard forces.

The duties of the men in the Customs Service in preventing smuggling of liquor and other commodities over the international boundaries devolved upon what is called the border patrol of that service, the members of which receive a salary of $2,100 a year and are under the direction of the collector of customs. On the rivers such as the Niagara, the Detroit and the St. Clair, the customs service does the patroling in small picket boats.

The duties of the Coast Guard, apart from their life saving and maritime activities, include patroling the border waters of the country for general police purposes. Their number has been considerably increased since the enactment of the Prohibition Act, and on June 30, 1929, included 12,100 officers and men. The enlisted men in this service are paid $36 a month and furnished with uniforms, food and lodgings. The

Coast Guard service had a serious organization problem of its own at the time that its forces were rapidly augmented in 1925 for the purpose of breaking up the rum row of vessels which lay off our coasts beyond the three mile limit, at which time some three thousand additional men were enlisted.

The Bureau of Immigration in the Department of Labor has a border patrol which was organized in 1925 primarily to prevent the illegal entry of aliens. The personnel of this patrol has been increased from about 400 in 1925 to approximately 1000 in 1930. This service works more closely with the Customs Bureau than it does with the prohibition forces, as the immigration inspectors are accustomed to work on the border with customs inspectors. This border patrol does, however, aid in the apprehension of aliens who are engaged in smuggling liquor.

Cooperation between all the forces above referred to would have been difficult at best. Each of the forces other than prohibition has duties to perform of a different nature than seizing liquor or apprehending smugglers of intoxicants. Effective cooperation is only possible where there is mutual respect and confidence. The older services had no such feelings for the newer.

These conditions explain the fact that save in a few places and under special conditions, there was no cordial, effective cooperation between these branches of the federal service. The attempts at better coordination have resulted in some progress, but much remains to be done. The Commissioner of Prohibition as late as June, 1929, stated that the then existing cooperation could be better. "It is a little spotty now, due to individual temperament. There is no difference of opinion or lack of complete harmony in the directing heads, but as you go on down the service, the service

rivalry crops out." One of the most important measures necessary to the enforcement of the prohibition of liquor importation is the creation of a competent border patrol which shall unite in one efficient force the men of the four different services above mentioned. Difficult as is the task, it does not seem to be beyond accomplishment, although some legislative aid may be necessary to perfect such an organization.

(f) General Observations

The foregoing statements are sufficient to indicate the nature, extent, and resources of the governmental machinery which has been set up for the purpose of prohibition enforcement and the more important aspects of its administration. Viewed solely from the standpoint of the enforcement machinery and administration, it is obvious that the organization has passed through many vicissitudes and has been subject to conditions many of which have been prejudicial to effective service. How far these conditions were inherent in the nature and subject-matter of the undertaking and in the conditions under which it was inaugurated and has been developed and how far they might have been or may now be avoided is difficult of determination and opinions differ thereon. The Eighteenth Amendment represents the first effort in our history to extend directly by Constitutional provision the police control of the federal government to the personal habits and conduct of the individual. It was an experiment, the extent and difficulty of which was probably not appreciated. The government was without organization for or experience in the enforcement of a law of this character. In creating an organization for this purpose, it was necessary to proceed by the process of trial and error. The effort was subject to those limitations which are inseparable from all human and especially governmental activities.

II

THE PRESENT CONDITION AS TO OBSERVANCE AND ENFORCEMENT

1

Observance

There is a mass of information before us as to a general prevalence of drinking in homes, in clubs, and in hotels; of drinking parties given and attended by persons of high standing and respectability; of drinking by tourists at winter and summer resorts; and of drinking in connection with public dinners and at conventions. In the nature of the case it is not easy to get at the exact facts in such a connection, and conditions differ somewhat in different parts of the country and even to some extent from year to year. This is true likewise with respect to drinking by women and drinking by youth, as to which also there is a great mass of evidence. In weighing this evidence much allowance must be made for the effect of new standards of independence and individual self-assertion, changed ideas as to conduct generally, and the greater emphasis on freedom and the quest for excitement since the war. As to drinking among youth, the evidence is conflicting. Votes in colleges show an attitude of hostility to or contempt for the law on the part of those who are not unlikely to be leaders in the next generation. It is safe to say that a significant change has taken place in the social attitude toward drinking. This may be seen in the views and conduct of social leaders, business and professional men in the average community. It may be seen in the tolerance of conduct at social gatherings which would not have been possible a generation ago. It is reflected in a different way of regarding drunken youth, in a change in the class of excessive drinkers, and in the increased use of distilled liquor in places and connections where formerly it was banned. It is evident that, taking the country as a whole, people of wealth, business men and professional men, and their families, and, perhaps, the higher paid working men and their families, are drinking in large numbers in quite frank disregard of the declared policy of the National Prohibition Act.

There has been much discussion as to how the consumption of liquor today compares with that before prohibition. It will be necessary to go into that discussion later in considering the amount produced and imported in violation of law. So many purely speculative elements are involved in the making of any figures as to consumption today that in the present connection it is not worth while to make an elaborate review of the statistical material. But it may be remarked that the method of adding to the figures for the period before prohibition, in order to reach a basis of comparison, an annual increase in the proportion shown during the development of organized production and distribution is unsound. That rate of increase could not have gone on indefinitely into the future under any regime. The evidence as to Keely cures, as to arrests for drunkenness and the type of persons found drunk in public, as to deaths from causes attributable to alcohol, as to alcoholic insanity, as to hospital admissions for alcoholism, as to the change in the type of person treated for alcoholism, and as to drunken driving, while in each case subject to much criticism and raising many doubts, yet all seem to point in the same direction.

The Census Bureau figures for the year 1929 indicate a decline in the rate of deaths from alcoholism, and the figures on all the points referred to are still substantially below the pre-prohibition figures. Upon

the whole, however, they indicate that after a brief period in the first years of the amendment there has been a steady increase in drinking.

To the serious effects of this attitude of disregard of the declared policy of the National Prohibition Act must be added the bad effect on children and employees of what they see constantly in the conduct of otherwise law abiding persons. Such things and the effect on youth of the making of liquor in homes, in disregard of the policy, if not of the express provisions of the law, the effect on the families of workers of selling in homes, which obtains in many localities, and the effect on working people of the conspicuous newly acquired wealth of their neighbors who have engaged in bootlegging, are disquieting. This widespread and scarcely or not at all concealed contempt for the policy of the National Prohibition Act, and the effects of that contempt, must be weighed against the advantage of diminution (apparently lessening) of the amount in circulation.

These observations are not directed to a comparison between conditions before the Eighteenth Amendment and since, but only to changes taking place during the years since the adoption of the Amendment. The disquieting features above referred to should, of course, be weighed against the recognized fact that very large numbers of people have consistently observed the law.

2

Enforcement

(a) Enforcement With Respect to Importation and Manufacture

(1) The Sources of Illicit Liquor

There are five main sources of illicit liquor: importation, diversion of industrial alcohol, illicit distilling,

illicit brewing, and illicit production of wine. In addition, a minor source, namely, diversion of medicinal and sacramental liquor has at times and in places assumed considerable proportions and must always be borne in mind as a potential mode of supply.

(i) *Importation*

Importation is chiefly from Canada, both directly and indirectly, since Canada is a large producer and is exceptionally convenient, by proximity and by geographical conditions and conditions of transportation, as a base for smuggling operations. Recently St. Pierre and Miquelon, a group of small islands off Newfoundland, belonging to France, have been growing rapidly in importance as bases for that purpose, both through importations from Canada and as a depot for importations from France. In the Bahamas, Bimini, an island of nine square miles, has become a heavy importer of Canadian whisky, as a depot for Florida, and has been to some extent a depot for supply of rum from the West Indies. The West Indies supply directly a certain amount. Mexico and Central America have been depots for Canadian whisky. Belize in British Honduras in particular is a depot for supply of the Gulf Coast. Finally, a certain amount, chiefly wines and brandies has been coming from Europe, mostly from France.

Transportation is by land, by water, and by air. Smuggling of liquor by land is by rail or motor, mostly from Canada, and to some small extent by pack animals on the southwestern border. Smuggling by rail takes place chiefly by concealment in or mixing with legitimate freight coming into the United States. It has also been carried on by manipulation of seals and substitution of content or of cars while freight trains

were in transit through Canada from one part of the United States to another. Such smugglings of liquor are not easy to prevent because of the importance of not unduly delaying legitimate freight. In order to put a stop to it cooperation of the railroads is needed, and all companies have not always cooperated. Smuggling by motor trucks and automobiles is well organized and is the main factor in land transportation. The conditions of travel today on the main arteries crowd the existing customs facilities beyond the possibility of any adequate control. As to the secondary roads and trails, adequate supervision is substantially impracticable. The organized smugglers are well provided with depots, have excellent equipment, thorough knowledge of the terrain, and efficient spies upon the enforcing agencies. Very largely they have neighborhood sympathy behind them. Moreover, there is continual pressure from tourists and travelers to bring in even considerable quantities.

Water transportation is by sea-going vessels, by specially designed or equipped small vessels or boats, by so-called mother boats with which small craft make connections, or from which they go forth at sea beyond the limits of activity of the Coast Guard, and by river boats. In sea-going vessels liquor comes concealed about the ship or mixed with the legitimate cargo, as, for example, mixing cases of liquor falsely labeled with cases of properly labeled freight. It is difficult for the customs authorities to deal with such things at the more important ports because legitimate freight should not be delayed in transit, because of lack of space in crowded docks for adequate examination, and for lack of enough inspectors. The usual course is to hold for examination one-tenth of all cases, bales, or bundles, taken at random. But substitution by long-

shoremen or dock workers and other devices have been used to defeat this method.

Small motor boats may go direct between points on the great lakes, between the Bahamas and the Florida coast, at times from St. Pierre and Miquelon to New England, and on Puget Sound. There has been a high development of special boats for this purpose. Also smuggling through so-called mother boats has been highly developed along all coasts. This form of transportation has been elaborately organized, often with special craft, with radio stations, and with efficient service for soliciting business, directing the movements of boats, ascertaining the movements of enforcement agents, and giving warning of their activities. It has developed all manner of ingenious apparatus, using the newest methods of engineering and of science. The organizations can operate profitably if they can land one boat load of five. The margin of profit is more than enough to take care of all ordinary activities of enforcement agencies. When an organization of this sort is broken up, it is quickly set up again by reorganization of experienced violators knowing exactly what to do and how to do it.

River boats have been active in the past at Detroit and Buffalo, and were especially effective at Detroit. Co-ordination of the enforcement services at Detroit made a noteworthy change there. But there is evidence that the real effect was to change the locus of smuggling. The figures as to decreased declarations opposite Detroit are impressive until one observes that the deficiencies were more than made up by increases at other points in the long and difficult river boundary between Lake Huron and Lake Erie. It is easy for smugglers to shift the base from one point to another and the shiftings are hard to keep up with. It is recog-

nized that this particular situation has been greatly changed by the friendly action of the Canadian Government in enacting the law effective July 1, 1930, prohibiting the declaration of withdrawals of liquor for direct exportation to the United States.

As to air transportation, it is shown to have gone on at several distinct points in widely distant sections during the present year. It is not unlikely to increase and to call for additional preventive measures.

Whisky, either directly or indirectly from Canada, forms the bulk of illicit importation. A considerable quantity of beer also comes from Canada and some wines and brandy. Rum comes in from the West Indies, and occasionally certain amounts of brandy from France and gin from Holland. An unknown amount of wine comes from France, both direct and by way of St. Pierre and Miquelon. That this is by no means inconsiderable is shown by the extent to which these wines are possessed and seem to be procurable not merely along the Atlantic Coast but in cities well in the interior.

It is not easy to estimate with assurance the amount imported. But estimates on the basis of the declarations for export from Canada to the United States, prior to the recent action of the Canadian government, are fallacious. In three years ending in 1929, while the re-exports of whisky, all of which but a negligible few gallons had gone to the United States, had multiplied by between four and five, the amounts of Canadian whisky declared for export to the United States had remained stationary. One must, however, note the amounts declared for export to places where there was no substantial market except for smuggling into the United States. In five years ending in 1929 the declared exports of whisky from Canada to the British

West Indies more than doubled, from Canada to St. Pierre and Miquelon multiplied almost by four, and to British Honduras multiplied by more than three. These increases, for the most part going on steadily year by year, were out of all proportion to any legitimate demands in those places and can have but one meaning. It would be a mistake to assume that the cutting off of clearances of liquor from Canada to the United States has achieved its helpful intention. Continual increase in Canadian production, with no corresponding increase of Canadian home consumption, indicates the contrary.

Attempts to stop illicit importations of liquor are dealing with a well organized, exceedingly profitable business, admitting of lavish expenditure for protection and in corruption, and of employing the best talent in design, construction, and operation of apparatus and equipment. The enforcement agencies, in order to cope with them, must be kept at a constant high level of efficiency, and constantly adapted in their methods and equipment to the ingenuity of well-financed, experienced and resourceful violators. There is always likelihood of any enforcement service, however adequately equipped and maintained, falling into a routine which cannot keep up with the activities of those who are vigilantly searching for the weak points.

(ii) *Industrial Alcohol*

Use of alcohol in industry did not become important in America until the present century. In 1906 the Tax-Free Alcohol Act relieved denatured alcohol, to be used in arts and industries, from the excise tax on distilled spirits. This act was in force at the adoption of national prohibition. In the meantime there had been a great development of the use of alcohol in industry.

Many new uses were found during the World War, many more were discovered in the industrial expansion after the war, and these, with the development of industrial chemistry, led to an enormous increase in the use of alcohol for other than beverage purposes. Between 1906 and 1929, legitimate production of alcohol in the United States had increased about threefold, although in the meantime manufacture for beverage purposes had been excluded. Thus the framers of the National Prohibition Act were faced by a difficult problem which appears in the very title of the statute. As declared in the title, the purpose is, on the one hand, to "prohibit intoxicating beverages" and on the other hand to "insure an ample supply of alcohol and promote its use in . . . the development of lawful industries." The difficulty of reconciling these two purposes, maintaining a just balance between them so as to make the one effective and not hamper the other, is not the least of those involved in prohibition.

The same difficulty is encountered in many other phases of enforcement.

In the National Prohibition Act the method employed to attain this balance involved three items: Control of production, requirement of denaturing, and control of use. Control of production was added where before prohibition the government had sought only to control distribution and use for other than beverage purposes.

Control of production is had through the system of basic permits, through annual limitation of the quantity to be produced, and through supervision of the process of production. The basic permit system as now organized seems adequate to its purpose. Formerly there was much political interference and at

one time there were cases of such permits which should not have been granted and were used for unlawful purposes. Today these permits are held by less than thirty companies, operating about fifty plants. This concentration in relatively few hands makes it much easier for the government to control production.

Limitation of the quantity to be produced was put in effect in 1928. The quantity to be produced during the calendar year is fixed arbitrarily by the government and each plant is allotted its proportionate share. Necessarily the quotas have been fixed within somewhat generous limits in the interest of business. But in view of the obvious menace of over-production beyond the needs of industry, this limitation of production is a great gain for enforcement, and seems reasonably adequate to its purpose.

Supervision of production is had through prescribing the construction of plants, before granting basic permits, so as to insure proper safeguards and facilities for inspection, by an elaborate system of reports, and by physical control of the apparatus of production. In practice it is difficult or even impossible to make the reports conform to the requirements of the system. The industrial alcohol plant of today operates on a scale and at a speed which gives little time for the required tests. Likewise an accurate estimation of the amount being produced, under recent methods, requires a knowledge of physics and chemistry beyond what storekeeper-gaugers may reasonably be expected to possess. Hence the present system of reports is not an effective check.

Physical control of the apparatus of production is provided by requiring all outlets to be under lock and requiring a government storekeeper-gauger to be present during all operations. But here again the ma-

chinery of control has been outstripped by the development of manufacturing methods. Without unduly hampering the process of manufacture, it is not practicable for the number and type of men employed as storekeeper-gaugers to make this physical control what it should be.

Control can be bettered by improvement and increase of the personnel in charge thereof. Under present conditions a more real security against large diversions of industrial alcohol at the source is the integrity of the producers. It is in careful administration of the basic permit system and limiting production to a few carefully investigated, thoroughly substantial, well organized manufacturers. As things have been recently, there is no reason to doubt that this reliance on the honesty of the large producers has been justified. But it involves serious possibilities. Whenever the pressure upon other sources of illicit liquor suggests to organized law breakers recourse to industrial alcohol, the opportunities afforded by the ineffectiveness of control by reports and by supervision of operation may be taken advantage of.

Denaturing takes place by adding to potable alcohol materials making it unfit for use as a beverage. It is said to be completely denatured when treated with substances which make it impossible to be used internally. When so denatured, alcohol may be sold and used without permit. As soon as it is completely denatured it passes out of the purview of the National Prohibition Act. But a denaturing beyond possibility of renaturing is not wholly feasible. Stimulated by the enormous margin of profit, chemical skill may be employed in defeating as well as in perfecting the denaturing process. It is conceded that a skilled chemist can recover alcohol from almost any mixture, given resources

and facilities which are easily commanded whenever there is strong pressure of enforcement upon other sources of supply.

Even more is this true of special denaturing, that is, treating in such wise as to permit of use in specialized arts and industries in which complete denaturants would make the alcohol unfit. Special formulas are necessary to meet the requirements of legitimate businesses. But the special denaturants are more easily removed and it is necessary to put specially denatured alcohol under strict check. To this end it can only be withdrawn under permit. The great bulk of diversion of industrial alcohol takes place here. Yet in the nature of the case this category of specially denatured alcohol cannot be given up without putting an end to a great variety of legitimate industries and businesses.

Denaturing goes on either at the distilleries or in independent plants. Supervision at the distilleries is subject to difficulties suggested above in connection with supervision of production. Here also a large reliance must be had upon the honesty of the companies operating the distilleries and of their employees. Occasional large quantities have escaped at this point, but relatively it is not a serious point of diversion. On the other hand, the independent denaturing plant has been a prolific source of diversion. There is little legitimate occasion for the existence of these plants. Few of them have been bona fide institutions. Happily they have been reduced to a minimum in the past few years. But there is always danger that under pressure to dispose of or to obtain alcohol, specious business reasons may be found for permits for such plants. It would seem that they should be forbidden.

Control of use is brought about by a system of permits for withdrawal of specially denatured alcohol, the

completely denatured being regarded as so far unusable for illicit purposes as to require no supervision. The granting of these permits, formerly subject to grave abuses, has now been put on a better basis. Probably as much has been done as we may reasonably expect in the way of endeavor to confine them to persons and companies conducting bona fide businesses. Here again it is not easy to reach a just balance between the requirements of prohibition and the demands of business. It is difficult to follow the product beyond a sale by the permittee and look into its ultimate destination in advance of violation, without limitations on the amount of business done by users and inquisitorial interferences to which American business men are not accustomed. Yet without this there can be no thorough-going assurance that, under pressure of the enormous profits involved, large diversions will not go on. Here again reliance is placed upon the honesty of the large and well established concerns which have permits to withdraw. Most of the businesses in which specially denatured alcohol is used are well organized in business or trade associations, which cooperate with the Commissioner of Industrial Alcohol in the endeavor to minimize abuse of permits. On the whole, this has proved advantageous. But there are disadvantages as well as advantages in this system of cooperation between the regulated and the regulator.

As to the amount diverted, in the heyday of diversion of industrial alcohol in 1926, it had reached very large proportions. Two causes have operated to change this condition: first, improvement in control through better regulations, better organization of the permit system, and elimination of politics; and second, development of new and efficient methods of illicit distilling and new and cheap materials for illicit distilleries so

that there is less occasion to look to industrial alcohol as a source of supply. But the conspiracies which come to light from time to time give abundant evidence of continued diversion. Estimates of the extent of diversion are based on the amount withdrawn under certain formulas chiefly susceptible of misuse, on the proportion of recovered denatured alcohol found in seizures, and on the presumed legitimate requirements of businesses using industrial alcohol. They must be largely conjectural. Also they do not allow for considerable potential leakages of sorts which have been found and prosecuted from the beginning of prohibition to the present; and the calculation on the basis of samples of seized liquor rather than on the volume seized in each case is very unsatisfactory. The estimate of the Director of Prohibition that 9,000,000 proof gallons were diverted in the year ending June 30, 1930, and that of a statistician fixing the amount at 15,000,000 proof gallons, made in each case on careful consideration of the several sources of leakage, show that the amount is much too large.

Moreover, there is grave danger of renewed pressure to divert industrial alcohol because of the discovery and rapid development of processes of making synthetic alcohol as by-products in connection with oil and natural gas. This can be made so cheaply that it bids fair at once to supplant completely denatured distilled alcohol in its chief market. So much is invested in distilleries and their accessories that they may not be expected to give up without finding some compensating outlet.

Much as the present situation is an improvement upon the bad conditions of some years ago, it is still far from satisfactory from the standpoint of prohibition. There are too many opportunities for leaks.

There is not the force, and the force is scarcely competent, to exercise full supervision over production. The best assurance of stopping diversion would lie in some plan which would do away with the enormous profits of the illicit trade.

(iii) *Illicit Distilling*

Moonshining had gone on in the region of the Appalachian range from the federal excise law of 1791 down to the National Prohibition Act. The unproductiveness of soil, the lack of occupational opportunities, and the difficulty of utilizing otherwise the scanty harvests of corn in that region, made illicit distilling, in defiance of the federal revenue laws, a settled feature of mountain life. After prohibition this practice got a great impetus. For a time illicit distilling went on in the old way. There were simply more of the well known type of small producers. But presently it spread to all parts of the land and reached a high degree of development, not only in the region where moonshining had always gone on, but also in and about the large cities and in remote districts everywhere. In 1913 the Commissioner of Internal Revenue reported the seizure of 2,375 stills, said to indicate a "slight abatement" of the practice. In 1929, in one state alone, the state seized more than this number and the federal government half as many more. For the whole country, the federal seizures of stills were six times as many as in 1913, and the total of state and federal seizures was well over twelve times as many. Just as the steadily growing market for industrial alcohol led to improved methods and use of new raw materials admitting of greater speed and quantity of production in legitimate distilling, so the growing demand for distilled liquor after the National Prohibition Act led to

discovery of new and improved apparatus, new methods and new materials for illicit production. In particular, it has led to discovery of new methods of speedy ageing whereby liquor of good quality may be made in a very short time. The methods of the pre-prohibition moonshiner are as obsolete as those of the pre-prohibition legitimate distiller.

With the discovery and perfection of these new methods, illicit distilling has become for the time being the chief source of supply. In place of the small still operated by the individual moonshiner, there are plants of a capacity fairly comparable to the old-time lawful distillery and all gradations, according to conditions of the locality, between these and the individually operated still turning out but a few gallons. These plants, often elaborately guarded against discovery, if operated but a short time pay for themselves and begin to make large profits. When destroyed they are promptly replaced. The business of maintaining and operating them is well organized, has found how to shift locations systematically, and has learned to calculate for seizures and destruction of stills as part of the overhead. The employes are assured of counsel in case of prosecution. If convicted, their fines are paid for them. If imprisoned, their families are cared for and they are re-employed on release. As it was put by one observer, there is a "revolving personnel" of experienced operators. Even where federal and state authorities join in a zealous campaign of enforcement, they have been unable to keep up with the setting up and operation of these unlawful plants. The number of seizures, federal and state, great as it has become, appears to leave the total in operation at the end of any period at least no less than before. The enormous and increasing number of seizures of apparatus and

material indicates, not necessarily more rigid enforcement, but quite as much increased production.

In consequence of the high development of illicit distilling, a steady volume of whisky, much of it of good quality, is put in circulation; and the prices at which it is obtainable are a convincing testimony to the ineffectiveness of enforcement as against this source of supply. The improved methods, the perfection of organization, the ease of production, the cheapness and easy accessibility of materials, the abundance of localities where such plants can be operated with a minimum risk of discovery, the ease with which they may be concealed, and the huge profits involved, have enabled this business to become established to an extent which makes it very difficult to put to an end.

(iv) *Production of Beer*

At the time of the National Prohibition Act, brewing was a strong, well organized industry. It had been originally an industry of local brewers supplying local trade and of numbers of small breweries in large cities. But towards the end of the nineteenth century came consolidations and reorganizations on modern lines and elimination to a large degree of local and small breweries. Thus, although the number of breweries in the United States had increased nearly two and one-half times between 1860 and 1880, by 1918 the number had fallen back very nearly to that of fifty-eight years before. This falling off was by no means due wholly to the spread of prohibitory laws. That it was largely due to changed organization of the industry is indicated by the circumstance that in the more populous states where prohibition did not obtain before the Eighteenth Amendment, there had been substantially the same increase in number between 1860 and 1880

and decrease between 1880 and 1918. The weaker enterprises had been for the most part merged with the stronger or abandoned. Moreover, the stronger breweries with modern organization and management had set up a vigorous national organization which is still maintained. Under the National Prohibition Act the distilleries were enabled to go on as producers of industrial alcohol or of medicinal whisky, while the brewers were put out of business, except as they could produce cereal beverage of less than one-half of one per cent of alcohol. They had to devise and work up a new demand or go out of existence. Obviously such a situation was full of possibilities of trouble.

After a brief period of making by arrested fermentation, the government allowed cereal beverage to be produced by making beer and dealcoholizing. Beer is made and stored and the alcohol is taken out as cereal beverage is required. Under such circumstances, control of the production of cereal beverage is clearly necessary. This control is provided for in two ways: (1) permits for production, granted and revoked under provisions of the statute and regulations much as in the case of industrial alcohol, and (2) supervision of production.

There is no physical control of the process of production as in the case of distilling. The supervision takes the form of inspection of plants and of auditing of returns and reports made by producers. There is a right of continual inspection of plants having permits. But inspectors are not kept constantly at the plants, as in the case of distilleries. It would take a force, large enough to police each plant, to insure completely against frequent escape of considerable quantities of real beer. As to the returns and reports, while they are audited frequently by plant inspectors,

they are easily made so as not to reveal illicit operations and are not of themselves an effective check. Unhappily the result of revoking a permit is not unlikely to be a greater latitude for the unlawful production of beer. The plant may go on ostensibly devoted to some other use. After the permit has been revoked, inspectors may only enter by virtue of a search warrant, which cannot be had except upon evidence hardly obtainable without access to the plant.

Abuses in the production of cereal beverage grow chiefly out of the method whereby large quantities of beer are stored at all times, affording many opportunities for it to get into circulation without having been dealcoholized. Employees, whether with or without the authority or connivance of the employer, have only to put a hose to a tank, fill cereal beverage kegs with real beer, and send it out as cereal beverage. This practice has been hard to detect and has at times been a prolific source of unlawful beer. Sometimes it has been the real or chief business of the brewery. There are producers above suspicion, and since national prohibition the Brewers' Association has urged action against breweries which engage in unlawful competition with the legitimate cereal beverage. But the system which leaves so much to reliance on the integrity of producers and their employees has unfortunate possibilities. Moreover, when the extracted alcohol is sent from one warehouse to another, or to a denaturing plant, there is opportunity for hijacking and other modes of escape. Also there have been cases of realcoholizing of cereal beverage by insertion of alcohol therein.

Other agencies producing beer are unlawful and so-called wildcat breweries and alley breweries. The former are large-scale breweries operated without permits, either breweries whose permits have been revoked, or brewery plants supposed to have been abandoned or to have been converted to new uses, or unauthorized new plants. The alley breweries are smaller, yet often worthy to be called plants and of considerable capacity. Usually they are in the cellar of what appears to be a dwelling. Sometimes they are fitted up in connection with ostensible filling stations, so as to permit of tanks going back and forth without question, with a well organized system of bottling plants, covered by an apparently legitimate bottling business, and of so-called "drops" for distribution. These are made possible by the development of production of "wort," or cooled boiled mash. As it contains no alcohol, it is outside of effective control under the National Prohibition Act. In consequence since that Act, permittees and others have produced and sold it in large quantities. Prepared in condensed form for fermentation, requiring nothing more than the addition of yeast, it has made the process of alley brewing simple and easy. One state has imposed a tax upon wort, and the resulting statistics show a very large production.

In some parts of the country enormous sums of money are derived from the business of illicit beer. The profits from illicit beer are the strength of gangs and corrupt political organizations in many places. In more than one locality beer rings and beer barons have made fortunes out of it. They have been able to go on in defiance of law and despite the efforts of enforcement officers. Moreover, an increased demand has been in evidence recently in several large cities, and the effect is seen in increased activity in illicit production. The making of cereal beverage is a legitimate business and cannot reasonably be eliminated.

But so long as it is carried on and there is demand for beer in the large cities, the gross margin of profit in supplying beer, the possibilities of escape from the plants, and the manufacture of wort will give trouble for effective enforcement of prohibition. To limit the production of the materials going into beer, many of them admitting of proper uses, involves serious difficulties to be considered in another connection.

(v) *Production of Wine*

Wineries are now operated under basic permits granted by the Bureau of Industrial Alcohol. They are subject to a constant inspection by the Bureau. The wine is stored in bonded warehouses and there are periodical inventories by government inspectors. There has been little trouble here. But there is a potential source of trouble in the manufacture of grape juice, which is not subject to federal control. If enforcement presses heavily on other sources, a leak might well develop here. As in the case of wort and malt syrup, incident to the production of cereal beverage, and as in the case of ethyl acetate, a question is presented how far it is advisable to limit or regulate the production of materials which, on the one hand may have proper uses, and yet, on the other hand, may be or are used toward violations of the National Prohibition Act.

(vi) *Production in Homes*

Home production of liquor takes three forms; home brewing of beer, home wine-making, and home distilling.

At one time there was an increasing amount of home brewing of beer among the average city dwellers, made possible by the production and sale of malt syrup.

The beer had a high alcoholic content, for a light beer can be made only by top fermentation, which is not practicable in homes or in small-quantity production. Today there seems to be less of this than formerly because of the inconvenience, the poor quality of the product, and the low cost of procuring whisky. But the recent increased demand for beer in some sections has led to the development of home brewing by people of lesser means not solely for home use but also for sale. The line between this and alley brewing is easily crossed. One may make for himself and a neighbor or neighbors, and another for neighbors and for sale. This type of brewing is hard to get at.

Home wine-making involves an anomalous provision of the National Prohibition Act. The last clause of Section 29 of Title II reads: "The penalties provided in this Act shall not apply to a person for manufacturing non-intoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar." For the general purposes of the Act, intoxicating liquor is defined by Section 1 as containing one-half of one per cent. or more of alcohol by volume. In view of Section 3, enacting that all the provisions of the Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage shall be prevented, it might be held that non-intoxicating in Section 29 means non-intoxicating as defined in Section 1. Federal courts in some districts have so construed the Act. Other federal courts consider Section 29 independent of Section 1 on the ground that if the definition in Section 1 extends to the provision in question, Section 29 would be rendered unnecessary. This view has been taken by one of the Circuit Courts of Appeals. The govern-

ment appears to have acquiesced in that construction of the Act by refraining from seeking a final interpretation by the Supreme Court of the United States. As the matter stands, then, when wine is produced in the home for home use, whether or not the product is intoxicating is a question of fact to be decided by the jury in each case. If this view stands, it becomes impracticable to interfere with home wine making, and it appears to be the policy of the government not to interfere with it. Indeed the government has gone further: Prepared materials for the purpose of easy home wine making are now manufactured on a large scale with federal aid. Much of home-made wine gets into circulation. The possibilities of leakage, when there is pressure on other sources of supply, are always considerable. Moreover, it would seem that Section 29, as its construction is now acquiesced in, is a serious infringement of the policy of Section 3.

Home distilling has gone on from the inception of prohibition and in some localities has at one time or another reached large proportions. Few things are more easily made than alcohol. A home-made apparatus will suffice, and with the variety of materials available and the ease of procuring those materials, any one may carry on home distilling on a small scale. The product is of poor quality, but it is cheap. The line between distilling in the home for home use, distilling for neighbors, distilling in part for neighbors and in part for sale, and distilling for bootleggers is not definite and is easily overpassed. Also the fact that much home production of liquor goes on everywhere facilitates use of what appear to be dwellings as cloaks for illicit manufacture.

But there is more to be considered than the difficulties of detection without invasions of homes and violations of constitutional guaranties. The bad effects of such operations, on the verge of or in violation of law, carried on in the home, are self evident. Adults living in such an atmosphere of evasion of law and law breaking and children brought up in it are an obstruction to the present enforcement of the law and a serious threat to law and order in the future.

The difficulties presented by home production differ from those arising in other phases of the general situation in that they involve the arousing of resentment through invasion of the home and interference with home life.

Necessity seems to compel the virtual abandonment of efforts for effective enforcement at this point, but it must be recognized that this is done at the price of nullification to that extent. Law here bows to actualities, and the purpose of the law needs must be accomplished by less direct means. An enlightened and vigorous, but now long neglected, campaign of education must constitute those means. Through this there can be brought into the home the knowledge of the moral, physical, financial, economic, and social benefits arising from liquor abstinence, and the thought can be impressed that law observance is one of the prime requirements of good citizenship and of the preservation of public and private security. It is not too much to expect that such knowledge will have a very large effect in supplying what the law itself can not furnish and result in a decided and steady diminution of home violations. If such a situation should be reached, the fact that such violations might never completely cease would present only a condition similar to that obtaining in regard to other laws which are commonly considered as being satisfactorily observed.

Whenever substantial law observance is attained, the need ceases for the power of law enforcement.

(vii) *Diversion of Medicinal and Sacramental Liquor and Scientific Alcohol*

There is division of opinion in the medical profession as to the therapeutic value of alcohol.

Originally the statute allowed physicians to prescribe any kind of liquor, if duly licensed and in active practice, upon obtaining a permit. It was forbidden to prescribe except after a careful examination or, if that was impracticable, upon the best information obtainable and belief in good faith that use of the liquor as a medicine would afford relief from some known ailment. Not more than a pint of spirituous liquor every ten days might be prescribed. The physician was required to keep a record of prescriptions and the prescriptions were to be upon blanks furnished by the government and under regulations whereby strict supervision was possible. In 1921, the Willis-Campbell Act imposed further stringent limitations. The provision for prescribing malt liquors was eliminated. No vinous liquor containing more than 24 per cent. of alcohol by volume was to be prescribed, nor more than a quart of vinous liquor, nor any vinous or spirituous liquor containing separately, or in the aggregate, more than one-half pint of alcohol (equivalent to one pint of spirituous liquor) for use by one person within any period within ten days, nor for more than one hundred prescriptions in ninety days.

For a time there was much resentment at this act on the part of the medical profession. But more recently the profession generally has accepted the situation to the extent of admitting the need of some regulation. Physicians still protest, however, against three features of the act and regulations, namely, the limitation of the amount below what they feel may well be

necessary, the limitation on the number of prescriptions a physician may make, and the requirement that the ailment for which liquor is prescribed be set forth on the blank which goes on file in the office of the supervisor of permits and is accessible to the public. This requirement runs counter to fundamental conceptions of professional ethics.

An additional embarrassment exists in the diversity of state laws on the subject and the divergence between the state laws in many jurisdictions and the federal statutes and regulations. There are no less than four well marked types of state law, ranging from states which wholly forbid prescribing of liquor in any form for any disease, through different limitations of kind and quantity, to those which impose no restrictions as to what is prescribed or for what purposes or how. Naturally, the medical profession resents the proposition that a lay legislative body may tell physicians what to prescribe and how much. Yet there have been serious abuses which have led to such legislation. While the bulk of the profession have undoubtedly been scrupulous in adherence to the law, prosecutions have been necessary from time to time and palpable evasions or violations come to light continually. Recently in one city, the federal grand jury called attention to the disproportionate increase in liquor prescriptions with no apparent legitimate reason. Moreover, many physicians feel that however unfortunate it may be on principle to regulate by law what may be prescribed for the sick, it is a protection to the honest practitioner to relieve him from the pressure of those who seek prescriptions for beverage purposes. On the other hand, there is evidence that many general practitioners will not take out permits because of the inconvenience and disagreeable features, but advise pa-

tients on occasion that they should take this or that amount or kind of liquor and leave it to them to obtain it as they can.

As in other situations already discussed, a balance between the needs of medical practice and the demands of prohibition is called for and is far from easy to attain. But we are satisfied that in several particulars the causes of resentment on the part of the medical profession operate against a favorable public opinion to such an extent as to outweigh the advantages to enforcement.

We recommend: (1) Abolition of the statutory fixing of the amount which may be prescribed and the number of prescriptions; (2) abolition of the requirement of specifying the ailment for which liquor is prescribed upon a blank to go into the public files of the supervisor of permits, leaving this matter to appear on the physician's own records and accessible to the inspector; (3) leaving as much as possible to regulations rather than fixing details by statute, and reliance upon cooperation of the Bureau of Industrial Alcohol with medical associations, national and state, in the same manner in which the Bureau cooperates with distillers and with trade associations; (4) enactment of uniform state laws on this subject, or, in the alternative, repeal of state laws and leaving the whole matter to federal statutes and regulations.

As to the diversion or unlawful use of sacramental wines, there seems now to be no serious problem.

With respect to the use of alcohol for scientific and educational purposes, the language of the statute is unfortunate and should be revised and amplified to cover all such purposes. In order to meet legitimate uses it invites loose construction and consequent potential evasions. To some extent irritation has resulted. Also some alcohol withdrawn for scientific purposes has escaped through theft, and some leaks have occurred through fraud or conspiracy. But there has been no serious trouble at this point.

(2) The Materials of Illicit Manufacture

Illicit manufacture has had the effect of stimulating production of materials which are beyond the reach of regulation under the National Prohibition Act, yet are used largely or even chiefly, in unlawful manufacture; thus making enforcement much more difficult than it would have been had materials and methods remained what they were when the act was adopted. The most significant items in this connection are malt syrup, wort, corn sugar and other corn products and grapes and grape products. Malt syrup and wort have made home brewing and alley brewing practicable. Wort has little legitimate use. One state taxes malt syrup and wort, except where malt syrup is used in medicine or wort in baking. It appears that some is used in candy making and some in making certain breakfast foods. But on inquiry it developed that these uses, as revealed by the payment of taxes, were insignificant and that almost all upon which tax was paid was used in making beer. There is every indication that such is the case generally. Even more serious is the enormous growth in the production of corn sugar. The legitimate uses are few and not easy to ascertain. The bulk appears to go into illicit whisky; and the ease with which it is procurable in any quantity and the advantages of clean production, with no odor and no ash, which it affords, have made it a chief factor in the development of unlawful distilling. Since the National Prohibition Act, the output of corn sugar has gone forward by leaps and bounds. In the ten

years between 1919 and 1929, it had multiplied by six. As to grape production, the proportion of legitimate use is large. But here also the production has increased steadily far beyond any normal use. Unfortunately, this growth in production of materials which may be used for unlawful making of liquor has had the effect of giving to large numbers of influential and otherwise law-abiding citizens a strong pecuniary interest adverse to effectual enforcement of the National Prohibition Act.

(b) Enforcement With Respect to Sale

Bootlegging had gone on for at least a generation before the National Prohibition Act, on reservations where sale of liquor was prohibited, in communities which had taken advantage of local option, and in states which had adopted prohibition. But that bootlegging stands to the bootlegging of today where the pre-prohibition moonshining stands to the illicit production of today. It is common knowledge, and a general cause of dissatisfaction with enforcement of the National Prohibition Act, that the big operators or head men in the traffic are rarely caught. Agents may discover a still or a speakeasy. They deal mostly with single cases of illicit making and distribution. But these apparently isolated single violations are seldom such in fact. The large still is part of an organized system of production and distribution. Those who are found distilling, or transporting, or selling are merely employes. Behind them are the heads of an organization, supplying the capital, making the plans, and reaping the large profits. It is clear enough that the real problem is to reach these heads of the unlawful business. Experience has taught them to carry on

their business with impunity and it is in evidence that they are harder to reach than formerly. To catch them calls for a much higher type of enforcement organization and a higher and more experienced type of agents than have been available in the past. Moreover, the means available for catching the employees, namely. information from neighbors, patroling roads, watching suspicious places where men loiter, talking with persons occasionally met and learning where liquor may be bought and buying it, are generally not effective to catch the men higher up. These leaders are often at a long distance from the single act of violation discovered by the prohibition agent. In the investigation made by the grand jury in Philadelphia in 1928-29, it was found that the ramifications of a highly organized system of illicit distribution extended from New York to Minnesota, and the financial operations reached from Philadelphia to Minneapolis.

When conspiracies are discovered from time to time, they disclose combinations of illicit distributors, illicit producers, local politicians, corrupt police and other enforcement agencies, making lavish payments for protection and conducting an elaborate system of individual producers and distributors. How extensive such systems may be is illustrated by some of the conspiracies recently unearthed in which 219 in one case, 156 in another, and 102 in another were indicted and prosecuted. Organized distribution has outstripped organized enforcement.

These things have been particularly evident in the distribution of beer.

It must be obvious that increased personnel and equipment are demanded if the enforcement agencies are to cope with this situation, and an increase in the corps of special agents whose function it is to work up

the evidence to expose such conspiracies, affords the most hopeful means of substantial accomplishment in the enforcement field. Destruction of alley breweries and padlocking of beer flats and speakeasies has little effect. It gives an appearance of enforcement without the reality.

Speakeasies, blind pigs and blind tigers existed also before national prohibition, wherever local option, or statewide prohibition, or state liquor laws, unacceptable to a local population, gave an opening. But these also were quite different things from the speakeasy in the city of today. At the present time, the term speakeasy covers a wide range from something not much different from the old-time saloon and the speakeasies with a high grade of regular patronage at one pole to the lowest grade of joint selling bad whisky or bad gin at the other. They are sometimes hardly disguised and obviously operating under official protection. At other times and in other places, they are thinly disguised or thoroughly camouflaged according to local conditions of enforcement, as cafes, soft drink stands, pool rooms, clubs, drug stores or filling stations. The number closed each year by prosecution or injunction is large. But the number does not decrease on that account. Indeed, it is evident that along with the occasional isolated individual keeper, the type which has come down from the era before prohibition and the type most easily caught, there is a thoroughly organized business which replaces its retail selling agencies as fast as they are discovered and closed up. The number of these places notoriously existing throughout the country, with public tolerance, demonstrates the extent to which experience and organization have carried retail distribution.

Speakeasies, even where they approximate the old-time open saloon, have few of the attractions which were used to bring customers to those drinking places and induce them to stay there and spend their money. Probably a much greater number of those who patronize them can afford to do so than was true in case of the saloon. Thus the closing of the saloon has been a gain even if speakeasies abound. But the saloon was not an unlawful institution. Where it was not carried on in defiance of law its patrons were not assisting in maintaining an unlawful enterprise. Against the gain in eliminating the saloon must be weighed the demoralizing effect of the regime of more or less protected speakeasies upon regard for law and upon law and order generally. Unless the number of speakeasies can be substantially and permanently diminished, enforcement can not be held satisfactory.

In some cities night clubs have notoriously sold to a steady and considerable patronage. At times they have been very bold and some cases, given wide publicity, in which jury trials have resulted in acquittal of well-known persons in charge of them, have had an unfavorable effect on public opinion. Commonly, they are operated under a system whereby patrons must be identified, to the extent at least of satisfying those in charge that they are not law enforcement agents, before gaining admittance. At times a card identifying the guest as a regular patron is required.

From time to time and in places, drug stores have been found to be engaged in illegal sale. Some have purchased the permit books of physicians with the prescriptions ready signed and have used them as a protection for sale for beverage purposes. Some have split permit liquor with bootleg liquor and thus have

been able to dispose of amounts not appearing on the records. More often they have been able to carry on an illicit business by withdrawing pure alcohol for manufacturing purposes, the ultimate use of which is beyond the reach of the checks provided by statutes and regulations. Some have even been found dispensing bootleg liquor as well as filling prescriptions. The drug trade is well organized and no doubt reliance is properly placed upon the organized business and the well established dealers. But the number of drug stores has increased out of proportion to the increase in population. With the pressure of competition and pressure of enforcement upon other agencies of distribution there will always be a large potential difficulty at this point.

(c) Enforcement With Respect to Transportation

Development of motor transportation had a great impetus during the World War. Unfortunately, that development reached its high point at the time when it became convenient to use motor transportation in violation of the National Prohibition Act. The truck and the automobile are the chief agencies of transportation, although rail, water and air are used in domestic transportation much as has been seen in connection with smuggling.

In the early years of prohibtion, hi-jacking and banditry also developed. These things had a bad effect on enforcement. Another unfortunate feature, in view of recent conditions of transportation, is the necessity of interference with legitimate use of the roads if enforcement is to be thoroughly effective. The truck driver and motorist of today resent delay. Yet it is

obvious that there cannot be absolute assurance that a violation is going on as to every vehicle which may have to be stopped and examined. Some state laws give state enforcement agents very wide powers of searching vehicles, which may be, and have been, exercised in a way exasperating to the public. Federal prohibition enforcement and state enforcement are not dissociated in the public mind. They are regarded as parts of one system. The bad features of state enforcement in several jurisdictions are attributed in the public mind to national prohibition.

In view of the general and convenient use of motor transport for carrying illicit liquors, completely effective enforcement of prohibition requires a high degree of potential supervision, power of inspection, and systematized watching of motor vehicles using the roads.

(d) Evasion in Places Used for Drinking

Not the least demoralizing feature of enforcement of national prohibition, is the development of open or hardly disguised drinking winked at by those in charge in respectable places where respectable people gather. People of wealth, professional and business men, public officials and tourists are drinking in hotels, cafes and tourist camps under circumstances where at least knowledge on the part of those in charge that the liquor comes in unlawfully is an inescapable inference. Sometimes this becomes so flagrant that for a time pressure is brought to stop or to limit it. But on the whole it goes on throughout the country in spite of the rulings that furnishing the accessories for drinking with knowledge of how they are to be used is an offense. The pressure from patrons, the state of pub-

lic opinion, and the difficulty of obtaining proof make it almost impossible to reach these things.

(e) Evidence of Prices

A fair index of the effectiveness of enforcement is furnished by the prices at which liquor may be had in different localities. As to this, there is significantly uniform evidence that while certain kinds of imported wines command high prices and now and then the pressure of enforcement raises all prices for a time at some one spot, whisky of good quality is obtainable substantially everywhere at prices not extravagant for persons of means. It is true many cannot afford these prices and for them a large amount of cheap, poor grade, or even poisonous, liquor is constantly produced and is in general circulation. The conclusion is that enforcement is not reaching the sources of production and distribution so as materially to affect the supply.

(f) State Cooperation as Evidenced by the Enforcement Situation in Various Localities

At the time of the adoption of the Eighteenth Amendment, thirty-three states had adopted prohibition by law or constitution; after the Eighteenth Amendment, twelve other states enacted prohibition laws and eighteen added to or amended their laws generally to correspond with the National Prohibition Act. In many of the first class of states the laws were quite generally enforced before national prohibition. In those states fair cooperation with the federal prohibition forces at first was given, but there has been in recent years a growing tendency, even in states with prohibition laws, to let the federal government carry the burden of enforcement. On May 31, 1923, the New

York Legislature repealed its prohibition act. In the same year Nevada repealed its statute and enacted the California prohibition law in its stead. This act was held unconstitutional by the Supreme Court of the State for a defect in its title. No new statute has been enacted and in 1926 the people of the State voted for repeal of the Eighteenth Amendment. Montana repealed its prohibition law in 1926, Wisconsin its law in 1929, and Massachusetts its law by referendum in 1930. In 1930 the people in Illinois and Rhode Island voted for repeal of their state laws. Such action of course seriously affects the attitude of the local authorities in those states respecting the apprehension of violators of the national law.

Conditions are not wholly the same from year to year anywhere. Upheavals in local politics, changes of administration, varying policies in policing, the activities of strong or inactivities of weak personalities in executive positions, contribute to make the course of state enforcement, at least in the average urban locality, fluctuating, vacillating, or even spasmodic. Thus the burden upon federal enforcement is not uniform from year to year in any locality. No precise data are obtainable as to state cooperation. In only a few states does the state maintain a separate department for the enforcement of the prohibition laws. In all of the remaining states having enforcement statutes, enforcement of the prohibition laws is a part of the duties of the general law enforcement officers, and there are not available segregated official figures showing arrests, convictions and seizures under the prohibition laws. Except in the few states maintaining separate prohibition departments, this information could be obtained only by inspection of the records of each county and city in the state, since in no states other than the

few maintaining separate prohibition departments are there available printed figures covering the entire state sufficient to permit any accurate figures upon state co-operation or any comparison covering the area of the entire state as to prosecutions for violations of state liquor laws since the adoption of the Eighteenth Amendment as compared with prosecutions before its adoption, or as compared with prosecutions in the federal courts. But the evidence sustains certain general conclusions. The states may be grouped conveniently in four categories: (1) Those where there was prohibition before the National Prohibition Act in which public opinion might have been expected to demand and sustain an active state enforcement and zealous co-operation with the federal government; (2) those where there was prohibition before the National Prohibition Act in which public opinion, either in the state as a whole or in the chief centers, is less vigorous, so that there is on the average perfunctory or spasmodic state enforcement, and at most lukewarm co-operation with the federal government; (3) those which did not have prohibition before the National Prohibition Act, but have state statutes conforming to or in support of it; (4) those in which there was no prohibition before the National Prohibition Act, and there are no state statutes of like effect.

(1) An example of the first type is Virginia, a state as to which happily excellent official statistics are available. Virginia has been a zealous prohibition state since 1914. There is not only a stringent state law reinforcing the federal law, but also a special state enforcing machinery for which considerable appropriations have been made annually. The testimony is uniform that the federal administrator has been more

than ordinarily efficient and determined. The state officers likewise have been under exceptional pressure to do their whole duty. They state that the state machinery of enforcement is as efficient as it can be made within the practicable limits of expenditure. It works in entire harmony with the federal agencies. The number of convictions under the state law is impressive, and of seizures thereunder no less so. Yet the number of arrests for drunkenness in Richmond has been growing steadily and has increased by more than one-third in five years. Also the testimony shows that the amount of liquor in circulation has grown steadily. Prices tell the same story. It cannot be said that there is a reasonably effective enforcement in Richmond, and the evidence as to Norfolk and Roanoke is to the same effect.

Another good example of the first type is Kansas. Kansas has had state prohibition for over fifty years. The preponderant sentiment is unquestionably for strict enforcement of the law. There is a drastic state statute, going much beyond the National Prohibition Act. In 1929 a state appropriation was made providing a fund for appointment of special attorneys to enforce prohibition. In March 1930 a prohibition survey of Kansas was made by direction of the United States Commissioner of Prohibition. A map contained in that survey setting forth the situation county by county, marks enforcement as "bad" or at most "fair" in the counties containing the chief cities of the state, as "'bad" in the mining regions, and as "fairly normal" in the remainder of the state, consisting of 101 out of 105 counties. It discloses three east-and-west and four north-and-south through highways giving trouble. It marks enforcement in the chief city of the state as "fair" because there is no evidence of "big

open saloons''; but admits there is ''considerable evidence of liquor traffic'' and that ''bootlegging is persistent.'' In the second largest city enforcement is frankly pronounced ''bad''. It is significant that the death rate in Kansas from alcoholism and causes attributable to alcohol, which had fallen to a very low level between 1917 and 1920, has risen to the level of 1917

(2) In the second type of state, which had prohibition before the National Prohibition Act, the conditions are less satisfactory. In too many of these states there has been a tendency to leave enforcement primarily, or as far as possible, to the federal government, either as a policy of the state, or as a policy in the cities, which often were opposed to prohibition when it was adopted as a regime for the state. By comparison of the prosecutions for violation of the state law before and after national prohibition, and comparison with the constantly rising number of federal prosecutions in these jurisdictions, a growing tendency in states of this type to give over at least a large measure of their former activities is plainly shown. In view of the admission of the federal prohibition authorities that there can be no effective federal enforcement without state co-operation, this tendency is significant.

(3) A like tendency may be seen in the third type of state which did not have prohibition before the National Prohibition Act, but adopted state statutes in furtherance of it. On the whole, in these jurisdictions state enforcement has become distinctly less active than it was in the beginning, and in some it has substantially broken down for the more important centers. Thus Illinois, which had not had prohibition prior to the Eighteenth Amendment, adopted in 1923 an act modeled on the National Prohibition Act intended to

establish a uniformity of state and federal laws on the subject. But state appropriations for enforcement of prohibition, which were made for a time, have ceased, and the survey made by direction of the United States Commissioner of Prohibition in 1930 says frankly that ''a breakdown of state enforcement work is apparent.'' As a result, this survey shows that enforcement of the federal and state laws is bad in twenty-seven counties and unsatisfactory in sixteen more; is very bad in the chief city of the state, and is bad in every urban community of much importance.

New Jersey, another state which did not have prohibition before the Eighteenth Amendment, enacted in 1922 a statute on the lines of the National Prohibition Act. That state has an effective state police and has always had an enviable record in its handling of crime. But the evidence is clear that state enforcement of prohibition in New Jersey has fallen down.

In Missouri likewise, a state which did not have state prohibition before the Eighteenth Amendment, a state law reinforcing the national act was adopted in 1923. The rural population of the state favors prohibition. But the character of state enforcement of the state law in the large cities may be judged by reference to a study of criminal cases in the courts of St. Louis made for the Missouri Association for Criminal Justice as a special report in connection with the Missouri Crime Survey. From that study it appears that in 1925 but 6.44 per cent of the liquor misdemeanor cases ended in carrying out of a sentence and but 3.88 per cent in carrying out of the sentence unmodified; and that in 1926 the percentage of sentences carried out was but 4.47. In the latter year, of 670 liquor prosecutions, in which 476 defendants pleaded guilty and 10 were convicted on trial, but 30 sentences were carried

out. In 93 per cent of the cases in which a fine was imposed the fine was "stayed", and in 2.67 per cent it was reduced. Thus, in substantially 96 per cent of the cases of convictions resulting in a fine there was no penalty or no substantial penalty. In any event an insignificant total of four out of 487 who pleaded guilty or were convicted on trial were imprisoned, and no term exceeded 60 days. The prohibition survey shows that in 1929 conditions were no better. Such results require no comment.

(4) As to the states of the fourth type which did not have prohibition before the Eighteenth Amendment, and have no state statutes in support thereof, it should be said that both in them and in those which, not having had prohibition originally, have adopted laws to reinforce the federal act, there are localities, which had taken advantage of local option before the National Prohibition Act, in which there is sufficiently strong public opinion to insure not a little co-operation with the federal government. But for the most part the whole burden is put upon federal enforcement. In this fourth group are some of the most important states of the Union. As to them it is obvious that there is not effective enforcement of prohibition.

(5) In certain localities where there is a large tourist business, enforcement fails because of the insistence of business men and property owners that tourists be given a free hand. In such places there is not merely no state enforcement and no state cooperation, but all attempts at enforcement are substantially precluded by public opinion.

It is true that the chief centers of non-enforcement or ineffective enforcement are the cities. But since 1920 the United States has been preponderantly urban. A failure of enforcement in the cities is a failure in

the major part of the land in population and influence. Enforcement is at its best in the rural communities in those states where there was already long established state prohibition before the National Prohibition Act.

Cooperation by state authorities largely depends upon public sentiment in their communities. Yet the federal authorities can often secure cooperation through their own tact and conciliatory attitude. For instance, in Maryland the United States attorney reports, that although there is no state prohibition act and the governor and the state government are hostile to the Eighteenth Amendment, the detective bureau constantly helps to locate offenders and detains them until the federal authorities can take them, and information of the violations of law is given constantly by policemen to the United States attorney. A tactful attitude on the part of the prohibition administrator often secures unexpectedly good results. This has been notably the case in the western district of Pennsylvania and in West Virginia. Even in New York State, a great deal of useful aid is given to the prohibition forces. It is apparent that without genuine co-operation by the state police authorities the federal forces are wholly inadequate thoroughly to enforce the law against "speakeasies", "bootleggers" and small distillers. The internal policing of the states necessary to the proper enforcement of such a law as this can only be accomplished with the active cooperation of the local police force and can best be enforced by the local agencies alone where they are free from corrupt political influences.

III

BAD FEATURES OF THE PRESENT SITUATION AND DIFFICULTIES IN THE WAY OF ENFORCEMENT

1

Corruption

As to corruption it is sufficient to refer to the reported decisions of the courts during the past decade in all parts of the country, which reveal a succession of prosecutions for conspiracies, sometimes involving the police, prosecuting and adminstrative organizations of whole communities; to the flagrant corruption disclosed in connection with diversions of industrial alcohol and unlawful production of beer; to the record of federal prohibition administration as to which cases of corruption have been continuous and corruption has appeared in services which in the past had been above suspicion; to the records of state police organizations; to the revelations as to police corruption in every type of municipality, large and small, throughout the decade; to the conditions as to prosecution revealed in surveys of criminal justice in many parts of the land; to the evidence of connection between corrupt local politics and gangs and the organized unlawful liquor traffic, and of systematic collection of tribute from that traffic for corrupt political purposes. There have been other eras of corruption. Indeed, such eras are likely to follow wars. Also there was much corruption in connection with the regulation of the liquor traffic before prohibition. But the present regime of corruption in connection with the liquor traffic is operating in a new and larger field and is more extensive.

2

The Bad Start and Its Results

Too often during the early years of prohibition were arrests made and prosecutions instituted without sufficient evidence to justify them. In very many instances, unwarranted searches and seizures were made, which resulted in the refusal by Commissioners to issue warrants of arrest, or in the dismissal of the prosecution by the courts. In many instances, the character and appearance of the prohibition agents were such that the United States attorney had no confidence in the case and juries paid little attention to the witnesses. Thus some of the most important causes were lost to the government. On the other hand, the prohibition agents were more concerned to secure a large number of arrests or seizures than to bring to the District Attorneys carefully prepared cases of actual importance. It is safe to say that the first seven years' experience in enforcing the law resulted in distrust of the prohibition forces by many of the United States attorneys and judges.

It must be said that enforcement of the National Prohibition Act made a bad start which has affected enforcement ever since. Many things contributed to this bad start.

(a) The Eighteenth Amendment was submitted and ratified during a great war. The National Prohibition Act was passed immediately thereafter. During a period of war the people readily yield questions of personal right to the strengthening of government and the increase of its powers. These periods are always characterized by a certain amount of emotionalism. This was especially true of the World War. These enlargements of governmental power, at the expense of indi-

vidual right, are always followed by reactions against the abuses of that power which inevitably occur. Periods following great wars are generally characterized by social discontent and unrest which frequently culminate in peaceful or violent revolutions. We have been passing through this secondary phase.

The Eighteenth Amendment and the National Prohibition Act came into existence, therefore, at the time best suited for their adoption and at the worst time for their enforcement. The general reaction against and resentment of the powers of government was inevitable. It could not fail to find expression in opposition to those laws which affected directly and sought in large measure to change the habits and conduct of the people. This attitude has been manifest in the non-observance and resistance to the enforcement of the prohibition laws.

The ratification of the Amendment was given by legislatures which were not in general elected with any reference to this subject. In many instances, as a result of old systems of apportionment, these legislative bodies were not regarded as truly representative of all elements of the community. When ratifications took place a considerable portion of the population were away in active military or other service. It may be doubted if under the conditions then prevailing the results would have been any different if these things had not been true, yet these circumstances gave grounds for resentment which has been reflected in the public attitude toward the law and has thus raised additional obstacles to observance and enforcement.

(b) In the second place, the magnitude of the task was not appreciated. It seems to have been anticipated that the fact of the constitutional amendment and federal statute having put the federal government

behind national prohibition would of itself operate largely to make the law effective. For a time, there appeared some warrant for this belief. For a time, uncertainty as to how far federal enforcement would prove able to go, lack of organization and experience on the part of law breakers, and perhaps some accumulated private stocks and uncertainty as to the demand and the profits involved, made violations cautious, relatively small in volume, and comparatively easy to handle. But soon after 1921 a marked change took place. It became increasingly evident that violation was much easier and enforcement much more difficult than had been supposed. The means of enforcement provided proved increasingly inadequate. No thorough-going survey of the difficulties and consideration of how to meet them was undertaken, however, until violations had made such headway as to create a strong and growing public feeling of the futility of the law.

(c) A third cause was lack of experience of federal enforcement of a law of this sort. The subjects of federal penal legislation had been relatively few and either dealt with along well settled common-law lines, or narrowly specialized. There was no federal police power and the use of federal powers for police purposes became important only in the present century. The existing federal machinery of law enforcement had not been set up for any such tasks and was ill adapted to those imposed upon it by the National Prohibition Act. But it was sought to adapt that machinery, or to let it find out how to adapt itself, without much prevision of the difficulties. Inadequate organization and equipment have resulted.

(d) A fourth cause which had serious incidental effects was the attempt to enforce the National Prohi-

bition Act as something on another plane from the law generally; an assumption that it was of paramount importance and that constitutional guarantees and legal limitations on agencies of law enforcement and on administration must yield to the exigencies or convenience of enforcing it.

Some advocates of the law have constantly urged and are still urging disregard or abrogation of the guarantees of liberty and of sanctity of the home which had been deemed fundamental in our policy. In some states concurrent state enforcement made an especially bad start with respect to searches and seizures, undercover men, spies and informers; and by the public at large the distinction between federal and state enforcement officers was not easily made. Moreover, the federal field force as it was at first, was largely unfit by training, experience, or character to deal with so delicate a subject. High-handed methods, shootings and killings, even where justified, alienated thoughtful citizens, believers in law and order. Unfortunate public expressions by advocates of the law, approving killings and promiscuous shootings and lawless raids and seizures and deprecating the constitutional guarantees involved, aggravated this effect. Pressure for lawless enforcement, encouragement of bad methods and agencies of obtaining evidence, and crude methods of investigation and seizure on the part of incompetent or badly chosen agents started a current of adverse public opinion in many parts of the land.

(e) Another cause was the influence of politics. No doubt this influence of politics is inevitable in any connection where very large sums of money are to be made by manipulation of administration, and where control of patronage and through it of interference or noninterference with highly profitable activities may

be made to yield huge funds for political organizations and as means to political power. In the enforcement of prohibition politics intervened decisively from the beginning, both in the selection of the personnel of the enforcing organization and in the details of operation. This political interference was particularly bad some years ago in connection with the permit system. When inquiry was made into large scale violations, when permits were sought by those not entitled to them, when attempt was made to revoke permits which had been abused, recourse was frequently had to local politicians to bring to bear political pressure whereby local enforcement activities were suspended or hampered or stopped. Nor was this the only source of interference. For some time over-zealous organizations, supporting the law, brought pressure to bear with respect to personnel and methods and even legislation which had unfortunate results. Only in the last few years has enforcement been reasonably emancipated from political interference.

(f) Constant changes in the statute and in the enforcing organization have also had an unfortunate effect. In eleven years the statute was amended or added to in important particulars four times. In that time the central organization as set up originally has twice been changed radically. In that same period the system of permits in connection with industrial alcohol has been changed three times. In consequence it may be claimed with good reason that administration of the law has not been as effective as it might have been.

(g) Another cause, which must not be overlooked, is lack of administrative technique in connection with the tribunals set up under the law. The National Prohibition Act gives to the supervisors of industrial al-

cohol powers of granting, renewing, and revoking permits which may involve large investments and no inconsiderable businesses. Thus a system of administrative tribunals has been set up to pass on what may amount to very important property rights. The operation of administrative tribunals of all kinds, necessary as they obviously are, is giving serious concern, largely because of their lack of technique and lack of experience and the inherent difficulty of providing effective control. Perhaps nowhere are the results of this lack of technique more apparent than in connection with the administrative tribunals under the National Prohibition Act.

In some places administrative hearings with respect to permits are carried on as quasi-judicial proceedings, with the dignity of a court and with judicial methods. In others there is no settled procedure or systematic conduct of the proceedings, and in consequence there is want of uniformity, want of predictability, and often not a little dissatisfaction. In consequence there has been much variation in the attitude of the federal courts towards these tribunals. Where the courts have not supported or are not supporting the decisions of the administrators, it will be found, as a rule, that the administrative tribunals in that particular locality are not, or until very recently were not, such in their personnel or in their procedure as to command judicial confidence. The evil that some of these tribunals did in the past lives after them in an unfortunate judicial attitude toward administration of the permit system in more than one important center.

(h) Another cause was lack of coordination of the several federal agencies actually or potentially concerned in enforcing prohibition, and consequent rela-

tive failure of cooperation until attention was given to this matter within the past few years.

Federal administration has always been more unified than that of the states. Yet friction and want of cooperation in law enforcement, as between different bureaus or services whose functions bear on the same fields or overlap, has been a common phenomenon which the exigencies of enforcing prohibition have merely made more prominent. Want of traditions of cooperation and departmental or bureau *esprit de corps* made it unlikely that services organized in different departments would cooperate heartily; and the services among which cooperation was to be promoted were distributed in the Department of the Treasury, the Department of Justice, the Department of Agriculture, and the Department of Labor. But even when the different agencies were in the same department, our traditions of independent individual administration led to habits or tendencies of non-cooperation among administrative bureaus. In some localities not long since there was often friction, and more often want of sympathetic common action between the customs authorities and the prohibition agents. There is evidence before us of "occasional co-operation" between the prohibition and the narcotic and immigration services as recently as a year ago. It is not much more than a year since a co-ordinator of the customs border patrol, coast guard and prohibition agencies was set up at one of the most important centers of importation of liquor in the United States. But for a decade those services were under one department.

When the services are organized in different departments, want of cooperation is even more to be expected. Before transfer of prohibition enforcement to the Department of Justice, there was not infrequent

lack of cooperation between United States marshals and prohibition administrators. Within a year, in some places, there has been lack of cooperation between United States attorneys and prohibition administrators. Not long ago there was often much want of accord between them and even sometimes public disagreement. Recently there was want of cooperation between the prohibition administrator, or his agents, and agents of the Department of Agriculture in a section where enforcement is particularly difficult.

Thus enforcement has fallen short of what it should have been partly because of this tradition and these habits of non-cooperation between department and department, bureau and bureau, and service and service. But non-cooperative federal enforcement had gone on for a decade before much was done to co-ordinate the different federal activities and bring them into some unified system.

(i) Finally, enforcement was relied on in and of itself without any reinforcing activities to promote observance. After the passing of the National Prohibition Act, the educational activities toward a public opinion opposed to the use of intoxicating liquor gradually lost their impetus and largely became dormant. For a decade little or nothing has been done in this connection, although such activities were peculiarly needed in an era of relaxing of standards of conduct and general free self-assertion. As a result too heavy a burden was put upon enforcement from the beginning and during the critical period in its history.

3

The State of Public Opinion

From the beginning ours has been a government of public opinion. We expect legislation to conform to

public opinion, not public opinion to yield to legislation. Whether public opinion at a given time and on a given subject is right or wrong is not a question which according to American ideas may be settled by the words, "be it enacted". Hence it is futile to argue what public opinion throughout the land among all classes of the community ought to be in view of the Eighteenth Amendment and the achieved benefits of national prohibition. So long as state cooperation is required to make the amendment and the statute enforcing it effectual, adverse public opinion in some states and lukewarm public opinion with strong hostile elements in other states are obstinate facts which cannot be coerced by any measures of enforcement tolerable under our polity. It is therefore a serious impairment of the legal order to have a national law upon the books theoretically governing the whole land and announcing a policy for the whole land which public opinion in many important centers will not enforce and in many others will not suffer to be enforced effectively. The injury to our legal and political institutions from such a situation must be weighed against the gains achieved by national prohibition. Means should be found of conserving the gains while adapting, or making it possible to adapt, legislation under the amendment to conditions and views of particular states.

Improved personnel and better training of federal enforcement agents under the present organization may well effect some change in public opinion, especially in localities where indignation has been aroused by crude or high handed methods formerly in vogue. But much of this indignation is due to the conduct of state enforcement, which affects opinion as to enforcement generally. A change in the public attitude in

such localities should follow an overhauling of state agencies.

We are not now concerned with the various theories as to prohibition, or with public opinion thereon, except as and to the extent that they are existing facts and causes affecting law observance and enforcement.

It is axiomatic that under any system of reasonably free government a law will be observed and may be enforced only where and to the extent that it reflects or is an expression of the general opinion of the normally law-abiding elements of the community. To the extent that this is the case, the law will be observed by the great body of the people and may reasonably be enforced as to the remainder.

The state of public opinion, certainly in many important portions of the country, presents a serious obstacle to the observance and enforcement of the national prohibition laws

In view of the fact, however, that the prohibition movement received such large popular support and the Eighteenth Amendment was ratified by such overwhelming legislative majorities, inquiry naturally arises as to the causes of the present state of public opinion. There appear to be many causes, some arising out of the structure of the law, the conditions to which it was to be applied, and the methods of its enforcement. Others, inherent in the principle of the act, may now be stated.

The movement against the liquor traffic and the use of intoxicating liquors for beverage purposes was originally a movement for temperance. The organizations which grew out of this movement and were potent in its development, were generally in their inception temperance organizations having as their immediate objectives the promotion of temperance in the use of alco-

holic beverages and, as a means to this end, the abolition of the commercialized liquor traffic and the licensed saloon, which were the obvious sources of existing abuses. In many of those states where prohibition laws were adopted and saloons abolished, provision was made for the legal acquisition of limited amounts of alcoholic liquors for beverage purposes. It was only when the Eighteenth Amendment was adopted that total abstinence was sought to be established by fiat of law throughout the territory of the United States or even in many of those states which had adopted limited prohibition laws.

There are obvious differences, both as to individual psychology and legal principle, between temperance and prohibition. Temperance assumes a moderate use of alcoholic beverages but seeks to prevent excess. Even though the ultimate objective may be total abstinence, it seeks to attain that objective by the most effective regulation possible and by the education of the individual to the avoidance of excess and gradual appreciation of the benefits of abstinence. To those holding this view the field of legitimate governmental control over personal conduct is limited accordingly. Prohibition makes no distinction between moderate and excessive use. It is predicated upon the theory that any use of alcoholic liquors for beverage purposes, however moderate and under any conditions, is antisocial and so injurious to the community as to justify legal restraint. To those who entertain this view the effort to enforce universal total abstinence by absolute legal mandate is logical. There is, therefore, a fundamental cleavage in principle between those who believe in temperance and those who believe in prohibition which it is difficult to reconcile under the traditional American attitude toward the law already discussed.

When the original temperance movement developed into one for prohibition, the immediate objective was the abolition of the commercialized liquor traffic and the legalized saloon. As between the alternatives of supporting prohibition or the saloon, those who favored the principle of temperance naturally supported prohibition; and, by a combination of the two groups, brought about the adoption of the Eighteenth Amendment and the National Prohibition Act.

When these measures became operative the situation was changed. The legalized liquor traffic and open saloon were abolished, and few desire their return. The question was no longer one between prohibition and the saloon but whether prohibition or the effort to enforce universal total abstinence by legal mandate was sound in principle or was the best and most effective method of dealing with the problem. On this question there was an immediate and inevitable cleavage between those who believed in prohibition and those who believed in temperance. Those who favored prohibition on principle naturally supported the law and demanded the most vigorous measures for its enforcement. Those who favored temperance on principle, while regarding the abolition of the legalized traffic and the saloon as a great and irrevocable step forward, yet looked upon the effort to require and enforce the total abstinence upon all the people, temperate and intemperate alike, by legal mandate, as unsound in principle and an unwarranted extension of governmental control over personal habits and conduct. They recognized and insisted upon the exercise of the right of the government to regulate and control the production, handling, and use of intoxicating liquors to the full extent necessary to prevent excessive use or other conduct which would be injurious to others or the community, but did not approve of the attempt to extend that power to the prevention of temperate use under conditions, not, in their view, injurious or anti-social. The abolition of the commercial traffic and the open saloon were so obviously steps in the right direction that for a time many of those holding this view acquiesced in the law or gave it passive support, but as its operations became more manifest and methods and efforts of enforcement developed, this acquiescence or indifference changed into non-observance or open hostility. Thus an ever widening difference was developed between those groups who by their united efforts for the abolition of the saloon had made possible the adoption of the Amendment and the National Prohibition Act.

Of course, there had been at all times a very substantial portion of the normally law-abiding people who had actively opposed the Eighteenth Amendment on principle. Many of these accepted and observed the law when once it was passed. When it became apparent that the results expected were not being realized, when the effects of the operations of the law and of the methods of enforcement which they deemed invasions of private rights became manifest, their opposition became aroused. This opposition was now, for reasons stated above, largely increased from the ranks of those who had formerly supported the law to get rid of the saloons, but felt that it went too far—who really favored the principle of temperance but did not favor prohibition. The cumulative result of these conditions was that from its inception to the present time the law has been to a constantly increasing degree deprived of that support in public opinion which was and is essential for its general observance or effective enforcement.

4

Economic Difficulties

Another type of difficulties are economic. Something has been said already of those involved in ease of production. The constant cheapening and simplification of production of alcohol and of alcoholic drinks, the improvement in quality of what may be made by illicit means, the diffusion of knowledge as to how to produce liquor and the perfection of organization of unlawful manufacture and distribution have developed faster than the means of enforcement. But of even more significance is the margin of profit in smuggling liquor, in diversion of industrial alcohol, in illicit distilling and brewing, in bootlegging, and in the manufacture and sale of products of whch the bulk goes into illicit or doubtfully lawful making of liquor. This profit makes possible systematic and organized violation of the National Prohibition Act on a large scale and offers rewards on a par with the most important legitimate industries. It makes lavish expenditure in corruption possible. It puts heavy temptation in the way of everyone engaged in enforcement or administration of the law. It affords a financial basis for organized crime.

5

Geographical Difficulties

A different type of difficulties may be called geographical. For one thing the proximity of sources of supply from the outside along almost 12,000 miles of Atlantic, Pacific and Gulf shore line, abounding in inlets, much of it adjacent to unoccupied tracts offering every facility to the smuggler, speaks for itself.

But in addition the chief sources of supply from the outside are immediately accessible along nearly 3,000 miles of boundary on the Great Lakes and connecting rivers. Likewise we must take account of 3,700 miles of land boundaries. Our internal geography affords quite as much difficulty. Mountainous regions, such swamp areas as the Dismal Swamp and the Everglades, islands in the great rivers such as the Mississippi, forested regions and barrens, are everywhere in relatively close proximity to cities affording steady and profitable markets for illicit liquor. Here also are the best of opportunities for unlawful manufacture.

6

Political Difficulties

What may be called political difficulties grow out of the limits of effective federal action in our polity, the need of state cooperation and the many factors operating against it, the tradition of politics and political interference in all administration, and the tendency to constant amendment of the law to be enforced.

It must be borne in mind that the federal government is one of limited powers. Except as granted to the United States or implied in those granted, all powers are jealously reserved to the state. Certain traditional lines of federal activity had become well developed and understood. Policing, except incidental to certain relatively narrow and specialized functions of the general government was not one of them. Importation, transportation across state lines, and the enforcement of excise tax laws were natural subjects of federal action. But prohibition of manufacture, distribution and sale within the states had always

been solely within the scope of state action until the Eighteenth Amendment. This radical change in what had been our settled policy at once raised the question how far the federal government, as it was organized and had grown up under the Constitution, was adapted to exercise such a concurrent jurisdiction.

Nor was it merely that a radical change was made when the federal government was given jurisdiction over matters internal in the states. It was necessary also to adjust our federal polity to a conception of two sovereignties, each engaged independently in enforcing the same provision, so that, as it was supposed, wherever and whenever the one fell down the other might step in. Endeavor to bring about a nationally enforced universal total abstinence, instead of limiting the power devolved on the federal government to those features of the enforcement of the amendment which were naturally or traditionally of federal cognizance, invited difficulty at the outset. But difficulties inhered also in the conception of the amendment that nation and state were to act concurrently, each covering the whole of the same ground actually or potentially; each using its own governmental machinery at the same time with the other in enforcing provisions with respect to which each had a full jurisdiction.

There are four possibilities in such a situation: (1) a strong, centralized, well-organized federal police; (2) full voluntary cooperation between state and nation; (3) a voluntary partition between state and nation in which each may be relied on to carry out zealously the part assigned to it, and (4) abdication of part, leaving to the states, if they care to exercise it, full control over the field which the nation surrenders.

Attempts to bring about and maintain the requisite cooperation between national and state enforcement of prohibition encounter adverse public opinion in

many important localities and are hampered by a bad tradition as to cooperation of state and federal governments and by irritation in communities which feel that the ideas of conduct and modes of life of other communities are being forced upon them.

We have a long tradition of independence of administrative officials and systematic decentralizing of administration. In consequence disinclination to cooperate has pervaded our whole polity, local, state, and federal; and for historical reasons since the Civil War there has been more or less latent, or even open, suspicion or jealousy of federal administrative agencies on the part of many of the states. Concurrent state and federal prohibition has shown us nothing new. It has repeated and recapitulated in a decade the experience of 140 years of administration of nation-wide laws in a dual government. In the beginnings of the federal government, it was believed that state officials and state tribunals could be made regularly available as the means of enforcing federal laws. It was soon necessary to set up a separate system of federal magistrates and federal enforcing agencies. We had no traditions of concerted action between independent governmental activities and it was not until the World War that we succeeded in developing a spirit of cooperation at least for the time being. In spite of that experience, the Eighteenth Amendment reverted to the policy of state enforcement of federal law, and again there has been not a little falling down of enforcement between concurrent agencies with diffused responsibility. The result was disappointing. Too frequently there has been a feeling, even in states which had prohibition laws before the National Prohibition Act, that enforcement of prohibition was now a federal concern with which the state need no longer

trouble itself. Thus there has often been apathy or inaction on the part of state agencies, even where local sentiment was strong for the law. It is true the good sense and energy of some prohibition directors and vigorous action on the part of some state executives have at times brought about a high degree of cooperation in more than one jurisdiction. Sometimes this cooperation is local and fitful, sometimes and in some places it is complete, and sometimes it is well organized and coordinated. But there are no guaranties of its continuance.

It seems now to be the policy of federal enforcement to make on its own motion a partition of the field, leaving all but interstate combinations and commercial manufacture to the state. This relinquishing of much of the field of concurrent jurisdiction, to be taken on by the states or not as they see fit, is a departure from the program of the Eighteenth Amendment.

All administration in the United States must struggle with a settled tradition of political interference. At the outset of enforcement of prohibition, the choice of enforcement agents was influenced for the worse both by politicians and by pressure of organizations. Positions in the enforcement organization were treated from the standpoint of patronage. Since the magnitude of the task could not have been appreciated, it was assumed that methods of filling federal administrative positions which had on the whole sufficed as to other laws would suffice here. Thus the enforcement organization at first was not at all what the task called for. Moreover, political interference went beyond the filling of positions in the administrative organization. There was constant complaint of interference by politicians with the granting and revoking of permits, with efforts at enforcement and

with the details of administration. Political interference has decreased, but as our institutions are organized and conducted, it will always be a menace to effectual enforcement.

7

Psychological Difficulties

A number of causes of resentment or irritation at the law or at features of its enforcement raise difficulties for national prohibition. A considerable part of the public were irritated at a constitutional "don't" in a matter where they saw no moral question. The statutory definition of "intoxicating" at a point clearly much below what is intoxicating in truth and fact, even if maintainable as a matter of legal power, was widely felt to be arbitrary and unnecessary. While there was general agreement that saloons were wisely eliminated, there was no general agreement on the universal regime of enforced total abstinence. In consequence many of the best citizens in every community, on whom we rely habitually for the upholding of law and order, are at most lukewarm as to the National Prohibition Act. Many who are normally law-abiding are led to an attitude hostile to the statute by a feeling that repression and interference with private conduct are carried too far. This is aggravated in many of the larger cities by a feeling that other parts of the land are seeking to impose ideas of conduct upon them and to mold city life to what are considered to be their provincial conceptions.

Other sources of resentment and irritation grow out of incidents of enforcement. In the nature of things it is easier to shut up the open drinking places and stop the sale of beer, which was drunk chiefly by working men, than to prevent the wealthy from having and

using liquor in their homes and in their clubs. Naturally when the industrial benefits of prohibition are pointed out, laboring men resent the insistence of employers who drink that their employees be kept from temptation. It is easier to detect and apprehend small offenders than to reach the well organized larger operators. It is much easier to padlock a speakeasy than to close up a large hotel where important and influential and financial interests are involved. Thus the law may be made to appear as aimed at and enforced against the insignificant while the wealthy enjoy immunity. This feeling is reinforced when it is seen that the wealthy are generally able to procure pure liquors, where those with less means may run the risk of poisoning through the working over of denatured alcohol, or, at best, must put up with cheap, crude, and even deleterious products. Moreover, searches of homes, especially under state laws, have necessarily seemed to bear more upon people of moderate means than upon those of wealth or influence. Resentment at crude methods of enforcement, unavoidable with the class of persons employed in the past and still often employed in state enforcement, disgust with informers, snoopers, and under-cover men unavoidably made use of if a universal total abstinence is to be brought about by law, and irritation at the inequalities of penalties, even in adjoining districts in the same locality and as between state and federal tribunals—something to be expected with respect to a law as to which opinions differ so widely—add to the burden under which enforcement must be conducted.

Resentment is aroused also by the government's collecting income tax from bootleggers and illicit manufacturers and distributors upon the proceeds of their unlawful business. This has been a convenient and

effective way of striking at large operators who have not returned their true incomes. But it impresses many citizens as a legal recognition and even licensing of the business, and many who pay income taxes upon the proceeds of their legitimate activities feel strongly that illegitimate activities should be treated by the government as upon a different basis.

Any program of improvement should seek to obviate, or at least reduce to a minimum, these causes of resentment and irritation.

It will be perceived that some of them are due to differences of opinion as to total abstinence and could only be eliminated by bringing about a substantial unanimity on that subject throughout the land, or by conceding something to communities where public opinion is adverse thereto. Others are due largely to inherent features of all enforcement of law which have attracted special attention in connection with a matter of controversy. These may be met in part by improvements in the machinery of enforcement, by improvements in the general administration of criminal justice, and by unifying or reconciling public opinion. Still others are due to unfortunate but to no small extent remediable incidents of enforcement. Federal enforcement has been steadily improving in this respect. If state enforcement agencies in many jurisdictions could be similarly improved, the effect ought to be seen presently in a more favorable public opinion.

8

The Strain on Courts, Prosecuting Machinery, and Penal Institutions

Our federal organization of courts and of prosecution were ill adapted to the task imposed on them by the

National Prohibition Act. Serious difficulties at this point soon became apparent and enforcement of national prohibition still wrestles with them. The program of concurrent federal and state enforcement imposes a heavy burden of what was in substance the work of police courts upon courts set up and hitherto employed chiefly for litigation of more than ordinary magnitude. In the first five years of national prohibition, the volume of liquor prosecutions in the federal courts had multiplied by seven and federal prosecutions under the Prohibition Act terminated in 1930 had become nearly eight times as many as the total number of all pending federal prosecutions in 1914. In a number of urban districts the enforcement agencies maintain that the only practicable way of meeting this situation with the existing machinery of federal courts and prosecution is for the United States Attorneys to make bargains with defendants or their counsel whereby defendants plead guilty to minor offenses and escape with light penalties. Hence a disproportionate number of federal liquor prosecutions terminate in pleas of guilty. In the year ending June 30, 1930, over eight-ninths of the convictions were of this character. Since enactment of the Increased Penalties Act, 1929, prosecutors have proceeded by information for minor offenses in most cases, thus facilitating the bargain method of clearing the dockets. During the year ending June 30, 1930, whereas for the federal courts as a whole 41.4 per cent of the convictions resulted in sentences to some form of imprisonment, in three urban districts in which there was obvious congestion the percentages were 6.3, 3.9 and 5.0, respectively, The meagreness of the result in proportion to the effort shows the seriousness of the difficulty under which the enforcement of national prohibition has been

laboring. But this is not all. The bargain method of keeping up with the dockets which prevails of necessity in some of the most important jurisdictions of the country, plays into the hands of the organized illicit traffic by enabling it to reckon protection of its employees in the overhead. In some of our largest cities sentences have been almost uniformly to small fines or trivial imprisonment. Thus criminal prosecution, in view of the exigencies of disposing of so many cases in courts not organized for that purpose, is a feeble deterrent. The most available methods of enforcement have come to be injunction proceedings and seizure and destruction of equipment and materials.

Lawyers everywhere deplore, as one of the most serious effects of prohibition, the change in the general attitude toward the federal courts. Formerly these tribunals were of exceptional dignity, and the efficiency and dispatch of their criminal business commanded wholesome fear and respect. The professional criminal, who sometimes had scanty respect for the state tribunals, was careful so to conduct himself as not to come within the jurisdiction of the federal courts. The effect of the huge volume of liquor prosecutions, which has come to these courts under prohibition, has injured their dignity, impaired their efficiency, and endangered the wholesome respect for them which once obtained. Instead of being impressive tribunals of superior jurisdiction, they have had to do the work of police courts and that work has been chiefly in the public eye. These deplorable conditions have been aggravated by the constant presence in and about these courts of professional criminal lawyers and bail-bond agents, whose unethical and mercenary practices have detracted from these valued institutions.

Prosecutors, federal and state, have been affected no less than courts. They have been appointed and elect-

ed too often under pressure of organizations concerned only with prohibition, as if nothing else were to be considered in the conduct of criminal justice. Their work has been appraised solely in terms of their zeal in liquor cases. Under the pressure to make a record in such cases, it has not always been easy to keep up the right standards of forensic conduct and methods, and speeches such as had not been known in common-law courts since the 17th century have become not uncommon in our criminal courts in the last decade. High-handed methods, unreasonable searches and seizures, lawless interference with personal and property rights, have had a bad effect on the work of prosecution at a time when the general condition of American administration of justice was imperatively demanding improvement.

Injurious effects upon the administrative machinery of the courts have been equally apparent. Instances of difficulty in procuring execution of warrants by United States marshals, scandals in the carrying out of orders for the destruction of seized liquors, failure to serve orders in padlock injunction cases, and carrying on of illicit production and distribution under protection of a marshal or his assistants, in many places have brought the executive arm of the federal courts into disrespect, where until recently its efficiency was universally believed in. The procuring of permits, the giving of legal advice to beer rings and organizations of bootleggers, and the acting as go-betweens between law-breakers and political organizations with a view to protection on one side and campaign contributions on the other, have made conspicuous a type of politician lawyer who had been absent from the federal courts in the past.

Nor have these bad effects been confined to the criminal side of the federal courts. There has been a general bad effect upon the whole administration of justice. There has been a tendency to appraise judges solely by their zeal in liquor prosecutions. In consequence, the civil business of the courts has often been delayed or interfered with. Zealous organizations, dictating appointments, interfering with policies and seeking to direct the course of administering the law, cooperating with other unfortunate conditions when the law took effect, brought about crude methods of enforcement. The gross inequalities of sentence made possible by the Increased Penalties Act, 1929, has added to the difficulties of the administration of criminal justice.

A policy, announced at one time, of dealing in the federal courts only with large-scale violations, with organized smuggling, diversion, and wholesale manufacture and transportation—leaving police cases to the state courts—was not generally successful for several reasons. Some states have no laws, and, in view of the clear implication of Section 2 of the Eighteenth Amendment, the federal government could not be expected to acquiesce in a general system of open violations in such states. Some states or localities, after the National Prohibition Act, began to leave all enforcement, or at least the brunt thereof, to the federal courts. In these states, too, the policy of Section 2 of the Amendment called for federal action. Moreover petty prosecutions often have an important place in a program of reaching larger violators. Before repeated offenders may be brought within the provisions of the statute as to second and subsequent offenses, it is necessary to prosecute them for a first time even if only for a relatively slight violation.

Such prosecutions of small offenders may also be the means of inducing employees to confess and thus aid in detecting those who are behind them. Nor may we overlook the desire of federal agents and officials to make a record for liquor prosecutions and the difficulty of catching and convicting large-scale as compared with small-scale violators.

The operation of the National Prohibition Act has also thrown a greatly increased burden upon the federal penal institutions, which seems bound to increase with any effective increase in enforcement. The reports of the Department of Justice show that the total federal long term prison population, i. e., prisoners serving sentences of more than a year, has risen from not more than 5,268 on June 30, 1921 to 14,115 on June 30, 1930. The number of long term prisoners confined in the five leading federal institutions on June 30, 1930 for violation of the National Prohibition Act and other national liquor laws was 4,296 out of a total of 12,332. The percentage of long term violators of the National Prohibition Act and other national liquor laws to total federal prisoners confined in the five leading federal institutions on June 30, 1930 was therefore something over one-third. This constituted by far the largest class of long term federal prisoners so confined, the next largest classes being made up of those sentenced for violation of the Dyer Act (the National Motor Vehicle Theft Act) and the Narcotic Acts, the percentage of whom on June 30, 1930 were, respectively, 13.2% and 22% of the total.

The figures above set out include only persons serving sentences of more than one year, and do not include the very large number of individuals confined in county jails and other institutions for violation of the National Prohibition Act under shorter sentences.

The recital of these figures is sufficient to indicate the gravity and difficulty of the problem from the penal housing standpoint, which the effective enforcement of the National Prohibition Act presents.

9

The Invitation to Hypocrisy and Evasion Involved in the Provision as to Fruit Juices

Reference has been made to the anomalous provision of Section 29, Title 2, of the National Prohibition Act as to the manufacture of nonintoxicating cider and fruit juices exclusively for use in the home. If these are not "liquor" within the act, it is hard to see why the provision was needed. If they are, and the provision so suggests by saying that the penalties for the manufacture of "liquor" shall not apply to them, there is a discrimination between beer of lower alcoholic content, which certainly is not a "fruit juice," and wine of distinctly higher content. Moreover, the failure to fix the meaning of "non-intoxicating" in this connection, leaving it a question of fact to be passed on by the jury in each case, in effect removes wine-making from the field of practicable enforcement. Why home wine-making should be lawful while home-brewing of beer and home distilling of spirits are not, why home wine-making for home use is less reprehensible than making the same wine outside the home for home use, and why it should be penal to make wine commercially for use in homes and not penal to make in huge quantities the material for wine-making and set up an elaborate selling campaign for disposing of them is not apparent. If, as has been decided, the provision means to sanction home making of wine of greater alcoholic content than permitted by Section 1, it is so

arbitrary, so inviting of evasion, and so contrary to the policy announced in Section 3 that it can only be a source of mischief.

10

Nullification

It is generally admitted and indeed has been demonstrated by experience that state cooperation is necessary to effective enforcement. In states which decline to cooperate and in those which give but a perfunctory or lukewarm cooperation, not only does local federal enforcement fail, but those localities become serious points for infecting others. As things are at present, there is virtual local option. It seems to be admitted by the government and demonstrated by experience that it is substantially impracticable for the federal government alone to enforce the declared policy of the National Prohibition Act effectively as to home production. Obviously, nullification by failure of state cooperation and acquiesced-in nullification in homes have serious implications. Enforcement of a national law with a clearly announced national policy, such as is set forth in Section 3 of the National Prohibition Act, cannot be pronounced satisfactory when gaps of such extent and far-reaching effect are left open.

11

How Far are These Bad Features Necessarily Involved in National Prohibition?

As to the prevailing corruption, it has its foundation in the profit involved in violations of the National Prohibition Act. Hence it could be put an end to, or at least greatly reduced, by eliminating or reducing

that profit. Also it could be materially reduced by better selection of personnel, both in the federal enforcing organization and in state police, administrative and prosecuting organizations. But it may be queried whether the profit in violation of the National Prohibition Act is likely to be eliminated or largely reduced so long as so many people and the people in so many localities are willing to pay considerable sums to obtain liquor, and so long as the money available for corruption is so wholly out of proportion to what is practicable in the way of salaries for those concerned with enforcement.

As to the state of public opinion, the way toward improvement is chiefly through education. Unhappily, since the National Prohibition Act the whole emphasis has been upon coercion rather than upon education. In addition many, at least, of the causes of resentment at national prohibition could be removed and thus a more favorable public attitude could be induced. On the other hand, it may be urged that it is too late to educate public opinion in those communities where a settled current adverse to national prohibition has set in. Also, care must be taken lest some of the changes in the law, necessary to remove what have become sources of irritation, may involve relaxation of enforcement so as to react unfavorably upon other features of the situation. The main difficulty will be to reconcile the population in our large urban centers to the policy announced in section three of the National Prohibition Act. How far this is possible is a matter of judgment on which opinions differ.

So also as to the profit involved in violations. How far as a practical matter this may be eliminated by more ample provision of machinery for enforcement

and stimulating more complete cooperation in the enforcement of the law as it stands depends upon a judgment as to what may be achieved in places where there is hostile or lukewarm public opinion. At bottom, this question is linked to the preceding one.

The strain on federal courts and federal prosecuting machinery, grows out of the inadequacy of the organization of federal courts and of the federal prosecuting system to the task imposed upon it. To a degree, this inadequacy could be remedied. But it may be a question how far it is expedient to set up what would be in effect a system of federal police magistrates in order to enforce the National Prohibition Act in jurisdictions where the police will not deal with lesser violations to which the present federal judicial organization is not adapted. If such violations are not prosecuted somewhere, either in state or in federal tribunals, there is to that extent nullification. While this bad feature of the present situation is not inherent in prohibition, it is closely connected with the question of cooperation between state and federal governments and of concurrent jurisdiction as contemplated by the Eighteenth Amendment, and what is done by way of remedy must depend upon the conclusions reached with respect to possibilities of cooperation.

Finally, with respect to the provision in Section 29 of Title 2 of the National Prohibition Act relating to home production of wine, the bad or potentially bad, features of the present situation could be and ought to be eliminated by the simple process of making the provision in this respect uniform with those of the rest of the act. Removal of the anomalous provision in Section 29 would do away with what threatens to be a serious impairment of the legislatively announced policy of national prohibition.

IV

THE DEGREE OF ENFORCEMENT DEMANDED

It is a truism that no laws are absolutely observed or enforced. A reasonable approximation to general observance and to full enforcement is the most we may expect. What, then, should be considered a reasonably practical enforcement of the National Prohibition Act? If we compare that Act with other laws, would not our measure be such an enforcement as operates on the whole as an effective deterrent and brings a high average of observance throughout the land?

If, with regard to any law, assuming a vigorous effort at enforcement, the result is found to be that, notwithstanding enormous numbers of convictions, there is little deterrent effect and, after a decade of experience the volume of violations seems to increase steadily and the public attitude is increasingly indifferent or hostile, the question arises as to whether such a law is, in any proper sense, enforceable. Moreover, there is a difference in effect between failure of enforcement of such a law as the National Prohibition Act and lax or ineffective enforcement of other federal laws. The everyday work of police belongs to the states. The bulk of federal legislation has little or no relation to the general maintenance of law and order. Poor enforcement of the customs laws, for example, would chiefly affect the revenue and the particular businesses subjected to unlawful competition. But if the National Prohibition Act is not enforced, the collateral bad effects extend to every side of administration, police, and law and order. In view of the policy announced in section three of that Act, any large volume of intoxicating liquor continually in cir-

culation shows a serious falling short of the goal, and is highly prejudicial to respect for law. The enforcement to be aimed at must be one operating as an effectual deterrent upon manufacture, importation, transportation, sale, and possession in every part of the land, resulting in a uniformly high observance of the announced purpose of the act everywhere and restricting the liquor in general circulation to a relatively negligible amount.

V

PLANS WHICH HAVE BEEN PROPOSED TOWARD MORE EFFECTIVE ENFORCEMENT

A very large number of plans for more effective enforcement of the law as it stands have been proposed in books, pamphlets or articles, have been put before us by witnesses, or have been suggested to us in letters. These plans may be grouped conveniently under eight heads.

1

Partition of the Field of Enforcement Between Nation and State

Many plans provide for legislation dividing the field between the federal government and the states. Usually they contemplate national abdication of part of the jurisdiction provided by the Eighteenth Amendment, leaving that part to the states, perhaps with the help of the federal government where prohibition exists by state law. When put as a general proposition, this seems plausible. It may be said that things which are naturally of federal cognizance, things which were of federal cognizance under our traditional pre-prohibition polity, are to be retained by the federal government; while those things which prior to the Eighteenth Amendment belonged to the states are to be left to them. But this policy is not easy of execution when it comes to details. The plans vary significantly. The subjects to be kept within federal jurisdiction are said to be importations from outside the United States, interstate transportation, illegal manufacture or diversion on a large scale, interstate organ-

izations of illicit traffic or conspiracies to violate the law, and sometimes, in addition, open saloons. With respect to importation from abroad, some would have the federal government deal with all such importation while others would confine federal activity to importation into states having prohibition laws. Likewise, as to interstate transportation, some would have the federal government retain jurisdiction over it as a whole, while some would confine it to transportation over interstate highways and others to transportation (whether general or over interstate highways) into states having state prohibition laws.

As to illegal manufacture and diversion, some would confine federal activity to large scale operations, some to commercial operations, and some to such things when carried on in states having state prohibition laws. To such programs, some add a federal jurisdiction over conspiracies, and others add federal repression of open saloons, although the latter is not a subject of natural or traditional federal cognizance. The present program of the Bureau of Prohibition seems to be to confine federal activity to importation, interstate commercial transportation, and commercial manufacture and diversion.

It will be seen that some of the plans are framed with a view to more effective enforcement by doing away with overlapping activities, while others are devised with a view to a policy of federal hands-off in states where there is disinclination or hostility towards enforcement.

From either standpoint, there are serious objections to this type of plan. It gives up the policy of concurrent jurisdiction expressly laid down in the Eighteenth Amendment and adopts a fundamentally different system. This is legally possible. But if the amendment is to be modified, we think that should be done directly and avowedly rather than by indirection.

Secondly, it gives up in effect the policy of the Eighteenth Amendment in whole or in part as to all states which decline to act or are indifferent. If this is to be done, we think it ought to be done directly under warrant of the Constitution and not by way of nullification thereof.

Thirdly, it gives up the announced policy of the National Prohibition Act as to any state which chooses to do nothing, or little or nothing, with respect to that part of the program of the Eighteenth Amendment abdicated by the federal government. If it is sought to guard this abdication by retaining federal jurisdiction to the extent of federal repression of open saloons, it must be observed that such saloons are not within the natural or traditional field of federal action. Yet the circumstance that it is felt necessary to guard against the return of saloons in states where the power given up by the federal government remains unexercised, shows the recognized need of a federal power beyond what existed before the amendment.

Apart from these considerations, such partitions are hardly practicable. There is grave difficulty in defining large-scale manufacture. There is difficulty in drawing the line as to what is commercial manufacture and transportation. It will be very difficult to define the organizations and conspiracies to be dealt with by federal agencies. For example, is jurisdiction to be determined by the composition or by the operations of the organization? Such a partition, if made by law, is likely to involve jurisdictional difficulties of a sort that always interfere with effective en-

forcement of law. It will be hard to eliminate overlapping enforcement without raising jurisdictional questions, and, except as a means of local nullification, the partition would not be worth while unless it eliminated such overlappings. This type of plan carries with it the same difficulties which are encountered in securing state cooperation under the existing system.

2

Better Organization of Enforcing Agencies

Most of the plans of this type antedate the Prohibition Reorganization Act of 1930 and the better organization which now obtains. A few call for special consideration.

It has been urged that coordination between the several independent investigating agencies of the federal government could be brought about by designation of a special secretary to the President charged with that task. This is an administrative measure not requiring legislation, and comes to a matter of executive judgment as to the relative weight to be given to the enforcement of prohibition in the whole process of government. To add to the direct burdens of the President and specialize executive attention upon the administration of one law is obviously unwise.

A unified federal police has also been urged. From the standpoint of a highly centralized federal enforcement of prohibition, reaching into the details of violation and seizures in every part of the land, this might be more effective. But Americans have a strong and justified traditional antipathy to over-centralization. Any considerable federal policing is wholly at variance with the general spirit of our Constitution. Indeed,

the Constitution permits it at all only as an incident of certain granted powers. Moreover, the political possibilities of such a force, reaching into every community are disquieting.

3

More Adequate Force and Equipment

There is substantial agreement among all who have looked into the subject that the federal prohibition force is very much too small in number for the work it has to do. Estimates as to the number required to make it reasonably effective vary greatly.

Experienced prohibition administrators (prior to the transfer) are in agreement as to the need of a very large number of additional agents and investigators. One of them, referring to a large city in a state having a state law, which the state does not enforce, considered that for reasonable enforcement in that one locality, he would need 50 agents and 10 investigators, and that this "would not make it absolutely dry". Another, referring to a large city in a state having no state law, considered that reasonable enforcement in that city would require 200 agents. Also the chief of the state police, in a state having a state law, considers that to bring about reasonable enforcement in his state, there should be 1,000 federal prohibition agents and 200 more state police in that jurisdiction alone.

In contrast with these views of those immediately in contact with enforcement in the field, the authorities at Washington have consistently maintained that a much smaller increase in number would suffice. The Prohibition Administrator is asking for 500 more

prohibition agents, about one-third more than the present force. His reason for not calling for more, namely, that 500 additional are as many as he can hope to train adequately within the term of the appropriation, has much force. But it should be remarked that his figure assumes practical federal abdication of an important part of federal jurisdiction under the amendment and federal acquiescence in state nullification. Moreover, the slow building up of an adequate and well-trained force presupposes a considerable further period of experiment during which the deficiencies of the present situation will continue.

Between these extremes our conclusion is that there should be 60 per cent more agents and 60 per cent more storekeeper-gaugers, that the number of prohibition investigators and special agents should be doubled, that there should be a proportionate increase in the Customs Bureau, and in the equipment of all enforcement organizations, and that the number of assistant district attorneys should be increased.

4

Improvements in the Statutes and Regulations

A number of plans or suggestions submitted to us have to do with improvements in the statutes and regulations. It has been urged upon us by those charged with enforcing prohibition in many parts of the country that the several statutes governing the subject are much in need of being put in order, revised and simplified. This does not mean that all of the 25 or more statutes bearing on the enforcement of national prohibition, enacted at various times during forty years, many of them much antedating the Eighteenth Amendment, are to be taken out of their setting in the United

States Code and put in a special prohibition code to the disorganization of the law on the subjects with which they have to do primarily, But, as they stand, they are in need of coordination and adjustment to each other. More than this, however, there is real need of revising and digesting the National Prohibition Act, and the acts supplemental to and in amendment thereof, with a view of putting it in a simpler, better ordered, and more workable condition. The original statute has been amended or supplemented by the Willis-Campbell Act (1921), the Act to create the Bureau of Prohibition (1927), the Increased Penalties Act (Jones Law, 1929), the Storekeeper-Gauger Act (1929), and the Prohibition Reorganization Act (1930). These acts have been superposed one upon another, and all upon the original act, in such a way that it is difficult at times to make out what is the effect as to particular details. The subject is discussed more fully in our report supplemental to the preliminary report submitted to the President on November 21, 1929 (71st Congress, 2nd Session, H. R. Doc. No. 252, p. 13). It is enough to say that the Bureau of Prohibition (before the transfer) was at work on the redrawing of the statute to remedy this situation. We think this work ought to be resumed, and that the whole series of statutes, with such amendments as may be called for towards better enforcement, should be put into a single, thoroughly revised statute.

Some have urged upon us the importance of uniform state laws. Undoubtedly the state laws are very diverse. But a uniform state law in aid of the National Prohibition Act could hardly be procured to be enacted in a number of the most populous states. Nor does it seem feasible as to the remaining states. Local conditions are so divergent, and local public opinion

differs so greatly in different parts of the land, that it would take a long time to work out a satisfactory uniform state law and still longer to procure general enactment of it. The relative failure of attempts to procure enactment in the several states of statutes copying the National Prohibition Act with such adaptations as state constitutions might require, is a sufficient testimony on this point. It is doubtful if the advantages of a movement for uniform state laws would be enough to justify the effort.

Many have urged different proposals for dealing with so-called cover-houses. The statute is not wholly clear and it has been urged with some force that the matter can be dealt with by regulations without the aid of legislation. But this is doubtful and we cannot say that the courts will uphold effective regulations under the statute as it stands. The matter is too important to rest upon interpretation of the present statutory provisions involving so many questions. The federal district courts would be very likely to differ, and it might be years before an authoritative interpretation could be had from the highest federal court. We conceive, therefore, that legislation is expedient.

Four types of statute have been proposed. One type provides for inspection of premises and access to records of wholesale and retail dealers, with a view to making it possible to trace products of specially denatured alcohol to the ultimate consumer. Another type provides a stricter system of supervision of the use of specially denatured alcohol through requiring bonds and detailed reports. A third type extends the scope of proposed legislation to all industrial alcohol, completely denatured as well as specially denatured. A fourth seeks to meet the cover-house situation by eliminating certain exceptions in the National Prohibition Act and thus extending the powers of federal

prohibition authorities to all products of denatured alcohol.

A statute of the first type seems most in accord with a policy of due balance between the needs of industry and business and the demands of prohibition. There seems little to be gained by including all denatured alcohol, and the irritation and resentment caused by a system of bonds and detailed reports imposed on wholesale and retail dealers in every-day articles, involved in the other types, will outweigh the gain.

More latitude for searches and seizures has been urged by many. No doubt the difficulties in this connection have had much to do with the abandonment of federal activity against home making of wine and beer. Also the limitations upon search and seizure have undoubtedly hampered investigators and special agents in every connection. But apart from constitutional questions, too much resentment and irritation is likely to be provoked by changes which would give to enforcement of national prohibition greater latitude than is permitted with respect to other laws.

We do not think it advisable to alter the federal law with respect to search and seizure, assuming that it would be possible.

Imposition of penalties upon purchase of illicit liquor has been urged from many quarters and a bill to that end is now pending. The effect of such legislation is a matter of opinion. Logically it is called for to carry out the policy of section 3 of the National Prohibition Act. The arguments against it are practical, namely, that it would be likely to add greatly to the volume of petty prosecutions, to embarrass the detection of violations of the statute, and to encourage activities by informers, which have been a source of irritation. A majority of the commission are of the

opinion that it would increase rather than reduce, the difficulties of enforcement.

Several plans have been proposed for rewarding those who detect conspiracies or large-scale violations, or for sharing penalties and fines between federal and state governments, or with the municipality where municipal officers participate in the search or seizure. It has been argued that such measures will stimulate cooperation of state and local enforcement agents with those of the federal government. Division of penalties is something which has been tried in many connections throughout the history of penal legislation and its effects have almost uniformly been bad. True there is a precedent in the provision for giving a percentage to informers under Section 533, Tit. 19, U. S. Code. But the scope of that section is very limited. This device has been tried in the liquor legislation of some of the states with the bad results which have usually attended it. We are satisfied that it would be a mistake to extend a division of penalties as a feature of federal enforcement of prohibition.

Many suggestions have been made as to improvements in the regulations under the National Prohibition Act. The regulations must be adapted from time to time to the changed expedients of law-breakers and new developments in industry and business. These can seldom be anticipated. Experience must show when and what changes are needed. In the nature of the case, permanent recommendations can only be with respect to legislation. Suggestions as to regulations would soon be out of date and would achieve little.

In our report supplemental to the preliminary report submitted to the President on November 21, 1929 (71st Congress, 2nd Session, H. R. Doc. No. 252, pp. 9, 14), we recommended legislation for making the procedure in so-called padlock injunctions more effective. The details need not be repeated. The need of such legislation has been recognized by judges who have sat in injunction proceedings. We renew the recommendation.

5

Improvements in Court Organization and Procedure

Relief of congestion in many of the federal district courts is considered in our preliminary report and reports supplemental thereto (71st Congress, 2d Session, H. R. Doc. 252, pp. 9 to 12, 17 to 25) and in the letter of the Chairman to the Attorney General dated May 23, 1930 (H. R. Rep. 1699). Bills to carry out our recommendations (as modified to meet certain proposed changes in the Increased Penalties Act of 1929) are now pending and have passed the House of Representatives. One of them has also passed the Senate.

The reasons we have given heretofore need not be repeated. It should be said, however, that questions of constitutionality which were much discussed in connection with our preliminary report seem to be set at rest by the decisive pronouncement of the Supreme Court of the United States in *District of Columbia* v. *Colts,* decided November 24, 1930. In the opinion in that case the court points out that at common law "petty offenses might be proceeded against summarily before a magistrate sitting without a jury"; also "that there may be many offenses called 'petty offenses' which do not rise to the degree of crimes within the meaning of Article 3 and in respect of which Congress may dispense with a jury trial." In the *Colts* case the offense charged was one indictable at common law and was not *malum prohibitum.* The court points out that it was in its very nature *malum in se.* Obviously, of-

fenses with respect to which legislation is proposed were not common law offenses and are only *mala prohibita.*

Despite the increase in the number of federal judges at the last session of Congress, the Judicial Conference of 1930 reports that "congestion in the federal court continues to be a major problem", and recommends a further increase in the number of district judges. The last report of the Attorney General states that "one of the serious administrative problems has been and still is congestion in some of the federal district courts, particularly in large, cosmopolitan districts" The Attorney General adds: "This difficulty has not yet been solved". We, therefore, renew our recommendations.

Two other suggestions from different sources deserve to be mentioned. It has been urged that regular conferences of judges, district attorneys and marshals should be had with and under the auspices of the Attorney General We think such a suggestion gravely misconceives the relation of the federal judges to the Department of Justice. The judges are a part of the judicial department of the government and are in no sense officers of the Department of Justice, which is a branch of the executive department. The independence of the judiciary is something fundamental in our polity. Conferences of judges, prosecutors and administrative officers with respect to pending cases, or cases soon to be pending, are opposed to the settled principles of our Constitution.

It has been suggested also that the district attorneys participate more largely in the work of the enforcement officers. Such suggestions overlook the bad effects of the quest for publicity upon prosecutions, as disclosed in recent surveys of criminal justice, and the distinction between criminal investigation and

criminal prosecution. The two activities should be fully coordinated and should go on with the most complete harmony, but they ought to be kept distinct.

6

Divorce of Enforcement from Politics

This is urged in many forms in a great variety of proposals submitted to us. Much of what has been written assumes the conditions which existed before recent reorganizations and improvements. Much else which has been written on the subject is in the way of counsels of perfection. No one has worked out specific plans to this end, and, so far as federal activities go, we see nothing to recommend beyond the changes in selection, recruiting, organization and training of the personnel of enforcement which have been going on for some time.

7

More Civic Activity: Cooperation with Non-legal and Civic Organizations

Numerous arguments for stimulating and plans for developing more organized civic activity directed toward observance of the National Prohibition Act and cooperation with non-legal and civic organizations toward that end have been brought to our notice. As to organized civic activity so far as the conduct of the courts and of prosecutions are concerned, such things are not without bad possibilities except as directed to the whole field of law and order and carried on with proper regard to the freedom of judicial action required by a due administration of justice. We do not see anything to suggest here with respect to prohibition as distinguished from the law in general.

As to cooperation, in more than one place cooperation with railroads, with professional associations, with industrial corporations, with trade associations and business organizations, with associations of real estate agents, with hotel associations, with service clubs, with local societies and with other important non-governmental agencies, has been arranged and has been bringing about good results. Such things are likely to come about with increasing effectiveness under the present organization of prohibition enforcement. We see nothing specially to suggest here.

8

Education of Public Opinion

It has been urged from many sides that the main reliance must be put on a process of educating public opinion toward observance and enforcement of national prohibition. There can be no doubt of the importance of this if enforcement is to be effective. But mere propaganda to that end will accomplish little if the bad features of the present situation, which operate to foster adverse public opinion, are not remedied. So long as they continue unabated they will largely counteract educational efforts, however well organized and conducted. Education must go along with elimination of these bad features.

We do not think any of the plans for coercing state or local enforcement or cooperation by publishing the details of violations or giving publicity to local examples of inaction or indifferent action are applicable to the country as a whole or may be made practically useful as a general means toward more effective enforcement. This subject and the subject of increased civic activity are hardly to be separated from the question of inducing a better observance of law generally.

VI

THE NECESSITY OF FEDERAL CONTROL

Every plan of control must start from the fundamental fact that the business of producing and distributing alcohol transcends state lines. Under any regime there will always be a need of federal action to protect the systems of the several states, whether the state systems are prohibition or state conduct of the business or state control or state regulation. Moreover, in order to make that protection effective, there will probably always be need of a strong federal enforcing organization. To some extent the needed national action could be brought in backhandedly by exercise of the power over commerce and the taxing power. But to set up a unified enforcing organization, required for the conditions of manufacture and distribution today, demands a broader basis than was afforded by the powers of the federal government before the Eighteenth Amendment.

Since at least a potential national check would be needed even if the subject or some part of it were remitted to state initiative, a constitutional provision is indispensable. In our judgment it is impossible to recede wholly from the Eighteenth Amendment in view of the economic unification of the country, the development of transportation, the industrial conditions of the time, and the general use of machinery in every line of activity. A complete remitting of liquor control to the states would be likely to result in the present situation in some states, with open saloons in others, with attempts at state control of manufacture and distribution in many others; but with no guarantee that any may be held to the minimum standards which national

considerations demand. In the industrial and mechanical order of today liquor control is more imperative than ever. If it is to be effective, the federal government must be authorized to do a large part in the program and to do it efficiently. Of course, it is recognized that active cooperation by the state governments always will be required for effective control.

VII

BENEFITS OF PROHIBITION TO BE CONSERVED

Such benefits as are clearly shown to have followed from the Eighteenth Amendment and the National Prohibition Act bear immediately upon the problem of enforcement. They cannot have resulted from abstract prohibition. They must have resulted from such enforcement as there has been in the past decade. Hence in passing judgment upon enforcement we should determine and appraise these benefits as something to be conserved in any program of improvement.

1

Economic Benefits

Disregarding the highly speculative assertions as to the so-called drink bill and its relation to industrial and financial conditions during the first decade of prohibition, the subjects upon which there is objective and reasonably trustworthy proof are industrial benefits—i. e., increased production, increased efficiency of labor, elimination of "blue Mondays," and decrease in industrial accidents—increase in savings, and decrease in demands upon charities and social agencies.

There is strong and convincing evidence, supporting the view of the greater number of large employers, that a notable increase in production, consequent upon increased efficiency of labor and elimination of the chronic absence of great numbers of workers after Sundays and holidays, is directly attributable to doing away with saloons. On the other side, it is contended by an able and conscientious group of skilled workers, leaders in organized labor, who appeared before us, that this increased efficiency of labor is to be attributed rather to the efforts of the unions in bringing about better conditions of employment, better hours, and better wages. It is contended also that improved methods of selection of personnel, the results of industrial engineering, improved management and general progress in the organization of industry and methods of production must be credited with the greater part of the undoubted advance in efficiency. In addition, account must be taken of newer and better modes of recreation and of occupying leisure time which, it is said, would have superseded general resort to drink in any event. It may be admitted that much of this is well taken. But with all deductions we are satisfied that a real and significant gain following National Prohibition has been established.

As to decrease in industrial accidents, nothing is clearly established. It is controverted how far drinking was a considerable factor in those accidents before prohibition. Better hours, better factory organization and methods, improved machinery, safety devices, the activity of insurers, and more systematic inspection have made it impossible to compare with any assurance the statistics of the first decade of the present century with those of today.

There has been an increase in savings, evidenced especially by savings deposits. As to this allowance must be made for the results of the vigorous campaign for thrift during the war, for the effects of increased activity of banks in stimulating savings deposits, for increased wages in the era of industrial prosperity following the war, and for the growth of the idea of investment during that era. Nor may we overlook the change in our standards of living whereby it has become the general custom that the wives and daughters of workers are employed for the whole or a part of their time. Moreover, there was a great and steady increase in savings before prohibition. It cannot be said that anything is clearly established on this point.

As to decrease in demands upon charities and social agencies, allowance must be made for conditions of employment during the era of industrial prosperity and the change whereby the women members of the household are so generally earning wages. Also the decrease which seemed to be indicated some years ago has not maintained itself wholly nor in all localities. Such statistics as are shown to be significant and worthy of credit make this matter too doubtful to be taken as the basis of a conclusion.

Looked at over the decade of prohibition, the most that may be said with assurance is that there has been a real and far-reaching improvement in the efficiency of labor, especially in mechanical industries. Even if we concede the contention of some labor leaders that in the last few years there has begun to be an increase in drinking among workers, an improvement remains. In an industrial country, in an industrial age, this established fact must be of great weight.

2

Social Benefits

Except in a few places where there seem to have been exceptional conditions, there is general agreemnt among social workers that there has been distinct improvement in standards of living among those with whom such workers come in contact, which must be attributed to prohibition. Here also deduction must be made for the economic conditions in the decade following the war, for the tendency of women members of the household to work for wages, and for the general diffusion of improved means of recreation. There would be no profit in going into details. It is enough to say that upon weighing all the evidence, there is a clear preponderance to establish a gain.

Beyond this the social benefits asserted are not so clear. It has been urged that there has been great improvement in domestic relations. But such few statistics as to divorce for drunkenness as are available and are reasonably trustworthy, seem to show a steady increase in divorce on that ground after a sharp drop in the initial years of prohibition. It is not safe to interpret these figures either to support a claim of gain or to show bad effects of national prohibition. A change in the general attitude of women is so disturbing an element that the statistics as to divorce before and since prohibition are simply not comparable.

So also as to the effect upon public health which has been urged by some writers. The steady development of means of conserving the public health and the continual advance of medical science preclude any just comparison of the statistical data available.

What may be said with reasonable assurance is that there has been real and substantial improvement in

the life of those with whom social workers come in contact.

Any program of liquor control should go forward from these economic and social gains. It should begin by conserving these benefits. But conceding them to the full extent to which they may be taken as established, they are due not so much to the attempt at federally enforced prevention of the use of intoxicating liquor as to the closing or substantial closing of the old time saloon. Hence the first desideratum in any constructive plan is to keep closed the saloon and its substantial equivalents. Public opinion almost if not quite everywhere would sustain keeping the saloon closed as a permanent achievement for good order, good working conditions, good morals, and improved domestic life.

VIII

SUMMARY OF FOREIGN SYSTEMS

1. *Systems of License and Regulation, much as obtained with us formerly.*

Great Britain has gone furthest in this direction having stringent provisions for licensing, stringent closing regulations and regulations as to the hours at which liquor may be sold. Progress has been made toward reducing the number of public houses and bringing about better conditions in such places. The chief difficulty in Great Britain today seems to be with respect to clubs. For whatever reason, whether bad economic conditions, high prices, education for temperance, or restrictions as to the hours of sale, or all of these things, the consumption of spirits has fallen off about half, and the consumption of beer has considerably decreased. By 1928 arrests for drunkenness had

fallen to 29.6 per cent of what they were before 1914. But it is difficult to determine how far the British system of liquor control has been a decisive factor. This is the more doubtful because in France, where there are few restrictions, high prices and the rise of beer drinking have led to a falling off in wine drinking. Also, in Germany there has been a sharp decline both as to distilled liquor and beer, in which the cutting off of sale of spirits on pay-days can hardly have been much of a factor. Italy has been reducing drastically the number of licenses. Denmark regulates indirectly by very high taxes on spirituous liquors. This seems to have brought about a decline in the consumption of such liquors to one-sixth of what it was formerly. In Belgium, during the present year a national commission has been investigating the results of the alcohol restriction law. A local option system has been adopted in Chile, and regulation of the stronger liquors has gone forward in a number of Latin-American countries. Poland and Esthonia also now have systems of local option.

2. *Systems of Importation, Distribution, and Sale by Government Agencies*

Systems of this type are in force in Canada, except for Prince Edward Island. Each province has its own system, but in each there is some form of controlled sale by government stores, with local option, and prohibition of private importation of distilled liquors from one province to another. Ontario has the strictest law, providing that spirits may be bought only by permit and then only in limited quantities and only for consumption in the buyer's home. Permits to purchase are required also in British Columbia, Manitoba and Alberta. Quebec does not require such permits,

but limits the amounts of spirits procurable at any one purchase. The effect of this system of government sales is in controversy. The official figures of the Dominion Bureau of Statistics, Department of Trade and Commerce indicate that the total consumption of spirits in the Dominion as a whole reached its peak in 1921 and then fell to a low point in 1925, since which time there has been a steady increase, although the 1929 figures are still less than half of the figures for 1921.

In Russia, distilled liquor is now permitted to be sold in restricted quantities at special government stores.

3. *Systems of Manufacture, Importation, and Sale by a Corporation or Corporations organized for that Purpose, under Control of the Government, and Regulation by a Commission adapted to Conditions as they Arise.*

This is the Swedish System. Under that system government controlled private corporations have a monopoly of distribution and sale. A central corporation is the wholesale distributor, and retail selling is committed to local corporations. The general government chooses a majority of the directors of the central corporation, and the local governments have the same control over the subsidiary local selling corporations. A national board of control has general power over regulations. There is local option, but anyone who has the proper permit may bring in liquors for his own use where local sales are forbidden. Purchases may be made only by holders of permits (called motboks), the granting of which is strictly regulated. There are also strict regulations as to the serving of wines and spirits in cafes and restaurants. Beer of

low alcoholic content may be made and sold freely. Norway now has a less complete and thorough system of local corporations of this general type.

4. *Absolute Prohibition*

Finland has prohibition except for beer of low alcoholic content, and has also a government monopoly of making and importing of liquors and alcohol for medicinal, scientific, industrial and religious purposes. Some years ago a government commission made a report upon the situation in that country which called attention to a very considerable development of smuggling, a three-fold increase in arrests for drunkenness, and a more than two-fold increase in crime. Only part of the latter was considered to have followed from the regime of prohibition, and the Commission reported that the increase in drunkenness would have been worse under the older system.

IX

THE PROPOSED ALTERNATIVES TO THE PRESENT SYSTEM

Proposals other than for going ahead substantially as things are may be considered under four heads:

(1) To repeal the Eighteenth Amendment, (2) to repeal or modify the National Prohibition Act, leaving the Eighteenth Amendment as it is, (3) to cure proved defects in the National Prohibition Act and supplemental legislation by further legislation, to go on with the development and improvement of the organization and personnel of federal enforcement, and to await results, and (4) to revise the Eighteenth Amendment.

1

Repeal of the Eighteenth Amendment

Hereinbefore we have given our reasons for the conclusion that repeal of the Eighteenth Amendment is not advisable. We are convinced that it would be a step backward, that it would not conserve the achieved benefits of national prohibition, and that it would be likely to lead to conditions quite as bad as those we are seeking to escape.

2

Repeal or Modification of the National Prohibition Act

Repeal of the National Prohibition Act would amount to nullification of a constitutional provision. As the efficacy of the Eighteenth Amendment depends so much upon the action of the states, it is evident that repeal of the federal statute in effect would put things back where they were before the amendment, leaving it to each state to provide such system of prohibition, or regulation, or want of regulation, as it chose, subject to the difficulty that any system of state regulation must not be in conflict with the federal Constitution. Thus, as a practical matter, the states would be left to choose between state prohibition, state hands-off and a free traffic, or a camouflaged state regulation, not subject to attack as in conflict with the Eighteenth Amendment, and yet effectively substituting the regime which the amendment is designed to supersede. The bad features and bad possibilities involved in such a course are manifest. In our opinion it is even less to be thought of than repeal of the amendment. It would not be honest.

Many plans have been submitted for modification of the National Prohibition Act so as to permit the manufacture and sale of beer of an alcoholic content of not more than 2.75 per cent. by volume, and of light wines. There is much evidence that beer of this content may reasonably be pronounced not intoxicating. Undoubtedly, within considerable limits, the definition of intoxicating is a legislative question. Hence, there are no serious constitutional difficulties in the way of such a modification. It has been urged strongly by the American Federation of Labor and other organizations, and has been presented to us with much ability. Undoubtedly the fixing of the alcoholic content of intoxicating liquor at one-half of one per cent. went much beyond the facts and has been a source of resentment on the part of many men who have felt that the proviso in Section 29, apparently allowing home making of wine of much higher content while forbidding the making of beer was an unfair discrimination. But important as it would be to allay this resentment, we think the disadvantages of the proposal outweigh that advantage and such advantage as would be derived from taking the making and distribution of beer out of the illicit traffic. To take the making, transportation, and sale of 2.75% beer out of the scope of the National Prohibition Act would involve either leaving them wholly to the states, or to the states subject to national laws in aid of those preferring to exclude beer. Legislation of this kind would be hard to draw and harder to execute. But without it, states having complete prohibition would be greatly embarrassed by an illicit traffic having a legal basis beyond the state line. Also there would be nothing to prevent beer saloons in states which chose to allow them and thus the chief gains of national prohibition would be imperiled.

As to the answer that states would set up dispensary systems, it may be replied: (1) that there would be nothing to insure this, and (2) that in any event, in our opinion after study of the different systems of liquor control, no modification should be permitted which would allow either the state or federal governments as such to go into the business of making or selling liquor in any form.

There would be need of affirmative federal legislation to prevent state dispensaries and the return of the saloon. The mere exclusion of beer of a definite content from the purview of the National Prohibition Act will not suffice.

As to the argument, which undoubtedly has much force, that relaxation of the law by allowing a non-intoxicating beer of low alcoholic content will promote temperance and relieve the strain on enforcement of the National Prohibition Act as to spirits, there are three answers:

(1) Experience before national prohibition makes it at least doubtful whether beer will replace spirits in general consumption to any degree. It must be remembered that before national prohibition increase in the *per capita* consumption of beer was accompanied by no decrease in the consumption of spirits.

(2) The use of illicit liquor has developed a taste for intoxicating beverages to an extent which makes it very doubtful whether a light beer would be widely accepted as a substitute therefor.

(3) If the beer made and sold is not intoxicating, it is unlikely to prove a substitute for intoxicating drink in communities where enforcement gives the most difficulty, while if it is, there would be a palpable violation of the Constitution.

As to the proposed exception of light wines from the operation of the National Prohibition Act, the same considerations apply But it should be said, also, that the anomalous provision in Section 29 of the Act, heretofore discussed, is closely related to this proposal. If that section, as construed, is to stand, it would probably achieve most of what the advocates of legal making of light wines are seeking.

Other plans for legislation, leaving the Eighteenth Amendment as it stands, propose state option as to prohibition, evasion of the intent of the amendment by allowing beverage liquor under the exemption of medicinal liquor, evasion by Congressional definition of "intoxicating liquor" so as to exclude liquor which is in fact intoxicating, and statutory exemption of all home manufacture for home use.

These proposals involve *pro tanto* nullification of the Eighteenth Amendment. The proposal as to state option is open to the objections to the repeal of the Eighteenth Amendment already considered, with the added objection that it would in substance leave it to the states to determine whether a general provision of the federal Constitution should obtain within their borders. Evasion of the federal Constitution by specious definitions of "intoxicating" or of "medicinal liquors" or by specious provisions for the procuring of medicinal liquor, undermining by legal action respect for the fundamental law, is quite as destructive of respect for law as the things sought to be avoided. As to home manufacture, the difficulties in differentiating between manufacture for domestic and for commercial purposes and of detecting commercial manufacture in homes, would make such a system as hard to maintain as the present one.

3

Development and Improvement of Organization and Personnel

In a number of particulars it must be pronounced that there has not been the kind of test of enforceability of national prohibition which would have been desirable. As has been said, enforcement started out with the idea that a federal law would largely command observance, and hence no adequate provision was made for a task of such magnitude as it has proved to be. It began by using methods and agencies which had proved effective in four generations of federal government under the Constitution. The assumption was that any strain upon these methods would be taken care of by the concurrent enforcing jurisdiction of the states. Thus the mechanics of enforcement fell short of the requirements of the task in three respects: (1) the organization, personnel, and training of the agents of enforcement; (2) the federal prosecuting organization and organization of the federal courts; (3) the means of insuring concurrent or cooperative action by the states.

At the outset, the best part of the enforcement organization was made up of those who had been in the Internal Revenue service, or some like service, before prohibition. But development of methods of manufacture of alcohol speedily outgrew the experience and training of storekeeper-gaugers brought up under the old method of distilling. The development of illicit distilling soon quite outstripped the experience of those who had had to do with pre-prohibition moonshining. Organized smuggling quickly outgrew the experience and equipment of those who had been trained under the old conditions in the customs service. The organization, mode of selection and recruiting, personnel management and personnel, and the mode of training in the services charged with or having to do with enforcement of national prohibition, as they were at first, were not equal to the demands of these rapid developments of organized law-breaking.

It is worth while to repeat that changes in the fundamental organization, fluctuating personnel, low salaries, methods of appointment and recruiting ill adapted to the work to be done, and lack of adequate training, led to bad results at the start of enforcement the effects of which are still manifest in some quarters.

Again it was only perceived gradually that there was need of special activity in coordinating the federal services directly and indirectly engaged in enforcing prohibition and of special effort to bring about coordination between them. Past experience with other laws had not indicated the need of such things. It was not until after the Senate investigation of 1926 had opened people's eyes to the extent of law-breaking and corruption that serious efforts were made in this direction. In the past few years, a great deal has been achieved toward coordination of and cooperation between the several administrative agencies. In the meantime organized law-breaking had grown strong and much mischief had resulted.

In view of this bad start, of the defective organization, unsatisfactory personnel, and insufficient equipment, and of the want of coordination among the agencies concerned, it is no wonder that there was a steady decline in the enforcement of prohibition from 1921 to 1927. Unfortunately, this steady decline gave an impetus to the illicit traffic which makes it hard for any organization and personnel to cope with it.

It may be urged that the bad features of enforce-

ment, or nonenforcement, which obtain today may be obviated with the lapse of time and certain improvements in the machinery of enforcement, through improved enforcement personnel, divorce of enforcement from politics, provision of more men, more money, and better equipment for the enforcing agencies, and certain amendments of the statutes and of the administrative regulations.

On the other hand, it may be urged that the primary difficulties in the way of enforcement lie deeper than these things. The statute has been in force for a decade with large majorities in Congress pledged to give effect to it and militant organizations pushing to that end. There has been more sustained pressure to enforce this law than on the whole has been true of any other federal statute, although this pressure in the last four or five years has met with increasing resistance as the sentiment against prohibition has developed. No other federal law has had such elaborate state and federal enforcing machinery put behind it. That a main source of difficulty is in the attitude of at least a very large number of respectable citizens in all communities, and of a majority of the citizens in most of our large cities and in several states, is made more clear when the enforcement of the National Prohibition Act is compared with the enforcement of the laws as to narcotics. There is an enormous margin of profit in breaking the latter. The means of detecting transportation are more easily evaded than in the case of liquor. Yet there are no difficulties in the case of narcotics beyond those involved in the nature of the traffic because the laws against them are supported everywhere by a general and determined public sentiment. Hence a program of improvement should be directed also toward a more favorable public opinion.

As to the possibilities of a much better personnel, it should be noted that improvement has been made of late. But there is a difference of opinion as to how far the requisite personnel will be possible, as something enduring and continuous, under our polity. It is to be wished that a divorce from politics might be brought about in large measure as to all enforcement of law. But, as a thorough-going change in our established methods, it must come slowly as to any of the activities of government. The methods, so well developed in recent years, which are practicable in a private industrial organization are not wholly applicable in the management of political affairs of 120,000,000 people.

More men, more money, and more and better equipment for the enforcing agencies would undoubtedly achieve much but no improvement in machinery will avail without cooperation from the states. This state cooperation will ultimately depend upon local public opinion. So long as public opinion is adverse or indifferent in large cities and in many states, so long as there is no practicable means of reaching home manufacture (which may easily run into commercial manufacture), and so long as the margin of profit remains what it is, serious obstacles in the way of satisfactory enforcement will continue to be beyond the reach of improved organization personnel and equipment and tightened statutory and administrative provisions.

4

Revision of the Eighteenth Amendment

A great variety of detailed plans, assuming modification or revision of the Eighteenth Amendment, have been proposed or submitted. In general they are of

four types. One type contemplates federal control, whether by legislation, by a permit system, by a federal bureau or by a federal commission, and manufacture, distribution and sale by a federal monoply or by general and local corporations under federal control. A second type contemplates state option under federal control. A third type contemplates state control by allowing the states to define the meaning of "intoxicating liquor". A fourth type contemplates a dispensary system or some equivalent system of distribution.

Plans of the third type are objectionable as allowing the return of saloons in states choosing to permit a high alcoholic content, since the liquor being legally declared non-intoxicating would not be subject to the police power and so to regulations as to sale and consumption.

We do not consider sale or distribution directly by the government or immediate governmental agencies expedient in the United States and are opposed thereto. The best showing of results is made by the system in force in Sweden. Obviously no system such as would be practicable in that country could be imported as it stands and made workable with us. But there are things to be learned from this system should it become possible for the states which do not acquiesce in national prohibition to try some plan adapted to their conditions and to local public opinion. In this connection the experience of federal control by Commissions of important activities which had presented grave problems is suggestive. The Interstate Commerce Commission, and the Federal Reserve Board show the possibilities of such a method of adjusting federal control to subjects to which rigidly detailed legislation is not applicable. It will not do to

say that American statecraft is not equal to devising some plan which will conserve the benefits thus far achieved and do away with or minimize the bad effects of national prohibition as it stands. Much of the difficulty comes from the rigidity of the Eighteenth Amendment and of the National Prohibition Act, which prescribe one unbending rule for every part of the country and every type of community without regard to differences of situation or conditions or to public opinion.

If there is to be revision of the Eighteenth Amendment, the following requirements should be met:

(1) The revision should be such as to do away with the absolute rigidity of the amendment as it stands. It should give scope for trying out further plans honestly with some margin for adjustment to local situations and the settled views of particular communities. It should admit of different modes or types of prohibition, or control in different localities in case Congress approves. It should aim at keeping control in the nation, and committing details and initiative to the states. (2) It should be such as to conserve the benefits of the present situation by national and state repression of saloons and open drinking places and yet permit, where demanded by public opinion, an honest, general or local control of manufacture or importation and distribution, consistent with the minimum demand which otherwise, in very many localities at least, will tend to bring about a regime of nullification or defiance of law. (3) It should allow of attempts by general or nationally approved local systems of control to do away with the enormous margin of profit which is at the bottom of wide-spread corruption and general lawlessness. (4) It should allow of allaying the sources of resentment and irritation di-

rectly and in accord with the spirit of the law instead of impelling to courses inconsistent with the spirit, if not also the letter of the law, and inviting disrespect for the legal ordering of society. (5) It should allow of adjustment to local public opinion so as to do away with the strain on courts and prosecuting machinery involved in the attempt to force an extreme measure of universal total abstinence in communities where public opinion is strongly opposed thereto, while subjecting the means of adjustment to national approval and so insuring against the return of the saloon anywhere. (6) It should involve a minimum of interference with the existing system and a possibility of retaining it or returning to it as communities are or become ready for or reconciled to it.

It would seem wise to eliminate the provision for concurrent state and national jurisdiction over enforcement contained in the second section as the amendment stands. This provision has not accomplished what was expected of it, and there are no signs that it will ever do so. It is anomalous to have two governments concurrently enforcing a general prohibition. Action on the part of the states cannot be compelled. If it comes, it will come voluntarily by state enactment and enforcement of state law. The states can do this without any basis in the federal Constitution.

X

CONCLUSIONS AND RECOMMENDATIONS

1. The Commission is opposed to repeal of the Eighteenth Amendment.

2. The Commission is opposed to the restoration in any manner of the legalized saloon.

3. The Commission is opposed to the federal or state governments, as such, going into the liquor business.

4. The Commission is opposed to the proposal to modify the National Prohibition Act so as to permit manufacture and sale of light wines or beer.

5. The Commission is of opinion that the cooperation of the states is an essential element in the enforcement of the Eighteenth Amendment and the National Prohibition Act throughout the territory of the United States; that the support of public opinion in the several states is necessary in order to insure such cooperation.

6. The Commission is of opinion that prior to the enactment of the Bureau of Prohibition Act, 1927, the agencies for enforcement were badly organized and inadequate; that subsequent to that enactment there has been continued improvement in organization and effort for enforcement.

7. The Commission is of opinion that there is yet no adequate observance or enforcement.

8. The Commission is of opinion that the present organization for enforcement is still inadequate.

9. The Commission is of opinion that the federal appropriations for enforcement of the Eighteenth Amendment should be substantially increased and that the vigorous and better organized efforts which have gone on since the Bureau of Prohibition Act, 1927, should be furthered by certain improvements in the statutes and in the organization, personnel, and equipment of enforcement, so as to give to enforcement the greatest practicable efficiency.

10. Some of the Commission are not convinced that Prohibition under the Eighteenth Amendment is unenforceable and believe that a further trial should be made with the help of the recommended improvements, and that if after such trial effective enforcement is not secured there should be a revision of the Amendment. Others of the Commission are convinced that it has been demonstrated that Prohibition under the Eighteenth Amendment is unenforceable and that the Amendment should be immediately revised, but recognizing that the process of amendment will require some time, they unite in the recommendations of Conclusion No. 9 for the improvement of the enforcement agencies.

11. All the Commission agree that if the Amendment is revised it should be made to read substantially as follows:

> Section 1. The Congress shall have power to regulate or to prohibit the manufacture, traffic in or transportation of intoxicating liquors within, the importation thereof into and the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes.

12. The recommendations referred to in conclusion Number 9 are:

1. Removal of the causes of irritation and resentment on the part of the medical profession by:

(a) Doing away with the statutory fixing of the amount which may be prescribed and the number of prescriptions;

(b) Abolition of the requirement of specifying the ailment for which liquor is prescribed upon a blank to go into the public files;

(c) Leaving as much as possible to regulations rather than fixing details by statute.

2. Removal of the anomalous provisions in Section 29, National Prohibition Act, as to cider and fruit juices by making some uniform provision for a fixed alcoholic content.

3. Increase of the number of agents, storekeeper-gaugers, prohibition investigators, and special agents; increase in the personnel of the Customs Bureau and in the equipment of all enforcement organizations.

4. Enactment of a statute authorizing regulations permitting access to the premises and records of wholesale and retail dealers so as to make it possible to trace products of specially denatured alcohol to the ultimate consumer.

5. Enactment of legislation to prohibit independent denaturing plants.

6. The Commission is opposed to legislation allowing more latitude for federal searches and seizures.

7. The Commission renews the recommendation contained in its previous reports for codification of the National Prohibition Act and the acts supplemental to and in amendment thereof.

8. The Commission renews its recommendation of legislation for making procedure in the so-called padlock injunction cases more effective.

9. The Commission recommends legislation providing a mode of prosecuting petty offenses in the federal courts and modifying the Increased Penalties Act of 1929, as set forth in the Chairman's letter to the Attorney General dated May 23, 1930, H. R. Rep. 1699.

There are differences of view among the members of the Commission as to certain of the conclusions stated and as to some matters included in or omitted from this report. The report is signed subject to individual reservation of the right to express these individual views in separate or supplemental reports to be annexed hereto.

GEO. W. WICKERSHAM,
Chairman.
HENRY W. ANDERSON,
NEWTON D. BAKER,
ADA L. COMSTOCK,
WILLIAM I. GRUBB,
WILLIAM S. KENYON,
FRANK J. LOESCH,
PAUL J. MCCORMICK,
KENNETH MACKINTOSH,
ROSCOE POUND.

Washington, D. C., January 7, 1931.

SEPARATE STATEMENTS OF THE COMMISSIONERS

Separate Report of Henry W. Anderson

Contents

Introduction

This Commission was created for the purpose of making a "thorough inquiry into the problem of the enforcement of prohibition under the Eighteenth Amendment and laws enacted in pursuance thereof, together with the enforcement of other laws." The essential purpose was not so much to find that abuses existed in law observance and enforcement, for this was already known, as to ascertain the nature and extent of these abuses and the causes therefor, and to suggest definite and constructive remedies.

This purpose was clearly stated by the President in a brief address to the Commission at the time of its organization in which he said:

> "It is my hope that the Commission shall secure accurate determinations of fact and cause, following them with constructive, courageous conclusions, which will bring public understanding and command public support of its solutions."

After eighteen months of investigation and study the Commission is now submitting its report on the problem of prohibition enforcement. I am unable to agree with some of the discussion in the report, or to concur in some of the conclusions—especially Conclusions numbered 6 and 9 as they are expressed, and Recommendations 3 and 8. My chief objections to the report, however, are due to its failure to draw definite conclusions as to certain essential aspects of the problem, or to present constructive remedies. The right is

reserved therein to the members of the Commission to express their individual views as to any matters contained in or omitted from the report in separate or supplemental statements to be annexed thereto. I am signing the report subject to this reservation.

With the essential facts as stated in the report I concur. Confronted by these facts, I am forced to the view that the causes for existing conditions and the solution of the present problem must be sought in fundamental social and economic principles which are ignored or violated in the existing system of national prohibition. These causes should be critically analized to the end that they may be understood and effective remedies devised to meet them. The essential conclusions, both as to present enforcement and the enforceability of the existing law, should be clearly stated.

A constructive solution of this problem should now be proposed. It is my purpose to do this—to present as a substitute for the present system a definite plan of liquor control, in conformity with our scheme of government, based upon sound social, political and economic principles, the essential elements of which have been tested in our own experience, and which, if adopted, will in my view provide a solution of the problem.

The facts stated and discussed in the report of the Commission can lead only to one conclusion. The Eighteenth Amendment and the National Prohibition Act have not been and are not being observed. They have not been and are not being enforced. We have prohibition in law but not in fact.

The abolition in law of the commercialized liquor traffic and the licensed saloon operated entirely for private profit was the greatest step forward ever

taken in America looking to the control of that traffic. The saloon is gone forever. It belongs as completely to the past as the institution of human slavery.

On the other hand the effort to go further and to make the entire population of the United States total abstainers in disregard of the demand deeply rooted in the habits and customs of the people, ran counter to fundamental social and economic principles the operations of which are beyond the control of government.

As a result we are confronted by new evils of far-reaching and disturbing consequence. We are in grave danger of losing all that has been gained through the abolition of the legalized liquor traffic and the saloon. The fruitless efforts at enforcement are creating public disregard not only for this law but for all laws. Public corruption through the purchase of official protection for this illegal traffic is widespread and notorious. The courts are cluttered with prohibition cases to an extent which seriously affects the entire administration of justice. The prisons, State and National, are overflowing, but the number of lawbreakers still increases. The people are being poisoned with bad and unregulated liquor to the permanent detriment of the public health and the ultimate increase of dependency and crime. The illicit producer, the bootlegger and the speakeasy are reaping a rich harvest of profits, and are becoming daily more securely intrenched. The enormous revenues (estimated at from two to three billion dollars per annum) placed in the hands of the lawless and criminal elements of society through this illegal traffic are not only enabling them to carry on this business in defiance of the government, but to organize and develop other lines of criminal activity to an extent which threatens social and economic security. The country is growing restive under these

conditions. The situation demands some definite and constructive relief.

The liquor question is obscuring thought, dominating public discussion, and excluding from consideration other matters of vital concern, to an extent far beyond its actual importance in our social and economic life. It must be solved or the social and political interests of our country may be seriously compromised.

We should profit by the lessons of our own history. America was the only nation of the civilized world which had to invoke the horrors of civil war to rid itself of the blight of human slavery. We allowed emotion and prejudice to obscure thought, and tampered with the situation by evasion and compromise, with tragic results. We are doing the same today. The whole world, including America, after years of suffering, is in a condition of social unrest and economic depression. Confidence in the integrity and capacity of government is shaken. It is no time for tampering with this problem. A definite solution is demanded.

We learn from experience. Progress is attained through the constant process of trial and error. Organized society has not exhausted its resources for dealing with the liquor question. Between the one extreme of a legalized traffic conducted solely for private profit, and the other extreme of absolute prohibition, lies a great middle ground of unexplored territory. Social organization is never absolute; the truth is generally to be found in this middle ground.

The abolition of the legalized traffic conducted solely for private profit has cleared the field. Holding at any cost the position thus gained we can take it as a

point of departure for a new offensive against the existing evils. Then, by methods adapted to present conditions, based upon sound principles and experience, we can accomplish their defeat. If other means of evading reasonable social restraints are then devised we may by proper modification of the line of action conquer them, and continue in this process until through effective control and higher social development the ultimate objective shall be attained.

I

The Causes for Existing Conditions

No law can be enforced unless it has the general support of the normally law abiding elements of the community.

The conception of natural or inherent rights of the individual as limitations upon the power of government and of majorities has been generally accepted in America since the Declaration of Independence. Whether this is sound it is useless to enquire. The existence of this conception is a stubborn fact of first magnitude. The distinction in principle between temperance and absolute prohibition by law is manifest. Public opinion is substantially unanimous in support of the abolition of the legalized saloon. But a large number of those who favor temperance and are unalterably opposed to the commercialized liquor traffic, including many who do not use alcoholic beverages in any way, regard the effort to enforce total abstinence by law upon the temperate and intemperate alike as unsound in principle and as an undue extension of governmental power over the personal conduct of the citizen. They feel that the present law attempted too much—went too far in its invasion of personal rights. This state of opinion among a large and increasing proportion of the normally law abiding people of the country is an important factor in the situation. It has its sources in fundamental principles and political conceptions which are beyond the reach of government. This attitude of public opinion constitutes an insuperable obstacle to the observance and enforcement of the law.

Another fundamental cause for existing conditions is to be found in the character and structure of the Eighteenth Amendment. That Amendment is a rigid mandate controlling both Congress and the states. It is the first instance in our history in which the effort has been made by Constitutional provision to extend the police control of the federal government to every individual and every home in the United States. The practical and political difficulties which have resulted therefrom are manifest. It imposed upon the federal government the obligation to enforce a police regulation over 3,500,000 square miles of territory, requiring total abstinence on the part of 122,000,000 people who had been accustomed to consume over 2,000,000,000 gallons of alcoholic beverages per annum. This was certainly an ambitious undertaking for any government.

The cooperation of the several States was contemplated but the Amendment inevitably operated to defeat this expectation. It aroused the traditional jealousy of the States and the people thereof as to the right of local self-government in matters affecting personal habits and conduct. As a result no less than eight states, containing one-fourth of the entire population of the United States, either have no enforcement law or have repealed or voted to repeal such laws. The people of other states are obviously contemplating similar action. Many states are indifferent as to enforcement. Comparatively few are actively or effectively cooperating in the enforcement of the prohibition laws. In view of the statement of every Federal Director, or Commissioner of Prohibition, from the beginning, confirmed by the unanimous finding of this Commission, that the National Prohibition Act cannot be enforced without the cooperation of the states, this situation seems to require only a simple syllogism to demonstrate that this law cannot be enforced at all.

Even more important and controlling causes for the existing situation are to be found in the social, political and economic conditions to which the law is sought to be applied.

The Eighteenth Amendment and the National Prohibition Act undertake to establish one uniform rule of conduct as to alcoholic beverages for over one hundred and twenty million people throughout the territory of the United States. This large and widely scattered population contains elements of nearly every race in the world. Many of them are but recently derived from their parent stocks. They still cling, in a greater or less degree, to the social conceptions of the races from which they sprang, and to the habits and customs of their inheritance.

The social, political, and economic views of these elements and groups are correspondingly varied and often conflicting. This variety or conflict of view finds direct expression in their personal habits, and is reflected in the thought and political organizations of the communities in which they live. Some of the political divisions of the country have had centuries of existence with settled habits and fixed social customs. Others are but the recent outgrowths of frontier life and have all those characteristics of independence, and of resentments of social control, incident to pioneer conditions.

Few things are so stubborn and unyielding as habits and conceptions of personal or political conduct which have their roots in racial instincts or social traditions. As a consequence of this truth—so often ignored—the development of that social and institutional cohesion which is essential to the spirit and fact of nationality is always a matter of slow and painful evolution. It cannot be hurried by mandate of law. It comes only

through the influence of association and understanding, through the development of common ideals and interests, the reluctant yielding of individual freedom to the demands of social organization.

Experience indicates that if the effort is made to force this development by legal mandate the result is social discomfort and resentment, frequently finding expression in passive refusal to observe the law, or in resistance. If normal development is sought to be unduly limited or restrained it finds expression in social unrest or disorder and, if carried to its ultimate conclusion, in revolution.

The operation of these principles has been manifest in every stage of the social and political life of the United States. The original colonists came to America with minds strongly influenced by the principles of individual liberty which dominated the thought of Europe during the seventeenth and eighteenth centuries. This individual consciousness was accentuated by conditions of life in the New World. It found its first united expression in the American Revolution. Even then these separate and independent communities were held together with difficulty for the protection of their common interests and in the face of a common enemy. When the war was over they, jealous of any central control, immediately began to draw apart.

The resulting disorganization and the dominant influence of a few great leaders made possible the adoption of the Federal Constitution. The declared purpose of that instrument was to bring about a "more perfect union". The people were not ready for nationality. It was not attempted. The federal government was given control only over matters of general interest. The states remained as agencies through which the varied and sometimes divergent interests

and social conceptions of the several localities might find expression; as schools for the training of the people in the difficult adventure of self government and for the gradual development of social, political, and economic life into a more cohesive nationality.

As the older communities became settled and individual freedom of action became limited by necessary social restraints, the more adventurous elements moved on to the frontier. New states were organized to begin again the difficult process of social adjustment. The frontier only disappeared late in the last century.

In the meantime successive tides of immigration have brought into this confused and divergent social order new elements of various races, customs and ideals which have created strong cross currents in the stream of American life and have tended to affect its flow.

Under modern conditions the progress of the United States toward that stage of social uniformity and cohesion which would admit of national regulation of matters affecting personal habit and conduct has been more rapid than that of older nations, but it appears yet to be far from actual attainment. The social and economic outlook, habits, and customs of the urban and industrial communities of the East are necessarily different from those of the agricultural communities of the South or West, of the more recently settled areas of the frontier. Those of different races and nationalities are still more widely divergent. If a topographic map should be made of the social conditions and stages of institutional development of the entire United States, it would present an aspect as rough, and with variations as acute, as the physical surface of the country. If we should then undertake to fit one rigid plane to every part of this highly irregular and

unyielding surface, it would give some idea of the difficulties of adjusting a national law of this character to every community and to each individual of the United States.

These conditions are clearly reflected in the attitude of individuals and communities toward the observance and enforcement of the prohibition laws. Those who had been accustomed to use alcoholic beverages—who saw no harm in their moderate use and no reason why they should be denied this privilege — sought other sources of supply in disregard of the law. Public irritation and resentment developed. There was a revival of sectionalism due to the feeling in urban and industrial communities that the law was an effort on the part of the agricultural sections to force their social ideals upon other sections to which those ideals were not adapted. On the other hand there was, on the part of those communities which favored the law, resentment against those which resisted its enforcement. These things are not only prejudicial to the observance and enforcement of the prohibition law; they go much further, and affect adversely the normal operations of our entire national life.

The economic conditions to which the Amendment and law are to be applied are of equally fundamental character and of even more conclusive significance. It has already been stated that prior to the adoption of the Amendment the people of the United States consumed more than two billion gallons of alcoholic liquors per annum. Neither the Amendment nor the law could eradicate this demand. It had its sources in the customs and habits of the people themselves. The business and agencies through which the demand had been legally supplied were destroyed. The supply within the country, except that in private possession or

in bonded warehouses, disappeared. The legal channels of supply from beyond our borders were obliterated. The demand remained.

Where a demand exists and that demand can be supplied at an adequate profit, the supply will reach the point of demand. Interference with or obstruction of the sources or channels of supply may affect the cost, and thus for a time reduce the effective demand as to those who are unable or unwilling to pay the increased price, but to the extent that the sources of the demand will provide the profit necessary for the supply the demand will be met. It was due to this elementary law that in the earlier years of prohibition, before the agencies of illegal domestic production could be developed, the purchase and use of alcoholic liquors were more largely confined to persons of means who could afford to pay the higher cost.

The operation of this economic law explains the failure of state regulation and state prohibition. State regulation undertook to control the supply at the point of outlet and sale. It did not touch the demand. Generally no effort was made to control the amount or source of supply or the profit. Such regulation therefore operated to increase the pressure of the supply at the point of attempted control and thus to increase sales to overcome this obstruction. It thus tended to augment the very evils which it sought to prevent. State prohibition undertook to control the supply at its source or point of entry but could not eradicate the demand, hence the supply reached the point of demand either through channels beyond the control of the state or through illegal production within the state.

When national prohibition was adopted the operation of this principle was merely extended. During the earlier period of national prohibition the existing sources of supply were the liquor in bonded warehouses, the diversion of industrial alcohol and the smuggling from other countries. Since it was less difficult to open illegal channels for a supply which already existed than to create illegal agencies for new production, the supply during these earlier years came largely from these sources. The withdrawals from bonded warehouses upon illegal or improperly granted permits were at first considerable. This was afterwards checked or the supply was exhausted. The diversion of industrial alcohol was extensive in the earlier years of prohibition, and appears to have reached its maximum at about 1925 and 1926. As other sources of domestic supply have been developed this has decreased. Smuggling reached its highest point at about 1926. With the development of less costly means of domestic supply smuggling has gradually dedecreased until it is now in large measure confined to the more expensive foreign wines and liquors, purveyed to people of means. In the meantime methods and agencies of illicit distilling, brewing and wine making have been developed and improved to a point where the existing demand is to a large extent supplied from these sources. The amount and quality are steadily rising and the prices falling. There is clear evidence that the drinking among some of the less prosperous classes of the population is increasing to a corresponding degree. Unless means are devised which will be far more effective than any yet employed or suggested to check this process it will inevitably continue, regardless of the present law, until the demand reaches the point of saturation approximating that which existed prior to the adoption of the Eighteenth Amendment.

It was the hope of many that with National Prohibition there would be a gradual decrease in the de-

mand for alcoholic beverages until in a reasonable time it would substantially disappear. In the present study of the subject nothing has been discovered in past experience or in operation of social and economic principles which would furnish any foundation for this hope. The lessons of human experience, the operations of economic law and the evidence as to present tendencies all indicate the contrary. In addition to the essential principles stated, the existence of an unregulated supply of alcoholic liquors at falling prices, the psychological appeal in gratifying a forbidden taste, the adventure of breaking a sumptuary law and the romance which surrounds the leaders of this illicit traffic, all have their profound effect, especially upon youth, and clearly indicate that the hope that there would be a decrease in demand was and is an illusion.

It would be difficult to find a more complete example of the force of the inexorable laws of supply and demand and of the principles discussed in their operation against the government than in the history and effect of prohibition in the United States.

This need not continue. The essential principles of successful strategy applied by organized society against its enemies, military or civil, are always the same—to hold them in check as far as practicable, while striking at their basic resources. With the illegal liquor traffic the prime resource lies in the profits of the business. Remove this and the business will end. The irresistible forces of social and economic law may be directed against this traffic with quite as decisive results as they have hitherto, under state regulation and state and national prohibition, been directed against the government and in favor of the lawbreaker. This may be demonstrated by a few simple and familiar illustrations from both military and economic history.

In the Civil War in America the northern armies, with all the power and resources of the federal government, could not get to Richmond in four years. In the meantime the navy was closing the ports and cutting off the supplies of food and munitions. When this was finally accomplished the southern armies were helpless. The more men they had the weaker they were. They surrendered in the field. Also in the World War the armies were blocked. It then became a question of supply. When the submarine campaign failed and the allied blockade succeeded with the addition of American resources, the armies of the central powers crumbled. The same was true of the Grand Army of Napoleon at Moscow. The Russians did not fight him directly. They cut off his supplies. The result was prompt and decisive.

The same principles have operated in our regulation of industrial corporations. So long as the states or the federal government undertook to regulate railroads by direct or frontal attack it was of no avail. The resources of these corporations were too large, their influence too great. They controlled industry through rebates and sometimes exercised their influence through corruption. Their activities affected the entire social and business life of America. With their immense financial and political power the problem was far more difficult than the present problem of the control of the liquor traffic. When the federal government, through the Interstate Commerce Commission, took control of the revenues through the fixing of rates, limited the return based on value, controlled the expenditures for construction and operation as well as the issue of securities, fixed the method of keeping ac-

counts, regulated the operations, stopped rebating and eliminated passes and special privileges—thus controlling the sources of their power—the problem was solved. These measures of control must be constantly perfected and changed to meet new conditions, but the Commission has flexible powers readily adapted to this end. We have thus established in principle and in operation the best and most effective system of public regulation of privately owned and operated agencies in the world, and have solved a problem which once seemed insoluble in the face of the opposition of the most powerful financial interests in America. They now accept and approve the system.

The same is true as to the Federal Reserve Banks. The most difficult of all things to regulate and control is money. For nearly a century our banking system was a source of constantly recurring trouble. Finally the Federal Reserve Banks were established, with profits limited to a fixed percentage on the capital, owned and operated privately under government regulation. These institutions are not primarily interested in profit, for beyond the limited return this goes to the government. Both national and state banks are members of the system. The Federal Reserve Board with large and flexible powers can meet changing conditions in different sections of the country. In its essentials the problem which vexed America for years and caused many social and economic evils is solved.

The same principles that operated successfully in military strategy and in the regulation and control of legal, yet recalcitrant, corporate interests may be applied to the struggle of organized society against lawlessness in any form, including the liquor traffic. So long as human nature remains unchanged and lawlessness is profitable it will persist. Make lawlessness

unprofitable by holding it in check as far as practicable and by using the forces of social and economic law against it, instead of trying to enforce direct control in violation of those principles, and the results will be successful.

These principles of economic law are fundamental. They cannot be resisted or ignored. Against their ultimate operation the mandates of laws and constitutions and the powers of government appear to be no more effective than the broom of King Canute against the tides of the sea.

There are other secondary or contributing causes for existing conditions such as matters of organization and incidents of enforcement, some of which are discussed in the report. I do not concur in the view there expressed that "general unfitness" of the organization, especially in the earlier years of national prohibition, was in "large measure" responsible for the "public disfavor in which prohibition fell". The difficulties encountered in the creation of the organization and training of personnel for a task of this character are manifest, but these cannot properly be appraised apart from a consideration of the conditions of social and economic confusion in the period following the World War. There was, and probably is, a considerable amount of bribery and corruption in the organization. This cannot be condoned. It is only fair, however, to the men engaged in this task to consider its nature and circumstances before issuing verdicts of general condemnation based upon individual cases of delinquency. Men have moral as well as physical limitations. If the people provide a law of this character and then send into action for its enforcement, throughout the territory of the United States, a small

field force of from 1,000 to 1,500 underpaid men against a lawless army running into tens of thousands, possessed of financial resources amounting to billions, ready to buy protection at any cost, the people must expect unsatisfactory results and heavy moral casualties. These conditions, to the extent that they have existed, have naturally tended to discredit the law. The same is true as to public killings, unwarranted searches and seizures, deaths from poisoned alcohol and other similar incidents of enforcement. There is a feeling on the part of many people, including earnest supporters of this law, that there must be some effective means of solving this problem which would not require the shooting of people upon the highways, the invasion of the sanctity of the home or the poisoning by the government of substances which are known to be used in beverages—especially where the purchase and use of such beverages is not even an offense against the law. These incidents of enforcement organization and method are deplorable. They have been contributing causes for the present state of irritation and resentment. I cannot find, however, that they have been or are fundamental or controlling factors in the larger situation. The understanding and ultimate solution of this problem must be found not in these incidental causes, but in those major causes which have their sources in the social and economic principles by which society itself is controlled, which human laws, constitutions and governments are powerless to resist.

It might be within the physical power of the federal government for a time to substantially enforce the Eighteenth Amendment and the National Prohibition Act. But under existing conditions this would require the creation of a field organization running high into the thousands, with courts, prosecuting agencies,

prisons, and other institutions in proportion, and would demand expenditures and measures beyond the practical and political limitations of federal power. This would inevitably lead to social and political consequences more disastrous than the evils sought to be remedied. Even then the force of social and economic laws would ultimately prevail. These laws cannot be destroyed by governments, but often in the course of human history governments have been destroyed by them.

Upon a consideration of the facts presented in the report of the Commission, and of the causes herein discussed, I am compelled to find that the Eighteenth Amendment and the National Prohibition Act will not be observed, and cannot be enforced.

II

Consideration of Suggested Remedies

Many plans for meeting the existing situation have been suggested. They tend either to ignore essential limitations in our system of government, or are opposed to the lessons of experience, or violate fundamental social or economic principles. Only a few of the more important will be mentioned.

The proposal for the repeal of the Eighteenth Amendment, remitting the problem to the control of the several states, is strongly urged. I am unqualifiedly opposed to such repeal.

The repeal of the Amendment would immediately result in the restoration of the liquor traffic and the saloon as they existed at the time of the adoption of the Amendment in those states not having state prohibition laws. The return of the licensed saloon should not be permitted anywhere in the United States under any conditions.

For fundamental reasons already discussed state regulation and state prohibition substantially failed before the adoption of the Eighteenth Amendment. With further improvements in means of transportation and other social and economic changes which have since taken place, those measures would be even less effective today. I can see no sound reason for going back to systems which have already failed, and which afford no reasonable probability of future success.

As to the repeal of the National Prohibition Act, leaving the Amendment unchanged, the objections seem equally conclusive. This would be open nullification by Congress of a Constitutional provision. The repeal of the law would leave the Amendment without any provision for its enforcement. It would remain

as a limitation upon the powers of both Congress and the States. No system of regulation or control—except State prohibition—could be adopted or continued since this would be prohibited by the Amendment. The license to the violators of the law and general social confusion which would result are difficult to measure.

The proposal that the law be amended so as to permit the sale of light wine and beer is objectionable both on principle and from a practical standpoint. If the limit of alcoholic content were placed so low that the beverage sold would not be intoxicating in fact it would not satisfy the demand. If it were placed high enough to be intoxicating in fact, in would to that extent be nullification of the Amendment. Under this plan we would have saloons for the sale of light wine and beer, and bootlegging as to liquors of higher alcoholic content. We would then have the evils of both systems and the benefits of neither. The opportunities for evasion of the law as to prohibited liquors would be enormously increased. Norway tried a system of prohibition as to liquors of an alcoholic content of more than 12 per cent. It failed. There were international complications involved, but chiefly because of the domestic evils resulting from the system, it has been abandoned and a system similar in principle to that of Sweden has been substituted.

The various suggestions as to National or State dispensaries cannot be accepted, for obvious reasons. Whatever may have been the results in other countries, a system of this kind is certainly not adapted to the political conditions or to the dual system of government in the United States. Our past experience with this system has been unfortunate.

I regret that I can not concur in the view that further trial be made of the existing system before reaching a

final conclusion as to its enforceability. Aside from the difficulties as to the future determination of the results of this trial, in my view a study of the facts and existing conditions, as presented in the report, and of the fundamental and controlling causes therefor, leads inevitably to the conclusion that the Amendment and law can not be enforced.

I concur in the recommendation of the report that the Eighteenth Amendment be modified as therein stated. But the National Prohibition Act would still be in force. No substantial change in the Act, or substitute therefor, is suggested. We cannot stop there. We have found that the law is not being observed or enforced. We have found causes for these conditions which clearly show that it cannot be enforced by any means within the reasonable limitations of federal power. An effort must be made at least to find some effective solution for the problem. I shall therefore go further and present as a substitute for the existing law, should the Amendment be modified, a complete plan of liquor control.

III

Proposed Plan of Liquor Control

Any plan for the control of the liquor traffic must meet three fundamental requirements, (1) it must be based upon sound social, political and economic principles; (2) it must be adequate in scope and structure to meet every element of the problem; and (3) it must be practical in operation.

1. The principles and requirements of the plan

The essential principles and requirements to which any plan of liquor control must conform may be briefly stated.

(a) It must preserve the benefits which have been gained through the abolition of the legalized liquor traffic and the saloon conducted solely for private profit.

(b) It must provide for the effective control and regulation of individual conduct with respect to the use of alcoholic liquors to the extent that such conduct is anti-social or injurious to others; but it must respect and protect freedom of individual action when that is not anti-social or injurious to the community. This will remove public irritation and resentment against the law, and will insure that support from the normally law-abiding elements of the community which is essential to its observance and effective enforcement.

(c) It must be sufficiently flexible to admit of ready adaptation to changing conditions and methods of evasion. It must restore the traditional balance between the functions of the Federal and State governments, defining the duties of each with sufficient clearness to prevent overlapping, and leaving sufficient elas-

ticity to permit of mutual adjustment. It must give to the federal government adequate power to insure uniformity of control as to those aspects of the problem which are of general concern or proper federal cognizance. It must leave to the states the maximum of discretion consistent therewith, both as to the policy to be adopted in dealing with the problem, and as to methods of local control, to the end that it may be adapted to the public sentiment of the people and to local conditions within the states. This would permit of the ready adjustment of the plan to the varied social, racial and institutional conditions existing throughout the United States and within the several states.

(d) It must conform to the requirements of sound economic principles, and recognize the irresistible power of the law of supply and demand. It must take the profit out of every phase of the illegal traffic, and employ the force of economic law to defeat that traffic, instead of attempting to oppose the principles, permitting them to operate in favor of the law-breaker. We have seen that the failure to conform to this requirement has operated to defeat every system for the regulation or control of the liquor traffic in America.

(e) Finally, the profits of the liquor traffic should be used for the destruction of that traffic and the prevention of crime. To the extent that the demand for alcoholic beverages cannot be prevented it must be tolerated, but the supply should be restricted to the full extent that this can be done without opening the way for the profitable operations of the illegal traffic. To this end the demand, insofar as it cannot be prevented, should be supplied by privately owned and operated agencies created for this purpose under strict government regulation. They should be required to supply wholesome products at

prices and under conditions to be fixed by Federal and State commissions. By thus furnishing a better product at lower prices it would at once become impossible for the illicit traffic to continue. The profits in excess of a return, fixed by law, on the capital invested should go into the treasury of the federal or state government, as the case might be. After paying all expenses of the governments in connection therewith the remainder of such profits should be segregated into special funds, federal or state, to be appropriated by Congress and the respective state legislatures in their discretion for education, public health, the improvement of housing conditions and other social purposes of similar nature. In this way, instead of having the proceeds of this traffic go to finance lawless and criminal activities as at present, they would be used to eliminate the breeding grounds of crime and ultimately to remove those conditions which are most potential in inducing the excessive use of intoxicating beverages.

2. The Scope and Structure of the Plan

I

It is proposed that as soon as practicable, by appropriate action of Congress and of the States, the Eighteenth Amendment be modified or revised, as recommended by the Commission, to read as follows:

> "The Congress shall have power to regulate or to prohibit the manufacture, traffic in or transportation of intoxicating liquors within, the importation thereof into, and the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes."

This modification would bring the Amendment into conformity with the traditional principles of our system of government. By conferring power upon Congress it would give to the Amendment the necessary flexibility. The power to prohibit should be given to the end that if the proposed modification is adopted the National Prohibition Act would continue in force thereunder until Congress enacted some other plan, thus avoiding any break in the system of control and preventing the restoration of the saloon anywhere in the United States. Under the proposed Amendment as modified, Congress would have full power (1) to continue the present system of absolute national prohibition, or (2) to remit the matter in whole or in part to the States, or (3) to adopt any system of effective control. Since greater flexibility is one of the outstanding needs of the present system, this modification should be made even if the policy of absolute national prohibition is to be continued.

II

That Congress should then create a bipartisan National Commission on Liquor Control, which should have full power under such laws as Congress might enact to regulate and control the manufacture, importation, exportation, transportation in interstate commerce, and also the sale, as and to the extent hereinafter stated, of intoxicating liquors of more than one-half of one percentum alcoholic content, for beverage purposes; and to exercise similar regulation and control over alcoholic liquors for other purposes, and of industrial alcohol, to the full extent necessary to render the system of control of such liquors for beverage purposes effective. The powers of the Commission as to

the regulation and control of the traffic indicated and of the agencies created for the purposes thereof should be fully as complete as those of the Interstate Commerce Commission over railroads and should in every respect be adequate for the purposes of the plan.

III

That Congress should create a National Corporation for the purposes of the plan, all of the stock of which should be privately owned, or in its discretion a number of such corporations, such as one for each judicial circuit, with the powers and duties generally stated below. Since one corporation, with branches throughout the country, would simplify operation and regulation, the plan will be stated on that basis. This corporation should have the usual powers of a commercial corporation to the extent necessary for the purposes of the plan except as herein limited. It should be vested with the exclusive right and power (to be exercised under the control and regulations of the National Commission) of manufacture, importation, exportation and transportation in interstate commerce, and of sale as and to the extent hereafter stated, of all alcoholic liquors for beverage, as well as for medicinal and sacramental purposes in, within or from the territory of the United States or subject to the jurisdiction thereof. The charter of the corporation should contain appropriate provisions for amendment or repeal by Congress; for the issue and redemption of its securities; limiting the return upon its capital; and providing for its operation and management, all of which should be subject to the control of the Commission.

The financial plan of the corporation, to be fixed in its charter and in operation subject to the control of

the Commission, should provide for an issue of stock of only one class to be sold at par, to be entitled to cumulative dividends limited to such rate upon the actual capital invested as might be determined by Congress, or with its authority by the Commission. A rate of not less than 5% nor more than 7% is suggested. The corporation should be permitted to retain from its earnings not exceeding 2% per annum on its invested capital as a reserve against contingencies and as an amortization fund for the retirement of its capital should Congress desire to change the plan of control, or for any other reason. This fund should be held, used and invested under orders of the Commission. All earnings in excess of the permitted return and amortization fund should be paid into the treasury of the United States to be held as a special fund to be disposed of by Congress as hereinafter provided.

In the event of the liquidation of the corporation for any cause, it should be done under the direction of the Commission. After payment of its obligations and the par value of its stock with any accumulated dividends thereon the remainder of its assets, including any balance of the reserve or amortization fund, should be paid into the treasury of the United States to be held as a part of the special fund.

IV

It should be required by law that alcoholic liquors for beverage, medicinal or sacramental purposes of over one-half of one per cent alcoholic content by volume (not including industrial alcohol) might be manufactured, imported, exported, transported in interstate commerce, or sold as and to the extent thereafter

stated, solely by the National Corporation, or its branches approved by and operating under such bonds as to their employes as might be prescribed by the Commission. The Commission should have power to prescribe the alcoholic content of the various kinds and grades of liquors.

All alcoholic liquors so acquired or produced should be promptly placed in bonded warehouses of the Corporation, which should be located at convenient points throughout the country approved by the Commission. Before shipment every container thereof should bear a label of the Corporation showing the kind, amount and alcoholic content of the liquor contained therein, certified by the Corporation. The Corporation should only be allowed to make sales and shipment of such liquors in any state to a corporate agency created by such state, similar in general character to the National Corporation, for the purpose of the purchase and distribution and local sale of such liquors within the state if and to the extent permitted by the laws thereof. If the State at its option elected not to adopt the system it could establish or continue prohibition, in which event it would have to enforce its own laws within the State, but the federal law would not permit sales or shipments into that State by the National Corporation except through the State in bond. Every aspect of the operations outlined would be subject to the control and regulation of the Commission and appropriate penalties would be prescribed for violations of the law or of such regulations.

V

The price at which the various liquors should be sold by the National Corporation should be fixed or approved by the Commission after hearing in proper cases, and should be posted at appropriate places. The prices should be based primarily upon and scaled upward on the basis of alcoholic content—the lower prices on low alcoholic content liquors such as light wine and beer, and the highest prices practicable on high alcoholic content liquors, such as whiskies and brandies. The prices should be such as on the one hand to limit the use and, on the other hand, not high enough to permit the illegal traffic in or sale of such liquors. The price should be adequate to provide for the operating requirements of the National Corporation on the basis of accounting and expense to be approved by the Commission; for a small ad valorem tax which might be imposed by the government to provide for its expenses in connection with the system; for the permitted return upon the invested capital of the Corporation; and for the reserve or amortization fund. The entire remaining revenue would go into the special fund in the treasury of the United States to be disposed of by Congress. The price should be as nearly uniform as possible throughout the country.

VI

The National Corporation should sell and transport only to state agencies created for the purposes of local distribution and sale within the state. This would be entirely optional with the State. If any State desired to establish or continue prohibition it could do so. In that event it would have to enforce its own law with-

in the State, but would be protected by the federal government from any supply from outside. If a State elected to go into the National system it would create a State commission and a State corporation similar in character and structure to the National agencies discussed, with similar powers and functions within the State. The State agencies would have to conform in general outline to a plan prescribed by the National Commission in order to insure uniformity throughout the country as to matters of general consequence, but as to local questions they would be subject entirely to State control and could easily be adapted to the varied social and economic conditions within the State. Matters of price, return and other financial and operating details within the State would be controlled by the State commission along the same lines as already discussed, and the surplus revenues from operations within the State would go into the State treasury as a special fund to be disposed of by the legislature of the State. The State agency would purchase from the nearest branch of the National Corporation, and shipments would be made in bottles or containers under the seal of that corporation to such branch of the State agency as might be directed. The State agency would, with the approval of the State commission, establish branches and local sales agencies at convenient points. The State could permit local option as to the establishment of a sales agency in any given community. These agencies should be in buildings where no other commercial activity is carried on, should be open only at certain hours of the day, on such business days as might be prescribed by state law or regulation. The sales employes should be required to give surety bonds

to insure good character and protect against abuses. Sales should be permitted only in original packages or units under seal of the National Corporation and not opened within a limited distance of the agency. Other necessary regulations would be prescribed by the State commission as to local operations.

Sales should be limited to persons holding license books, which should be issued by the State agency nearest the fixed abode or voting place of the holder under regulations of the Commission. The holder should be required to sign an agreement in this book to account for the purchases made thereunder at any time on request and to the satisfaction of the State corporation or State commission. This book should be good for purchase at any state agency in the United States, subject to regulations of the National and State commissions. All purchases should be entered in this book and the entry signed by the employee making the sale. The amount of wine and beer below an alcoholic content to be fixed from time to time by the appropriate Commission might or might not be limited, but the amount of high alcoholic liquors should be limited to a reasonable quantity in any month, having regard to the proper use by the purchaser with a view to limiting the use and preventing purchases for illegitimate purposes. The requirement for accounting for purchases would further protect this situation. Special permits could be issued under regulations upon showing of special requirements, and provision could be made for limited special books for foreign visitors and transients. Upon conviction for violation of the law, for drunkenness or other cause provided by law, the book could be cancelled for such time as might be prescribed. All state and national regulations should

seek to restrict sales and use as far as may be done, without leaving a possible demand which could be supplied at a profit by bootleggers. The essential purpose must be to drive the illicit producer and trader out of business and keep them out by directing against them the force of the law of supply and demand, and fixing prices with which they cannot possibly compete. Within these limits the regulations should operate to reduce the demand. No advertisement of alcoholic liquors or solicitations of purchasers should be permitted.

VII

The excess revenues from the operations of the national corporation would go into the federal treasury, and those from the operations of the state corporation and its branches would go into the state treasury. These revenues, which now go entirely to the lawless and criminal classes, would undoubtedly be very large. They would be subject to disposition by Congress and the state legislatures respectively. They should be set aside as special funds in the respective treasuries, and used for educational purposes, especially as to the evils resulting from the use of alcoholic beverages and for the eradication and prevention of those conditions which cause excessive drinking, or which tend to create a demand for intoxicating beverages.

To this end it is proposed that the revenues derived by the federal government from the plan, including the excess earnings of the National Corporation, should be set aside in the Treasury as a special fund from which the expenses of the Government, including those of the National Commission incurred in connection with the system, should first be paid. The Commission

should be required to collect accurate facts and statistics as to the operation and social and economic results of the system in the United States and of systems of liquor control in all foreign countries and the effects of such systems, and of the use of intoxicating liquors upon individual, social and economic life; to publish the same in bulletins for distribution without cost to colleges, schools, libraries, and other educational agencies, and to individuals. These publications should be in popular terms but should be scientific and factual, similar to those now issued by the scientific agencies of the government. The cost thereof, including distribution, should be paid out of this fund.

Such proportion of the remainder of the fund as Congress might determine should be distributed among the several states upon an equitable basis and should be used by them as stated below. The remainder of the fund should be appropriated by Congress to be used by the proper federal agencies for scientific investigations of social and economic conditions related to crime and dependency at their source, to the extent that these matters are within the proper cognizance of the federal government.

The larger proportion of the National fund could be apportioned to the states since matters of social regulation and improvement are properly within their jurisdiction. After paying the expenses of the State Commission and other regulation expenses, the State could use the surplus revenues derived from the excess earnings of the State Corporation (if created), together with its proportion of the National fund, for education, public health (including medical services for the poorer rural districts) the improvement of housing conditions and elimination of slums urban and rural,

the prevention and abatement of delinquency, the care of the poor, the improvement of economic security, and other similar social activities which tend to eliminate the sources of crime and delinquency, and to remove those conditions of social and economic hardship and stress by which the demand for alcoholic stimulants is largely induced.

3. The practical operation of the plan

Every principle and feature of this plan, except as to the specific use of excess profits, is now in operation either in the present system of government regulation of railroads, or in the Federal Reserve Bank system, or in both. The principle and practice of private ownership and operation under government regulation are too well established to require discussion. Even as to the use of the excess profits (which is only a suggestion and not an essential part of the structure of the plan) the same principle is in operation with respect to both railroads and banks. The profits of railroads in excess of 5¾ per centum return fixed on value are subject to recapture and use under government control for the development of the transportation services. The profits of the Federal Reserve Banks in excess of the limited return on capital and a permitted reserve go into the federal treasury.

Any statement of a plan of this character covering so large a field may seem complicated. In operation it would be simple. All liquor imported or produced would be the property of the National Corporation, and would be put into bonded warehouses at convenient points under strict government regulation and control. Accurate accounts thereof would be kept as prescribed by the Commission. It could be sold and

transported only to state agencies under seal of the National Corporation and proper regulations. There would be no leakage in this process because (1) the essential employes of the Corporation would be bonded, (2) the product would have to be accounted for to the Commission, and (3) there would be no demand for or profit in illegal liquor so long as a reasonable supply could be obtained legally. Smuggling and illicit production would end since no one would buy bootleg liquor of doubtful quality at high prices when good liquor could be obtained at fair prices. The profit in the illegal traffic would be eliminated.

When the liquor reaches the State agency it could be sold only under national and state regulations. Sales could be made only to holders of permit books. These books would be issued under regulations of the State Commission, with safeguards against transfer or improper use, and would be subject to cancellation for any violation of the laws or regulations. The amount which any holder could purchase, certainly of high alcoholic content liquors, would be limited as far as it might be possible to do so without opening a demand for an illegal supply. The holder would be required to sign an agreement to account for all purchases on request. The amount purchased would be entered in the book and the entry signed by a bonded employe of the corporation. The liquor so purchased would be in the original package or container of the National Corporation, bearing its seal and showing the alcoholic content. The prices to the purchaser would be fixed from time to time by the State Commission to meet existing local conditions, subject to adjustment by the National Commission for the purpose of general uniformity as in the case of intrastate rates of railroads.

If a State elected to continue prohibition it could do so. It would enforce its own laws within the State. Full protection would be provided against shipments from without the State. There would be only two possible sources of supply of legal liquor. The federal law would prohibit shipments of liquor by the National Corporation into such State. This source would be completely controlled. Purchases of liquors under the plan in an adjoining state would also be effectively controlled. No liquor could be obtained except on permit books issued as above stated. The amount of the purchase would thus be limited to personal requirements, and the purchaser would have to account for the same on request of the State agency. It would be impossible to secure liquor for illegal shipment or sale.

Illegal production in an adjoining State would be prevented by economic law as well as by federal and state statutes. The illegal producer could not manufacture and sell bootleg liquor in competition with good liquor supplied by the State agency at lower prices than he could meet. Deprived of a local market, he certainly could not manufacture for the purpose of shipment into another State having prohibition, in violation of the laws of both States and of the federal law. The door would thus be effectively closed against every source of supply from without the State.

An analysis of this plan of control both as to structure and operation shows that it meets every aspect of the present problem; that it is in conformity with the principles and requirements outlined above. It is predicated upon our own successful experience in dealing with problems involving similar principles of private ownership and operation with adequate government regulation. It fully preserves the benefits

gained through the abolition of the legalized traffic and the saloon. It is flexible and may readily be adapted to varying local conditions as well as to new situations or new efforts at evasion which may arise. It is in conformity with our political system, contemplates effective action of both state and federal governments in their appropriate jurisdictions, and the adjustment of these activities to each other with a maximum of discretion to the States consistent with effective liquor control.

It also conforms to essential economic principles and brings the force of these principles into play against the smuggler, illicit producer and bootlegger, instead of permitting them to operate as at present against the government and in favor of the criminal class. To the extent that there is an unavoidable and existing demand for alcoholic beverages, it meets that demand by legal but controlled supply of wholesome products, instead of having it supplied with dangerous or deleterious stuff through illegal channels. It takes from the lawless and criminal classes the enormous profits of the present illegal traffic, by which public service is being corrupted, and crime developed and organized, and applies these resources to educating the people as to the evils resulting from the use of alcoholic liquors, the elimination of the chief sources of crime, and the relief of the social and economic stress which tends to produce the desire and demand for alcoholic stimulants. It tends through effective control and the operation of natural laws to progressively reduce the demand and ultimately to eliminate this evil from our social and economic life. It should result in an effective solution of the present problem.

Conclusion

The problems of American life may best be solved through the study of our own experience in the successful application of sound principles, under our system of dual governments, to our peculiar social and economic conditions.

A study of the conditions in or experience of other ccuntries is helpful only to the extent that it illustrates the operation of principles which underlie and are common to all social and economic organization.

It was with this thought in mind that the plan for the regulation and control of the liquor traffic herein presented was developed. When it became evident as a result of the present investigation and study that the existing system of national prohibition was not being observed or enforced, that owing to social and economic conditions in the United States, and to the operation of fundamental social and economic laws, it could not be enforced, a study was first made of our own experience in applying the principles involved in this problem to other phases of our national organization, and the results of that experience. It was found that in the familiar system of joint state and federal regulation of railroads, extending over a period of forty years, every principle involved in the present problem of liquor control had been successfully applied to conditions different as to the facts, but similar as to the essentials. The same was found to be true in less degree with the Federal Reserve Bank system. These two agencies present a body of experience in the successful application of fundamental social and economic laws to varied and complicated human conditions not to be found elsewhere. The present plan was then formulated, based upon those principles and that experience.

A study was then made of foreign systems of liquor control. Some of the countries were visited, interviews held with government officials and citizens of every class, and checked by personal investigations of the operations of the several systems. The system which has been in force in Sweden for more than ten years, which is similar as to many principles but different as to many details from the plan herein proposed, is by far the most successful of any existing system of liquor control. These studies abroad entirely confirmed the view that the plan proposed is sound in principle and practical in operation; that it is adapted to our system of government, and to social and economic conditions in America; that if adopted it should remove this vexing problem from our political life, and result in its constructive solution.

We must not lose what has been gained by the abolition of the saloon. We can neither ignore the appalling conditions which this Commission has found to exist, and to be steadily growing worse, nor submit to their continuance. The time has arrived when in the interest of our country we should lay aside theories and emotions, free our minds from the blinding influence of prejudice and meet the problem as it exists. Forgetting those things which are behind we must bring into action against existing evils the great reserve of American common sense, guided by practical and successful experience. By this means we shall advance the cause of temperance and achieve an effective solution of the liquor problem.

As appears from their separate statements filed with the report, this plan is recommended for consideration by Commissioners KENYON, LOESCH, MACKINTOSH, MCCORMICK and POUND. The endorsements of Commissioners KENYON and MCCORMICK are subject to the condition stated in their memoranda to the effect that they favor a further trial of the present law before definitely recommending the adoption of a substitute.

HENRY W. ANDERSON.

Washington, D. C., January 7, 1931.

Statement by Newton D. Baker

In my opinion the Eighteenth Amendment should be repealed and the whole question of policy and enforcement with regard to intoxicating liquors remitted to the States.

If, for practical reasons, immediate repeal be thought unattainable, a submission of the Amendment suggested in the report of the Commission would test the present sentiment of the country and, if the Amendment were adopted, would accomplish the double result of removing an arbitrary and inflexible police regulation from the Constitution, where it seems to me it should never have been put, and of giving Congress the power to adapt federal legislation on the subject, from time to time, to the realities of the situation as they may develop.

I have signed the report of the Commission because it is a fair finding of the facts disclosed to us by such evidence as was available, and because it is clear that so long as the Constitution and law remain as they now are, the recommendations of the report should be carried out to aid the Executive, charged with the duty of enforcement.

The efforts now being made to enforce the law are sincere and intelligent and aided and supplemented, as recommended in the report, a higher degree of effectiveness will be certain to follow, but in my opinion the problem is insoluble so long as it is permitted to require a nation-wide federal enforcement of a police regulation, at variance with the settled habits and beliefs of so large a part of our people.

Newton D. Baker.

Washington, D. C., January 7, 1931.

Statement by Ada L. Comstock

The material which has been brought before the Commission has convinced me that adequate enforcement of the Eighteenth Amendment and the National Prohibition Act is impossible without the support of a much larger proportion of our population than it now commands. Moreover, the conditions which exist today in respect to enforcement and which, in my opinion, can be modified only slightly by improvements in administration, tend to undermine not only respect for law but more fundamental conceptions of personal integrity and decency. For these reasons, I am one of the members of the Commission who favor an immediate attempt at change. As I still hope that federal regulation of the liquor traffic may prove more effective than that of the states, I favor revision of the amendment rather than its repeal.

Ada L. Comstock.

Washington, D. C., January 7, 1931.

Statement by William I. Grubb

I am one of the members of the Commission, who believe that prohibition under the Eighteenth Amendment is entitled to a further trial before a revision or repeal of the Amendment is recommended. I join in the findings of fact and all the ultimate conclusions of the general report of the Commission (except that recommending that the Amendment be revised immediately, without awaiting a further trial), but not in all of the general observations.

My reasons for thinking that prohibition under the Amendment is entitled to a further trial are twofold. The first is that it is an experiment, which has not been completed, and has not yet had a fair trial, and the second is that no satisfactory substitute for it has been presented or shown to exist.

I

I agree with the conclusion of the report that enforcement and observance of the law have never been and are not now adequate or satisfactory, and do not warrant its continuance, unless a change is probable within a reasonable time. I agree also in the finding of the report that there has been an improvement in the efficiency and character of enforcement methods, since the enforcement unit was placed under Civil Service, and since the transfer of the unit to the Department of Justice. Improvement in the machinery alone will not accomplish satisfactory enforcement. It will require also a favorable change in the attitude of the public towards the law. Voluntary observance of a law of this nature is essential. So long as the majority of the people do not observe it, the law is

powerless to enforce it. I believe that the use of only clean and efficient methods of enforcement, together with adequate appropriations to accomplish efficiency, may change the present hostile attitude of the public to one of voluntary observance and approval, that will within a reasonable time for such an end, bring about a proper enforcement of prohibition. So long as improvement continues, the experiment cannot be considered completed, and should not be abandoned. If, and when, improvement ceases or when it is demonstrated that the improvement, though continuing, will not result in a changed public opinion, favorable to the law, so that enforcement can be made reasonably effective, the experiment should be abandoned. The time required for the completion of the experiment cannot be determined in advance, but will work itself out during the progress of the trial The result of a further trial is a matter of prophecy, not of fact, as to which there can now be no certain ascertainment. In view of the present improvement, and the possibility of its resulting in successful observance and enforcement of the law in the future, I think the experiment should be accorded a further trial.

II

This conclusion is reinforced because of the fact that no satisfactory substitute for prohibition under the Amendment has yet been presented or shown to exist. Repeal of the Amendment would remit the control of the liquor business to the States, except so far as it was susceptible of Federal control through the powers of interstate commerce and taxation. Prohibition is conceded to have produced two great benefits, the abolition of the open saloon and the elimination of the liquor influence from politics. Remission to the States would assure the return of the open saloon at least in some of the States, and the return of the liquor interest to the politics of all of them. Revision of the Amendment by vesting in Congress the exclusive control of the liquor business would make certain the return of the liquor influence in national politics, and possibly the return of the open saloon in all the States. The authority of Congress under its taxing and commerce powers would be inadequate to protect a State desiring prohibition, in securing it, when it had neighbors who permitted the manufacture and distribution of intoxicating liquors. Vesting in Congress the power to regulate or prohibit without recommending a specific plan of regulation or control, furnishes no solution of the liquor question, and would leave it to constant agitation in Congress and the Country, until the happening of the remote contingency of a solution satisfactory to all parties. As to the systems of other countries, they may be classified into prohibition, ownership and operation by governments or governmental agencies, private operation under regulation and taxation, or without restrictions. The finding of the Commission is adverse to operation by government agencies. In this finding, I concur. Private operation without restrictions is impossible. This leaves for consideration, regulated private operation and prohibition. Private operation, under a high license, proper closing regulations, forbidding the sale to minors and incompetents, and drinking on the premises where sold, seems the only practicable system, excluding prohibition. This was the system that preceded prohibition. The difficulty experienced with it then was that the regulations were impossible of enforcement, and the liquor business came to such a dis-

regard of them, as led to prohibition. An abandonment of prohibition and a return to regulated private operation would be a step backward in the evolution of the liquor question, and one that should not be taken until all hope of a reasonable enforcement and observance of prohibition under the Amendment and the enforcement laws had disappeared.

Believing that the time has not yet come, I think there should be a further trial, and that there is a possibility under improved enforcing methods and personnel, and increased and adequate appropriations for equipment and additional personnel, together with a resulting sympathetic feeling of the public towards the law, of reasonable observance and enforcement being accomplished within a reasonable period. If proper enforcement and observance are not then had, or if a better and more satisfactory system is shown to exist, it will be time enough to abandon prohibition, and to adopt the better substitute.

W. I. GRUBB.

Washington, D. C., January 7, 1931.

Statement by WILLIAM S. KENYON

In signing the general report of the Commission, the right is reserved to each member to express his or her individual views as to matters therein discussed. It is not an easy matter for eleven individuals to agree on any report concerning the problem of prohibition enforcement and of necessity there must be some give and take in order to reach any conclusions.

I desire, as to some of the propositions, to submit a few observations.

I use the term, "prohibition laws," to cover all the laws passed by Congress to carry out the Eighteenth Amendment, and the terms "witnesses" and "evidence" to cover names and statements of parties before us.

In the report is this: "A division of opinion exists in view of the foregoing considerations as to whether enforceability of the law has been fairly tested." It seems to me the evidence before us is sufficient to demonstrate that at least up to the creation of a Bureau of Prohibition in the Department of Justice the enforceability of the prohibition laws had never been subjected to any fair and convincing test. Whether in view of the bad start in the enforcement program and the maladministration of the same up to said time there has been created a public sentiment against the law that makes it impossible for enforceability to have any fair chance, may be a debatable proposition. From my viewpoint, it is unfortunate that the hearings of the Commission on prohibition have been in secret, which compels us to file a report based in part on secret evidence. If the evidence produced before us could have been made public, I think

it would have given to the country a true picture of why reasonable enforcement of the prohibition laws could not have been expected.

The Commission, of course, had no authority to grant immunity to witnesses, nor did it have the power of subpoena to compel attendance, which facts bore somewhat on the policy adopted of secrecy.

Notwithstanding this policy, it is permissible, I think, to refer to some evidence of witnesses before us who did not enjoin secrecy, without giving the names except in instances where the witness may have publicly stated the same thing.

There are many reasons why the prohibition laws have never had a fair chance of reasonable enforcement. I refer to some of them.

Up to the time of the recent transfer to the Department of Justice of prohibition enforcement, responsibility therefor was in the Treasury Department. It did not logically belong there. The higher officials of the Treasury Department were skilled in finance but not in law enforcement, and with some exceptions, had little heart in the enforcement of these laws. This naturally dampened any enthusiasm for enforcement on the part of enforcement forces all down the line.

Another reason is that a large part of the personnel up to the time at least that employees of the Prohibition Bureau were placed under the Civil Service were the kind who would not ordinarily have been selected to enforce any law. The report points out the tremendous overturn and in a general way the political influences surrounding the appointment of prohibition enforcement agents. Prior to the covering into the Civil Service of employees of the Prohibition

Bureau, appointments of prohibition agents to a large extent were dictated through political influence and by political bosses. These appointments were regarded as political patronage. We have had before us experts from the Civil Service Commission from whom we have learned that even after the prohibition agents were placed under Civil Service, this political interference persisted, that some of the worst men had the strongest political backing. An examination of the Civil Service records would tell the story. Some of the prohibition agents, whose appointments were attempted to be forced by political influence were men with criminal records. Some apparently sought the positions because of the opportunity for graft and boasted of what they could make therein. Others were entirely incompetent. It has been stated before us by those who should know that at least fifty per cent of the men employed as prohibition agents prior to the time they were placed under Civil Service were unfit for the position and incompetent as law enforcing officers. The turnovers in the prohibition personnel prior to Civil Service show a shocking condition. The situation is probably somewhat better now; and better men are being secured. There have been many honest, capable and patriotic officials in the prohibition service—men of the highest character, such as Prohibition Administrators John D. Pennington, S. O. Wynne, Thomas E. Stone, Alfred Oftedahl and others. I do not mean to criticize the entire personnel, nor by mentioning these to disparage all of the others. Some of the personnel have been excellent, some indifferent, some corrupt.

Major Chester P. Mills, who honestly tried to enforce the law as Prohibition Administrator of the

Second Federal District of New York, has told in articles published in Collier's Weekly in 1927 the story of attempted political influence in the appointment of prohibition agents in his district, and has repeated practically the same story before us. In these articles he said that "three-fourths of the 2,500 dry agents are ward heelers and sycophants named by the politicians." Politicians, some of them high in national affairs, attempted to force upon him men with criminal records—some the very lowest grade of vote-getters—which apparently was the test of the politician for good prohibition agents. Prohibition was expected evidently by some politicians to furnish a fine field for the operation of the spoils system in politics. Their expectations have been largely realized. One of the leading political bosses of New York City informed Mills that he must let him control the patronage in his office or he would have to get out. Another told him that efficiency must give way to patronage. One agent with a criminal record whom he discharged was reinstated after Mills ceased to be Administrator, and was continued in office until about a year ago, when he was indicted for alleged conspiracy to violate the provisions of the National Prohibition Act. One of the parties whom it was insisted he should appoint had shortly before shot a man in a row in a speakeasy, another had been found with burglar tools upon him. Major Mills tried to do an honest job and soon discovered, according to his statements, that he was not wanted on the job, and to use his language, was kicked "up-stairs to an innocuous zone supervisorship."

In one district the evidence shows that a prohibition agent was transferred prior to an election because his enforcement activities were injuring the party and

interfering with the collection of funds for the campaign. Some officers were directed by political bosses to let up in their activities and "lay off" on their work until after some particular primary or election.

Another reason, somewhat closely associated with the character of the personnel, as to why the law has not been better enforced, is corruption. After every war there is a tragic era of graft and corruption, but all of the corruption under prohibition cannot be attributed to the aftermath of the war.

The profits in the unlawful making and vending of intoxicating liquors have been so enormous that the funds to invest in protection have been large, and the temptation to many men in the service on small salaries has been difficult to withstand. Evidence before us by those accurately acquainted with the workings of prohibition in the great cities, shows that in many of them the supposed enforcement of prohibition has been reeking with corruption, and has been a complete fiasco. The grand jury investigation at Philadelphia in 1928 disclosed that some of the police force were depositing more in the banks than their salaries amounted to. Bootleggers' accounts running up to $11,000,000 were deposited in a certain bank, and the officers of the bank testified they did not know any of the parties so depositing. Witnesses have presented to us evidence showing that breweries have been operated in the heart of a great city with the knowledge of prohibition agents, in some of which as much as $200,000 was invested in the plant. In one large city three breweries were openly operated, and at least up to April 1, 1930, were making real beer and delivering it around the city. Every one in the vicinity except the prohibition agents seemed to know of the breweries.

Truck loads of liquors have been transported under the protection of police. In one state prohibition agents sent to a great university to look into the situation at a "Home Coming" were found drinking with some of the students in a hotel room. In many of the cities there has developed under prohibition an entirely new underworld, due to the large amounts of money involved in the bootlegging business. The gangster and his crew have taken an important part in politics, and in connection with politicians and under their protection control the liquor business in many of the cities. In one of them gangs have entered into agreements dividing the city for plunder, and providing that the beer privilege shall belong in certain parts of the city to certain particular gangs, and criminal syndicates take care through politics of those who buy from the gangs.

There are thousands of speakeasies operating in the large cities—the number is appalling. Speakeasies cannot operate openly unless protected from prosecution. One who can operate a speakeasy in a block where policemen are constantly passing is enabled to do so only because of one thing, and that is protective graft. In some cities there is complete protection by ward politicians who must have back of them the influential political bosses. The speakeasies could not run a day if the authorities would act. The combination of liquor and politics has been almost fatal to law enforcement, but surely the government is not powerless to strike, and strike hard at such a situation. Surely enough honest men can be found to act as prohibition agents and as police. If not, there is no use in any further efforts to enforce these laws or any other laws.

I have referred to only a part of the evidence before us showing the mess of corruption. It is difficult in view of the secret policy of the Commission to prepare any report doing justice to the subject that may not do injustice to the many able and honest men in the service. Some of the evidence is so startling that it is difficult to believe it. Of course, there was corruption prior to prohibition. The saloon was the center of political activity, but I think the corruption was not so widespread and flagrant as it now is. The amounts involved were not so large. Corruption had not become such an established art and racketeering was unknown. It has now developed to a high degree of efficiency. Nothing but a Congressional investigation could give to the public the whole story.

This situation has developed a type of politician-lawyer unknown to the federal courts in earlier days, who sells his supposed influence with the district attorney's office and acquires the bootlegger's legal business in many instances by virtue of his political connections and influence.

Certain abuses in some of the cities in the permit system of handling alcohol have added to the difficulty. Political influence has been exerted to secure permits and the reinstatement of revoked permits. Quite a business along that line has been carried on by some political lawyers. One witness who knows the situation in one of the larger cities states that permits are sometimes secured by getting men with decent reputations to appear as the real applicants, when in fact behind it are gangsters and underworld men. Some legitimate permittees have been blackmailed by threats to revoke permits. In some

cases where administrators have denied applications the applicants have gone to the federal district court, and that court in some instances has directed issuance of the permit. Today the courts are more inclined to sustain the administrator where he refuses a permit than they formerly were. In some instances the cases were not properly presented to the court on behalf of the administrator.

How, in view of all these things, can it be reasonably claimed that the prohibition laws have had any real honest test as to enforceability? It seems to me they have never had a chance. Laws against murder and arson under similar conditions, could not have been enforced. If a different beginning had been made in the enforcement of these laws, there might have been a very different story.

No law can be enforced without reasonable public sentiment behind it. Public sentiment against the prohibition laws has been stimulated by irritating methods of enforcement, such as the abuse of search and seizure processes, invasion of homes and violation of the Fourth Amendment to the Constitution, entrapment of witnesses, killings by prohibition agents, poisonous denaturants resulting in sickness and sometimes blindness and death, United States attorneys defending in the federal courts prohibition agents charged with homicides, the padlocking of small places, and the lack of any real attempt to padlock clubs or prominent hotels where the law is notoriously violated, the arrest of small offenders and comparatively few cases brought against the larger ones. The limitation of the amount of liquor that physicians may prescribe for medicinal purposes, restraint in the use of alcohol for

scientific purposes, the fruit juice proviso of the National Prohibition Act (Section 29, Title II) which practically permits the making of wines in the homes when there is no similar provision as to the making of beer, have contributed to the dissatisfaction.

That there have been abuses of search and seizure processes is without question; likewise as to entrapment of witnesses. We have studied the numerous cases of killings by prohibition agents in the attempt to enforce the laws. There have been few convictions. Some of the shootings were apparently careless and unjustifiable, and evidence the reckless use of firearms and disregard of human life. There has been a too free and easy use of firearms by some of the prohibition agents. This is now being restrained.

On the other hand, many prohibition agents have lost their lives in attempting to perform their duties, concerning which little reference is made by the press.

The defense by United States district attorneys of prohibition agents charged with killing has made difficult the conviction of such agents.

The Supreme Court of the United States holds that agents of the government engaged in enforcement of the prohibition laws have the right of removal of a case against them from the state to the federal court where they are charged with homicide while engaged in their duties. *Maryland* v. *Soper,* 270 U. S. 9. The present Attorney General has announced a very wise doctrine on this subject, which may be summed up, I think, by the statement that while the United States attorneys will defend in these cases after removal to the federal courts, they will not attempt to procure the

acquittal of guilty men or attempt to justify unlawful or illegal acts by federal officers. This question of defense by district attorneys of the United States raises very difficult questions of policy and of justice. The Federal Government might be seriously impaired if its officers were to be tried in state courts for conduct in carrying out their legitimate official duties. On the other hand, it is apparent that with the United States attorney defending a man in the federal court there is little possibility of conviction. It seems to me the policy of Attorney General Mitchell will alleviate to some extent this particular irritation.

The present book of instructions to agents issued by the Prohibition Bureau stresses the idea that enforcemust must be by lawful methods. Government lawlessness in law enforcement is an abhorrent proposition. The Fourth and Fifth Amendments to the Constitution safeguarding the rights of citizens are fully as important as the Eighteenth Amendment. "Let the homes alone," should be the policy of enforcing officials, unless there is a clear showing that the home is being used as a place for the sale of liquors or the manufacture for sale. (Such is apparently the present policy of the new Administrator.) The doctrine that a man's home is his castle still applies so long as it is used as a bona fide home. Nothing can tend to create public sentiment against these laws more than the invasion of the home.

The use of poisonous denaturants in alcohol cannot be justified. Death or blindness is too heavy a punishment to administer to one who may indulge in a drink of liquor. We are advised that arrangements have now been made for the use of non-poisonous denaturants which make the liquor nauseating but not fatal. Congressman Sirovich of New York clearly pointed out in a speech in the House of Representatives on January 17, 1930, how this can be done.

Some of the physicians who have appeared before us make no objection to the restrictions upon physicians in the use of liquors as medicines. They differ as to the necessity for such use, but the majority of them resent these limitations as to the maximum amount of alcohol that may be permitted to a patient within a given period placed upon them by laymen who have no knowledge of the needs therefor, and take them as a reflection on the medical profession. Physicians should be permitted, under reasonable regulations, to prescribe whatever liquor in their judgment is necessary for a patient. If a physician can be trusted to prescribe dangerous drugs he can be trusted to prescribe liquors as medicines.

The forfeiture of automobiles of innocent persons in which liquor may be found adds to the irritation.

These things have not helped to create a friendly attitude toward the prohibition laws by those who might be considered as neutrals, and undoubtedly have interfered with their enforcement by creating public sentiment against them. Public sentiment changes quickly in the United States and a fair and honest trial of prohibition laws with less of the irritating methods of enforcement might change much of public sentiment on the question.

It is impossible to obtain satisfactory statistics to show whether or not more intoxicating liquor is being consumed today than during pre-prohibition days. I am satisfied there is not. The liquor bill of the nation

before prohibition was staggering. It required a tremendous outpouring of liquor to support 178,000 saloons openly selling and soliciting business. Most of the witnesses agree that there is less drunkenness under prohibition than before. Statistics generally can be secured to prove almost any proposition, and we have a mass of them in our files on various phases of the subject. Figures uninterpreted may be very misleading. The years 1920 and 1921 seem to have shown the best results under prohibition. The low mark in arrests for drunkenness was reached in those years. In many parts of the United States it appears that arrests for drunkenness have increased since 1920.

Arrests for drunkenness are not an infallible index, but do have significance. The attitude of the police of one city toward prohibition laws may be entirely different from that of another. Some do not regard violations of such laws as serious, and leave the entire matter to the United States Government, making few arrests. Others regard drunkenness as more serious than in the pre-prohibition days.

Alcoholics in detention institutions have apparently increased, and the figures given out by the Metropolitan Life Insurance Company tend to show there have been more deaths from alcoholism in the last few years than heretofore. That company in a report on the subject says:

> "The rising alcoholism death rate in this country since 1920 cannot, in our judgment, be explained by increased consumption of 'hard' liquor as compared with war-time and pre-war-time years. The reason must lie, we think, in the greater toxicity of the alcoholic liquors which are

> now used so generally throughout the country. The only encouraging feature in this picture is that officials of various states, responsible for the public health, are now stirred by the situation and are preparing measures for its more adequate control."

This upward trend in the death rate from alcoholism is accounted for by some on the theory that the liquor available today is more injurious to life than that available before prohibition.

That there is an abundance of intoxicating liquor is evident. It is idle to close one's eyes to that fact. It is supplied by smuggling, illicit distilling and diversion of industrial alcohol.

In the report made to the President on January 13, 1930, we have spoken of the tremendous border line of this country which makes the control of smuggling difficult. While some of the reports that have been given out by the Prohibition Bureau would indicate that smuggling has decreased, the figures before us tend to show it has not, except in spots. At some particular point, such as Windsor, smuggling may have lessened, only to break out at other places, such as Amherstburg. The situation at Detroit is one of the worst in the United States, and the few boats, the small force of the customs and prohibition agents of the government, are totally inadequate to cope with the problem in that vicinity. Bank statements at Detroit would show the tremenodus business of some smugglers

The Canadian Parliament has recently passed a law forbidding exportation of liquor to this country, which it was supposed would be helpful in meeting the problem as far as the Canadian boundary line is concerned, but it appears that since this change there has been more smuggling than before the passage of the act.

That it will require a tremendous force in the nature of a border patrol to prevent smuggling from Canada and Mexico is apparent. It should be a unified border patrol. To prevent all smuggling along our extended water fronts is impossible. It requires constant vigilance to hold it within any reasonable bounds.

The Prohibition Bureau makes reports as to the seizure of stills, illicit distilleries and paraphernalia used in the manufacture of whisky. These figures show an enormous increase in the number of stills seized by agents of the Bureau since 1920, in which year there were approximately 32,000 stills seized. In 1928 there were about 261,000. These stills are sold by mail order houses and department stores in sections and easily set up. General Lincoln C. Andrews, formerly Prohibition Administrator, before the Senate Committee investigating this subject in 1926, testified that the department in twelve months had seized 172,600 stills and had not captured, he thought, more than one in ten. That testimony would indicate a tremendous number of stills. The evidence before us tends to show a great increase in the number of stills and a universality of operation extending all over the country. The amount of moonshine liquor made in this country per year cannot be estimated within any reasonable bounds.

It is asserted there has been a great increase in the manufacture of flasks and corks. We have been unable to obtain any evidence as to this.

The question of diversion of industrial alcohol as a source of the liquor supply is discussed in the report. That there have been serious and unconscionable diversions of industrial alcohol in the past is without question. The specially denatured alcohol permittee

is the chief diverter of industrial alcohol into beverage channels. Major Mills estimated a diversion of fifteen million gallons of industrial alcohol in New York per year when he became Prohibition Director for that state. At Buffalo in one three-month period ninety carloads of such diverted alcohol were seized. We have before us reports of special agents made to their superior officers in the year 1930 with relation to the legitimate consumption of industrial alcohol in one district in a large western state to be used by 2,300 drug stores, 200 hospitals, 25 Turkish baths, and miscellaneous consumers. The report shows that 60,000 gallons would cover the actual needs for these purposes, but the amount imported in 1929 to that district was four times the quantity legitimately used. In this particular district it was estimated that industrial alcohol products constitute approximately thirty per cent of the total contraband liquor seized. In this same state it was estimated by those who should know that in the northern part of the state ten to fifteen per cent of seized liquor is diverted alcohol, while in the southern portion it is thirty per cent. Others estimate it at seventy per cent. Two important cases were brought by the government last year, one at Baltimore and one at Chicago, involving the question of a conspiracy in diversion of industrial alcohol. It is charged in the Chicago case that during a period of seven years a million gallons a year of alcohol have been diverted to illicit distilleries. The ramifications of this conspiracy reach from New York to Los Angeles. Large quantities of industrial alcohol are seized in carload lots that never reach a still. In the Chicago case over three carloads had been seized and the railroad records showed that approximately 138

carloads of the same product had been shipped into Chicago in six months. Carloads of pure grain alcohol have been seized where the consignor and the consignee were both fictitious. The diversion of industrial alcohol in the New England District was forty-four per cent of the total in the district a year and a half ago. It has been, according to the prohibition officers, reduced to twelve per cent. One administrator captured within two or three months last year one carload of insecticide. Forty per cent of it was alcohol. It came from New Jersey, and was ordered destroyed by the Federal Court. Another car of the same stuff was captured at Cleveland. From January 1, 1927, to March 4, 1927, the same administrator captured nineteen carloads of straight alcohol. It came from the Federal Chemical Company of Nitro, West Virginia. Figuring 78,000 gallons of straight alcohol to the car would be 1,482,000 gallons. It was all billed to firms that did not exist (otherwise known as cover houses). It was not certain that any denaturants whatever had been placed in this alcohol. A Chemical and Products Company in the same district, which was a fake concern operating under a permit, had a capacity of 80,000 gallons of alcohol per month. This would make three times the amount of bootleg whisky, or 240,000 gallons, which would sell at $30.00 a gallon. In one district alone millions of gallons have been diverted, and enough withdrawn in a few months for perfume manufacturers to perfume the South Sea Islanders. There has been enough specially denatured alcohol withdrawn in one year by one corporation for hair tonics "to supply the world with hair tonic," as one witness puts it. There have been diversions of medicinal and sacramental alcohol, but they are minor compared with the diversion of industrial alcohol.

The legitimate uses of alcohol throughout the nation in industry have tremendously increased. There were some 38,000,000 gallons withdrawn in 1921 for denaturing purposes, while in 1929 there were 182,000,000 gallons withdrawn, an increase of nearly five hundred per cent. The Department of Commerce has been unable to furnish us the figures as to the amount of alcohol needed per year for legitimate industry. The permittee has not been required to follow through to ultimate destination the alcohol he sells, and through the instrumentality of cover houses the system of fraudulent diversion has been built up in this country by crooked permit-holders. Corporations and partnerships have been created merely for the purpose of using diverted industrial alcohol. The independent denaturing plant is a fraud, and should not be permitted to exist apart from the manufacturing plant. Undoubtedly the Bureau is strenuously endeavoring to remedy this leak. Such things as supposed manufacture under permits and formulas for hair tonics, perfumeries, deoderants, barber supplies, tobacco sprays, lacquers, paints and varnishes, furnish opportunity for diversions. In many instances where permits have been taken away new companies representing the same parties have been organized and new permits secured. Fly-by-night concerns, dignified by titles of chemical companies and drug associations have been acting as cover houses and denaturing plants. It is possible the situation could be remedied by requiring accounting by concerns which purchase from the permittee, or by the adoption of regulations urged by Mrs. Willebrandt when Assistant Attorney General, requiring permittees to follow the liquor through to ultimate destination, although there is some legal difficulty in the matter.

It is impossible to estimate with any degree of accuracy the amount of industrial alcohol diverted into bootleg channels. Any estimate is a mere guess. The Bureau announced some time ago that it had cut down on permits some fifteen million gallons of industrial alcohol per year for the future. How the Bureau arrives at this arbitrary figure we are not advised. If the Bureau can arbitrarily cut the amount allowed to permittees fifteen million gallons, it is some evidence that at least that much diversion has been taking place. The Director of Prohibition estimates the diversion for the year ending June 30, 1930, as nine million proof gallons. One estimate is probably as good as another. My own would be from the evidence before us that ten million gallons per year over a period of years was the minimum average of diversion, at least up to the present time; and while under the efforts of Dr. Doran such diversion has been materially lessened, it has not stopped. The problem is a most difficult one.

The production of corn sugar, which it is claimed is used largely in the manufacture of whisky, has increased from 157,000,000 pounds in 1919 to 894,985,794 pounds in 1929. What percentage of the increased production of corn sugar is used for the production of illicit whisky is problematic. Of the unrefined product from which alcohol can be made, approximately one hundred million pounds are used per year for the manufacture of rayon. It is also used in other textiles as starch; is used in tanning leather, vinegar manufacture; by caramel makers, for candy fondant, ice cream and condensed milk. The legitimate uses of corn sugar, however, do not account for the enormous increase, and it must be assumed that a considerable proportion of the corn sugar goes into the bootleg

trade, and is one of the chief sources in the manufacture of illicit liquor. Corn sugar is preferred by the moonshiner because of the price, though cane and beet sugar contain more fermentable material and hence offer a larger return of alcohol.

The blame for the supply of illegitimate liquor should not be placed entirely on corn sugar, which has enough to answer for without putting on it all the responsibility for the prevalence of illicit alcohol. It is undoubtedly contributing its part. While alcohol can probably be produced more cheaply from corn sugar, it is not so safely done as to obtain it by diversion.

The beer situation has changed very materially under prohibition. The increase in the production of hops in the United States has been quite marked, viz., 27,744,000 pounds in 1922, 33,220,000 pounds in 1929. Some hops are used for medicinal and commercial purposes. Probably 10,000,000 pounds go into the manufacture of beer. There has been a large increase in the production of yeast. In recent years considerable beer has been shipped from New Jersey to other states. Breweries are openly operating in New York City. In some of the leading cities large plants have been engaged in manufacturing beer. No man is buying a brewery since prohibition except for bootlegging purposes. Some great breweries such as the Anheuser Busch Company at St. Louis have obeyed the law and upon the enactment of the prohibition laws ceased to make real beer.

What is known as wort, a product of barley, is now being used in the production of beer, and in the industry known as "alley brewing" which has developed in the large cities. It seems impossible to secure any information as to wort. We took up the question with

the secretary of the National Malt Products Association, but he could furnish us no information as to the amount of its production or use in this country. It is interesting, however, to note in this connection that the state of Michigan in 1929 imposed a privilege tax upon the sale of malt syrup, malt extract and wort. The question of wort being subject to this tax is now in the courts. From August 28, 1929, to March 20, 1930, there was collected from the tax approximately $600,000.00.

The general report has covered rather fully the question of increased drinking of liquor among college students. These students know that a large number of American citizens are daily helping those who are violating the prohibition laws by patronizing the bootlegger and smuggler. They see the laws ridiculed in many of the motion pictures of today and in the newspaper cartoons. It is little wonder that their respect for the law has been lessened. There was drinking in colleges before prohibition. It is not clear how any system that might make liquor easier to procure would remedy this situation. Efforts to teach the bad effects of drinking intoxicating liquor upon the health and efficiency of the individual seem to have lessened if not entirely stopped since the adoption of prohibition, and the growing youth of today has not had any advantage from such teachings as in the pre-prohibition days. Hence to a considerable extent he does not understand the reason for having prohibition laws and rebels against what is considered restraint on liberty.

The government could well afford to appropriate money for an educational campaign throughout the Nation to educate the youth of the land in respect for law. It is fully as important as to appropriate money

for many of the governmental purposes of today. Nothing is more fundamental to the stability of the Republic than a deep seated respect for law among the youth thereof. Education is not so important as to the older citizens, for they will soon pass off the stage. Any plan of education as to respect for law should be limited to the youth of the country. It would be a useless performance as to those who consider themselves so completely educated as to be above law.

There is much to be placed on the credit side of prohibition, even under the inauspicious circumstances surrounding its supposed enforcement, that should incline public sentiment favorably toward a further test of enforceability of the law. Approximately 178,000 legal saloons have been closed under prohibition. Only one or two witnesses before us have favored the return of the saloon. They were driven to that position by their theories as to local option and the leaving of the matter entirely with the states. While there are thousands of speakeasies today in the great cities, where people may sneak in side doors or down an alley and in some back way and get liquor, or may go to other speakeasies more openly operated, yet it must be that the abolition of the saloon has been a mighty movement for the betterment of the Nation. The saloon was in partnership with crime. It was the greatest aid in political corruption. It never did a good thing or omitted to do a bad one. Nothing good could be said of it, and it is notable that very few people advocate its return. The open saloon in this country is dead beyond any resurrection. People are prone to forget the picture of conditions before prohibition. Speakeasies, so prevalent in the large cities, are not entirely a product of prohibition—they existed prior

thereto. Interesting is the following account from a Pittsburgh paper of November 15, 1900:

> "At the meeting of the retail liquor dealers yesterday the statement was made that there are in Allegheny County 2,300 unlicensed dealers who sell liquor, in viloation of the law, every day in the year, Sundays and election days included. This is a decidedly startling assertion, for while it is notorious that speakeasies exist and, are to some extent tolerated by the authorities, there has been no visible reason to suppose that illicit traffic was being conducted on so large a scale. The district attorney of the county and the public safety directors of the city ought to be heard from on this head. If the law is being violated so extensively as the licensed dealers claim, it is manifest that there must be a wholesome neglect of duty in official quarters."

Some witnesses before us have strongly challenged the claim that prohibition has benefited industry. At the House of Representatives hearings and before us, representatives of great industries spoke against prohibition. These same representatives take strong ground against their employees drinking. It is an irritating circumstance to labor that great captains of industry favor prohibition to prevent the laboring men securing a glass of beer on the ground that they can get more work out of them if they do have liquor, while they reserve to themselves the right to have all they want in their cellars and their club lockers. We asked many of the leaders of industry to express themselves on the question of whether conditions in industry were better than before the passage of the prohibition laws Some appeared and some filed statements. I quote from a few.

From the president of a great coal company:

> "I know the business men of my acquaintance, quite generally, have something wet around their homes, if they want it, but the spirit of it is more that of the mischievous school boy who rather shuns the 'goody-goody'' path but is not positively bad. When some of our best people are evading taxes, concealing dutiable goods, violating the Sunday laws, divorcing, swapping mates, speeding, gambling etc., I do not quite understand the agitation about liquor violations. La enforcement has always been one of the chief functions of government, and one would think the Eighteenth Amendment was expected to enforce itself.
>
> The old liquor laws aimed to control the public nuisance feature of drinking and failed. The present law, in our mining towns at least has largely corrected that failure. There is some moonshine liquor, some home-brew, and some bootleg, but the old days of the pay-day whoopee are gone. What drinking there is, is under cover, the practice of drinking up a whole month's pay, and challenging the world to mortal combat has passed. A drunken miner in public is so rare a sight that when it happens one would think a dancing bear had come to town, and even his chance acquaintances rally to get him out of sight.
>
> . . . I have seen pay days when it was not safe to ride on the branch-line trains going to and from mining towns. I have seen at Christmas season the station platforms jammed with a swearing, fighting, vomiting mob, with cheap Christmas toys thrown away, tramped on and lost. I have lain awake listening to the crack of revolvers as miners staggered up and down the railroad tracks. I have fought with crazy drunks at the pay window. I have seen Christmas-tree entertainments broken

up, religious worship interrupted, and Sunday School picincs turned into a stampede of terror.

Wages have not increased enough to provide for any great amount of liquor at prevailing prices and at the same time to buy automobiles, radios, electrical applicances, and better food and clothing. The drink bill must be much less than before.

It is only fair to state that whatever success prohibition has had in the mining fields may be somewhat attributed to the mine operators. No matter how much they may talk wet and drink wet in the great convention cities, they do not want any 'modification' at their mines.

I believe I have noticed some increase in drinking during the past year, and it may be due to the publicity given the matter by the wets and drys.

. . . . . .

. . . Prohibition may be an utter failure other places, but is not so here nor with the industrial people with whom I make contact. They are spending more money for things the whole family enjoy, are better fit for work, better fed, and they constitute a majority of our population."

From the head of a great industrial company:

"Improvement in the economic condition of employees' families is evidenced by the fewer cases of distress among employees reported from time to time. Visiting nurses, whom we employ to visit and administer to families of employees in case of sickness, report that the economic condition of such families is much better now than prior to prohibition."

From another:

"The working people are better off under prohibition, they make more money and have more time. I do not dread Monday morning like I used

to before prohibition. There is less of the effects of liquor on the job today than there was four or five years ago."

There are many other statements of similar import, and only a few of different view. Mr. Samuel Crowther in articles in The Ladies Home Journal last year sets forth many statements on the subject from industrial leaders. We find from a check-up that these statements are substantially correct and can be relied on.

My conclusion on this subject from the evidence before us is, that while there is some drinking now creeping into certain of the large industrial establishments, and the bootlegger is endeavoring to ply his trade there, on the whole industry has vastly benefited by prohibition. Accidents have been fewer and efficiency greater. The working men and their families are more prosperous than before prohibition. The contest for the Saturday night pay check between the wife and the saloon keeper is no more.

Some of those in favor of prohibition are wont to claim that increased life insurance, homebuilding, bank deposits, automobiles, radios, are to a large extent the result of prohibition. The marvelous progress of this Nation cannot of course be entirely attributed to prohibition. There are many factors, apparent to any thinking person, which have been at work to build up what we like to call prosperity. There has been an industrial revolution in the United States, and industrial development has contributed materially to prosperity. Certainly, however, much of the money formerly spent on the saloon has gone into the purchase of automobiles, radios, better furniture in the homes. That prohibition has been a factor contributing to our prosperity cannot well be denied. Savings deposits

have increased from $11,534,850,000.00 in 1918, $28,538,533,000.00 in 1930. High wages during and since the war and steady work in industry have of course been a contributing cause. It is impossible to determine approximately what per cent of the increase of savings deposits is due to prohibition, but some undoubtedly is.

As to the question of the effect of prohibition upon social welfare: we have had statements before us from Miss Evangeline Booth and Miss Mary McDowell, head of the University of Chicago Settlement House, and others who are familiar with conditions among the poor and the working people in industry, to the effect that prohibition has resulted in a better condition of affairs. Miss McDowell states that in the packing house district of Chicago the homes of the working men are better; their children better fed and clothed; there is less rioting and shooting up alleys; more observance of law and order; that there were hundreds of saloons in that neighborhood prior to prohibition, and while now there may be some speakeasies, there are no open places to entice the workingman and relieve him of his pay check. In a remarkable statement to the Commission by Miss Evangeline Booth, she says in part:

> "To sum up the conclusion of the Salvation Army in a sentence or two, I desire to state in unmistakable terms that the benefits derived from prohibition far outweigh any difficulties that may have been raised against its enforcement, that the wettest of wet areas is less wet today than it was when the saloon, usually accompanied by the speakeasy, were wide open, and that much of the outcry against the Volstead Act, so far from

> undergoing a failure of enforcement, arises from persons who in fact cannot obtain all the liquor that they desire.
>
> "As Commander-in-Chief of the Salvation Army in the United States, and with full support of my officers, I warn the Commission that any surrender to the forces of crime and indulgence at this time will be followed inevitably by a heavy toll in human life and by a loss of the prosperity which has been an untold blessing to millions of our homes. The hope that crime will be diminished by concessions to crime is preposterous on the face of it.
>
> "The Salvation Army knows the underworld. Tens of thousands of its victims have been rescued by our efforts, and a victory of the wets over the law of the land, if permitted, will be a signal for an orgie of exultation and renewed excesses, by those whose entire life is a rebellion against orderly citizenship."

Other words of Miss Booth that challenge attention are:

> "You can hush every other voice of national and individual entreaty and complaint! You may silence every other tongue—even those of mothers of destroyed sons and daughters, of wives of profligate husbands—but let the children speak! The little children, the wronged children, the crippled children, the abused children, the blind children, the imbecile children, the dead children. This army of little children! Let their weak voices, faint with oppression, cold and hungry, be heard! Let their little faces, pinched by want of gladness, be heeded! Let their challenge—though made by small forms, too mighty for estimate—be reckoned with. Let their writing upon the wall of the na-

> tion—although traced by tiny fingers, as stupendous as eternity—be correctly interpreted and read, that the awful robbery of the lawful heritage of their little bodies, minds and souls is laid at the brazen gates of Alcohol!''

If anyone is entitled to speak with authority on the subject, it is Miss Booth, and what she says is not paid propaganda.

It has been charged by some who have appeared before us that the criminal elements in the United States now engaged in violating this law, as well as every other law, find encouragement from the attitude of those who have been termed by witnesses ''the upper crust'' of society, meaning that portion of the very rich people of the Nation constituting so-called fashionable society. It is not fair to indict all the so-called ''upper crust'' of the Nation as law-breakers, but it has been frankly stated before our Commission that many of these people of great wealth and prominence will not obey the prohibition laws, do not intend to, and boast of the fact that they will not because they do not believe in them and consider them an encroachment on personal liberty. In other words, that they will obey the laws in which they believe, and refuse to obey the laws in which they do not believe. If that is to be the standard of law observance, our government will fail. The forger and the bank robber; the highwayman and the embezzler, do not believe in laws that restrain them. There is no more reason why what is termed the ''upper crust'' of society should choose the laws they will obey than that the same privilege should extend to the ''under crust''.

Clubs in some of the cities, officered by distinguished men, leaders in finance and in the life of the community, are maintaining bars where liquor is freely dispensed to the members. People who buy bootleg liquor are assisting in violating the law and are contributing money for purposes of bribery and corruption, for they know that the system of illicit sale of liquors cannot be carried on to the extent that it is without bribery and graft. They are moral accessories to the illegal business of the bootlegger. They are assisting in breaking down law in the Nation.

One of the greatest of American manufacturers is reported by the newspapers to have recently said:

> ''That portion of 'high society' that buys bootleg liquor is just a part of our underworld.''

A truth well stated.

Honorable Herbert Hoover, in his address accepting the Republican nomination for President, said in part:

> ''Modification of the enforcement laws which would permit that which the Constitution forbids is nullification. This the American people will not countenance. Change in the Constitution can and must be brought about only by the straightforward methods provided in the Constitution itself. There are those who do not believe in the purposes of several provisions of the Constitution. No one denies their right to seek to amend it. They are not subject to criticism for asserting that right. But the Republican Party does deny the right of anyone to seek to destroy the purposes of the Constitution by indirection.''

In his inaugural address of March 4, 1929, he said:

> ''But a large responsibility rests directly upon our citizens. There would be little traffic in illegal

liquor if only criminals patronized it. We must awake to the fact that this patronage from large numbers of law-abiding citizens is supplying the rewards and stimulating crime.

". . . The duty of citizens to support the laws of the land is coequal with the duty of their government to enforce the laws which exist. No greater national service can be given by men and women of good will—who, I know, are not unmindful of the responsibilities of citizenship—than that they should, by their example, assist in stamping out crime and outlawry by refusing participation in and condemning all transactions with illegal liquor. Our whole system of self-government will crumble either if officials elect what laws they will enforce or citizens elect what laws they will support. The worst evil of disregard for some law is that is destroys respect for all law. For our citizens to patronize the violation of a particular law on the ground that they are opposed to it is destructive of the very basis of all that protection of life, of homes and property which they rightly claim under other laws. If citizens do not like a law, their duty as honest men and women is to discourage its violation; their right is openly to work for its repeal."

In his address at the annual luncheon of the Associated Press in New York City, April 22, 1929, he said in part:

"What we are facing today is something far larger and more fundamental—the possibility that respect for law as law is fading from the sensibilities of our people Whatever the value of any law may be, the enforcement of that law written in plain terms upon our statute books is not, in my mind, a debatable question Law should be observed and must be enforced until it is repealed by the proper processes of our democracy. The duty to enforce the laws rests upon every public official and the duty to obey it rests upon every citizen.

"No individual has the right to determine what law shall be obeyed and what law shall not be enforced. If a law is wrong, its rigid enforcement is the surest guaranty of its repeal. If it is right, its enforcement is the quickest method of compelling respect for it. I have seen statements published within a few days encouraging citizens to defy a law because that particular journal did not approve of the law itself. I leave comment on such an attitude to any citizen with a sense of responsibility to his country."

". . . Respect for law and obedience to law does not distinguish between federal and state laws—it is a common conscience."

General Pershing, at a dinner to ex-service men is reported to have said:

"Ex-service men must stand up courageously and fearlessly for everything sacred in our institutions. No man or woman can fulfill the obligations of citizenship who remains passive regarding the enforcement of the law."

These statements at this time are entitled to the thoughtful consideration of the American people. This government will continue to be a government of law or it will cease to be a government at all. The representatives of great property interests who are well within their rights in seeking repeal of the laws go far beyond such rights when they defy the laws' enforcement. The day may come in this country when

representatives of great property interests will realize that they need the protection of the law for the properties they represent more than other people may need it.

Everything in the way of breaking down of law, prison riots, hard times, increase in crime, is charged to prohibition by its enemies. That there is an increase of crime in this country is evident to all practical thinking citizens. The whole age in which we live has changed. Crime is more sensational, is featured all too much by the newspapers, and has become nauseating. The great war affected the thought and habits of people, and resulted in a national letdown in our moral fibre. All this has borne on the question of criminality. Surely the terrorizing of the people of some large cities by gangs of murderers who seek to create an American Mafia in this country cannot be laid at the door of prohibition. The revenue of these gangsters comes from gambling establishments, dance halls, houses of prostitution and other vice dens and not entirely from beer and other liquors.

The calm judgment of the American people must face the situation as it now exists. It is porbable that the Eighteenth Amendment cannot be repealed. The other alternatives are enforcement, modification, or nullification. Nullification is an odious word in this republic and yet the Fifteenth and parts of the Fourteenth Amendment to the Constitution have been nullified and such nullification accepted by the people. The situation now as to use of wine concentrates, which seems to be backed by governmental appropriations, amounts to a nullification in part of the Eighteenth Amendment. That the Eighteenth Amendment is now nullified in many of the large cities of the country cannot be denied by anyone willing to face the facts, and this

very nullification is producing public sentiment against the prohibition laws and affecting the judgment of those who earnestly believe that it is a dangerous proposition for a country to permit its laws to be nullified. It would be better to modify the Eighteenth Amendment than to nullify it. I have pointed out the reasons why, in my judgment, the prohibition laws have never had a fair chance of enforcement. The effort to enforce the same is now quickened, due I think somewhat to the statements made by the President in his various addresses, from which I have quoted, and due to the transfer of enforcement to the Department of Justice.

It has been admitted by some of the strongest prohibition leaders of the country whom we have had before us that the prohibition laws cannot be enforced without the cooperation of the states, that the cost would be almost prohibitive, and it is doubtful if the people of the Nation would countenance a system of federal policing of our cities. Certainly that is a duty that should not rest on the federal government. Dr. Doran and General Andrews, testifying in 1926 before a Senate Committee, stated it would require $300,000,000 a year to administer the prohibition laws if state cooperation could not be secured. It is idle under our form of government to talk of enforcing these laws by the military and naval forces. In large cities in the states which have no enforcement laws the National Prohibition Laws are bound to become more or less of a dead letter, unless public sentiment therein changes. The government can go ahead and prosecute some of the larger cases, but every little violation cannot be taken care of by the federal government at least without creating a system of courts and police that would be staggering.

I do not like to admit that the Federal Government cannot enforce its laws without the help of the states, but I am satisfied it cannot enforce completely the prohibition laws without such aid. Certainly it cannot enforce them in a state where there is active opposition on the part of the officials of the state, and while there is no legal duty on the states that could in any way be enforced to assist in carrying out the federal statutes, it is apparent that Congress in providing for concurrent jurisdiction expected the states to assist. There is a moral obligation on the states to assist in enforcing the Eighteenth Amendment and laws passed in pursuance thereof. They should take care of the violations coming peculiarly within the province of the state, such as intrastate violations of the law. States are a part of the federal government. Surely there is a solemn moral duty on the states to support the Constitution. The Constitution and amendments and laws to carry them into effect are still the supreme law of the land. What kind of a Union of States is this if there is no obligation on the part of the states to assist in preserving the government which makes possible the existence of the states and guarantees to every state a republican form of government and protects it against invasion. It is a dangerous doctrine that the states of the Union have no interest in preserving the Federal Government. The words of Senator Borah in an article in the New York Times of January 28, 1929, hit the nail squarely on the head. He said:

> "The most inconsistent and indefensible thing in all government is for a state to be a part of a government, to belong, as it were, to a government, to enjoy the interstate trade and commerce, the prosperity and the dignity of such government, but whose will and policy and authority it rejects. It is a part of the government for its benefits and its privileges. It is against the government for its supposed burdens. That is a false and mistaken position to take and no argument, no plea will be able to justify such a position or give it a place of dignity and honor."

Officials of states swear to support the Constitution of the United States. If they give aid and comfort to the attempts to nullify laws passed by Congress to carry out Constitutional provisions, they are not supporting the Constitution of the United States and are violating their oaths of office. There are moral obligations in government binding on honest representatives of the people. True, Congress is not compelled to appropriate money to carry on the government. It can paralyze the administrative and judicial branches of government by refusing to provide necessary funds by taxation and to make appropriations for carrying them on and thus cause the Federal Government to perish. The honest partiotism of legislators is the safeguard against such course.

The present situation as to prohibition in the large cities is intolerable and presents a serious question to the thinking people of the Nation, viz., are they willing to have a few states, through the influence of large cities, and that influence affected by thousands who have come to our shores from foreign countries and who have been naturalized, but insist that their customs and habits shall not be interefered with, nullify the Constitution of the United States, and if they are not willing what are they going to do about it? The seriousness of these questions cannot be underestimated. The seeds of national trouble are implanted therein, and thoughtful citizens may well give pause and meditate thereon.

Inasmuch as the amendment was ratified by all of the states of the Union except two it would seem that opponents of the prohibition laws ought to be willing to have them given a fair trial. After such fair trial if they cannot be enforced any better than in the past, the proponents of these laws should be willing to have the Eighteenth Amendment modified or repealed and abandon the effort for national prohibition. The general report states: "There has been more sustained pressure to enforce this law than on the whole has been true of any other federal statute. No other federal law has had such elaborate state and federal enforcing machinery put behind it." That is true, but no law has had as much propaganda against it as these laws, and while the pressure at times may have been sustained to enforce the law, it is apparent that the pressure was not of the nature applied to enforce other laws.

Much has been said about the Eighteenth Amendment having been adopted while the boys were overseas and that the people have had no chance to express themselves upon it. In view of growing opposition to the prohibition laws and the prevalence of this sentiment, it seems to me there should be if possible a referendum which would settle the proposition of whether the majority of the American people favor prohibition as a national policy. There is no provision of the Constitution for a referendum and a mere straw vote referendum by states or magazines is unsatisfactory. There could be an expression by the people under Article 5 of the Constitution. An amendment could be proposed to the Constitution to repeal the Eighteenth Amendment, and the Congress could provide that the ratification should be by conventions

in the various states, delegates to be elected by the people. That would present as clear cut an issue on the subject as is possible under the Constitution.

The people are the source of power, and on a question of this character, where the discussion has become nation-wide and excludes consideration of other great questions involved in our national political life, the people should have a right to speak and to register their desires. Such an amendment as I have suggested, if submitted to conventions in the states, delegates to be chosen by the people, would find the nation soon engaged throughout its length and breadth in an educational campaign, and such campaign would be beneficial. After ten years of trial, such as it has been, why should the people not have an opportunity to register their feeling on this subject? If the great majority of the American people are against prohibition and say so in the selection of delegates to constitutional conventions in the states, it will be apparent that such laws cannot be nationally enforced. If a large majority of the people declare against repeal of the Eighteenth Amendment, many who are opposed to it will see that the policy of the Eighteenth Amendment is to be the national policy and will adjust themselves to the situation. My firm judgment is that the referendum herein suggested would be the best thing that could happen to assist in settling this troublesome situation. A limit of time should be fixed as to the meetings of the conventions, so that the matter may not be stretched over a period of years and so that the will of the people may be expressed at substantially the same time. This can be done under the authority of *Dillon* v. *Gloss,* 256 U. S. 368.

If it were possible to repeal the Eighteenth Amendment what in the way of a regulatory measure is to

take its place? Those who advocate its repeal offer no program. The answers to this question propounded to practically all of those who appeared before us advocating a change or repeal of the prohibition laws brought little help. Some advocated the substitution of the Canadian system. There are as many different systems in Canada as there are provinces, and there is no Canadian system, as such.

Honorable E. C. Drury, fromer Premier of the Province of Ontario, was before us, and stated that bootlegging is carried on in the Province of Ontario to as great an extent now as during prohibition days; that there is much drunkenness, and that arrests for drunkenness have not diminished. He stated that the present system in Ontario is not satisfactory; that liquor consumption and crimes have increased under governmental liquor control. Other prominent Canadians are quoted to the contrary in the papers. Throughout Canada it will be found that there are complaints as to violations of their laws. It must be remembered that under prohibition in Canada licenses upon the payment of one dollar were issued for home-brewing, and citizens were permitted to make wines in their homes out of native fruit juices. This practically amounted to permitting the manufacture in the homes of light wines and beers. Undoubtedly there has been increased sale and consumption of intoxicating beverages in Canadian provinces that have given up prohibition.

The Bratt system of Sweden which bears some similarity to the Quebec system has been explained before us as an ideal system. The Commission has had the benefit of the testimony of our Minister to Sweden and has been fortunate in that Honorable Henry W. Anderson, one of the members of the Commission, visited

Sweden during the summer and gave a careful study to the situation. They have presented very fully to the Commission the operation of the Bratt system. It is based on a paternalism which would be rather odious to citizens of this republic. It should be carefully studied, however, if any change is to be made.

Many of the witnesses before us representing organizations opposed to prohibition insist that state local option is a proper method of control; that inasmuch as the government trusts the state to punish murderers it can trust them to handle the liquor traffic. Others point to the fact that under such local option all the difficulties that arise as to prohibition are found.

There is no doubt from the experiences of this Nation and others that there are tremendous difficulties involved in any control or regulation of the liquor traffic and always will be. No system of control anywhere is satisfactory. Even Soviet Russia is having all kinds of trouble with it. Any restraint of the liquor traffic is regarded by many as infringing on personal liberty, and probably that idea will always prevail. The traffic never can be entirely eliminated as long as the appetite for drink remains. A repeal of the prohibition laws and the Eighteenth Amendment, without some satisfactory plan to take their place, is unthinkable. The result would be chaos. In this high-powered age of universal rapid traveling by automobiles on the interstate highways of the Nation, an awakened public would not long submit to the situation that would be brought about by an uncontrolled or state sporadic control of the liquor traffic. Public roads and drunken automobile drivers are not a good combination.

If prohibition cannot be successfully enforced, I should favor a trial of the system proposed by Com-

missioner Anderson in his report—which could only be after some modification of the Eighteenth Amendment putting the matter in the hands of Congress. Professor Chafee of Harvard University interestingly discusses in the January Forum of 1931 a somewhat similar proposal.

It seems to me, in fairness to a great social and economic experiment, that the enforceability of the prohibition laws should have further trial under the new organization in the Department of Justice; that if, after such reasonable trial it is demonstrated they cannot be enforced any better than they have been in the past, the modification of the Eighteenth Amendment suggested by the Commission should be brought about and the power placed in Congress to deal fully with the subject; that in the meantime, the feeling of the people on the subject should be registered by a referendum on repeal of the Eighteenth Amendment in the manner suggested herein.

WILLIAM S. KENYON.

Washington, January 7, 1931.

Separate Report of MONTE M. LEMANN

Under the language of the Appropriation Act which provided funds for the work of the Commission, it is the duty of the Commission to inquire into the enforcement of the Eighteenth Amendment and the laws enacted in pursuance thereof. I construe this language as a mandate to assume the Eighteenth Amendment as the established national policy. The wisdom, advantages and desirability of prohibition in the abstract, if it be enforceable, are not, as an original question, within the province of the Commission, whose primary function it is to ascertain the facts bearing upon the problem of enforcement and to make such recommendations as the ascertainable facts may seem to justify.

Except with respect to the machinery of enforcement, the amount of scientifically provable facts bearing upon the enforcement of the Eighteenth Amendment made available to the Commission is small, and the material before the Commission consists chiefly of statements and reports by persons whose positions give them special opportunities for observation and entitle their estimates upon the issues of fact to more weight than those of the ordinary individual. As to the machinery of enforcement, omitting the machinery of the courts and penal institutions, an extended study has been made for the Commission by Messrs. Henry S. Dennison and Albert E. Sawyer and their staff. That study presents in considerable detail the history, development and present situation of the federal forces dealing with pro-

hibition enforcement, excluding the federal courts and penal institutions. The facts collected in this study, some of which are set out in the report of the Commission, are sufficient, I think, to support the conclusions that (a) even upon the most restricted theory of the proper field of federal activity, the organization for the enforcement of the National Prohibition Act is and always has been inadequate, (b) the uncertainty and changes attending the early history of the Prohibition Bureau and the poor quality of the field force prior to the extension of Civil Service prevented the organization from operating with reasonable efficiency prior to the reorganization of 1927 and for some time thereafter, (c) the federal machinery for the enforcement of the National Prohibition Act has not yet had an opportunity to demonstrate the most that it can accomplish, and (d) a substantial improvement in enforcement may reasonably be expected with increased personnel and equipment.

The machinery of enforcement may, in my judgment, without disproportionate expense, be made adequate to cope with the industrial alcohol and smuggling aspects of the enforcement problem.

The entire number of plants holding permits to produce ethyl alcohol, exclusive of breweries conserving the alcohol driven off, was on June 30, 1930, forty-nine.[1] These forty-nine plants, of which two produced no alcohol during the fiscal year ending June 30, 1930, were owned by twenty-one corporations on June 30, 1930. These figures were furnished to the Commission by the Technical Division of the Bureau of Industrial Alcohol. It is, I think, reasonable to assume that those directing these enterprises will not

[1]In 1923 the number was seventy-six. See Annual Report Commissioner of Internal Revenue, page 33.

connive at violation of the law, but even if they were disposed so to do, their number and the location of their plants is sufficiently limited to permit of adequate supervision. During the fiscal year ending June 30, 1930, there were in the entire country only sixty-seven denaturing plants in operation and of these there were basic permits held on June 30, 1930, by only seven which might be termed independent. Of these two were subsidiaries of large corporations and used all of the denatured alcohol which they produced, so that there were in fact on June 30, 1930, only five actually independent denaturing plants.[2] Enactment of legislation prohibiting independent denaturing plants would entirely remove any possibility of difficulty as to them. The study made by Messrs. Dennison and Sawyer calls attention to the difficulty presented by the so-called coverhouse, or establishment purchasing from permittees products made by them from specially denatured alcohol, for resale to illegitimate denaturing plants. The difficulty with respect to these coverhouses arises from the fact that under existing legislation there is doubt as to the Government's authority to examine the records of persons purchasing products manufactured from specially denatured alcohol or to require reports from such persons, for the purpose of determining the ultimate disposition made of the products so purchased. This difficulty may also be met by appropriate legislation.

The new process for the manufacture of synthetic alcohol from petroleum is likely to cause some added difficulty in dealing with the problem of industrial alcohol, but not beyond the reasonable power of the federal government to meet. It must be borne in mind

[2]This information was also furnished to the Commission by the Technical Division of the Bureau of Industrial Alcohol.

that even with the abandonment of prohibition, the federal government would continue to be faced with the problem of supervising industrial alcohol plants and preventing diversion of industrial alcohol in order to protect the government's taxes, although it is true that the incentive to divert would then be confined to evasion of the tax.

As to legitimate cereal beverage plants or breweries, there were in force on June 30, 1930, in the entire country only two hundred and seven permits authorizing the operation of such plants.[3] These plants were inadequately supervised, but it would require only a relatively small force of men (estimated at four men for each brewery) to supply this supervision, and no serious difficulty in enforcement appears to be presented at this point.

Upon the facts presented, I have also reached the conclusion that the difficulties of enforcement with respect to smuggling are exaggerated. Of course, it always will be impossible entirely to prevent all smuggling of liquor. It is also impossible to completely prevent the smuggling of other commodities. Conceding that a greater difficulty is presented in the case of liquor, it seems reasonable to conclude that a moderate increase in personnel and in the number of first-class destroyers assigned to the Coast Guard service, an addition to the patrol service of faster boats, radio equipment and silencing devices, accompanied by an increase of two or three hundred men in the Customs service, would eliminate most of the smuggled liquor. In this connection it may be observed that the official statistics of the Canadian government with which the Commission has been furnished show that the quantity of all alcoholic beverages declared for export from

[3]Annual Report, Commissioner of Prohibition—1930, page 90.

that country to all points was 4,816,291[4] imperial gallons in the year ended March 31, 1930. The figures include alcoholic beverages declared for export not only to the United States (prior to the recent ban by the Canadian government of such exports), but also all liquors exported to St. Pierre and Miquelon, Central America and other countries. While it is true that the ratio of increase in the quantity of liquor declared for export from Canada to St. Pierre and Miquelon and Central American points has been considerable, the total amount of liquor so exported remains relatively small. In the fiscal year ended March 31, 1930, the total quantity of alcoholic beverages exported from all Canadian ports to St. Pierre and Miquelon was 1,038,980 gallons.[5] Assuming that the entire quantity of liquor exported from Canada found its way into the United States—an assumption which seems beyond the possible fact—the total quantity would not be as great as commonly supposed. In addition to liquor declared for export through regular channels, some may be surreptitiously brought into the United States directly from Canada, but the quantity so introduced can be acquired only by individual purchasers in Canada and it does not appear that in the aggregate it could bulk very large. A consideration of these figures suggests that much of the liquor which is purchased upon the assumption that it is imported actually represents moonshine spirits distilled and sold under fictitious labels. In considering the problem arising in the prevention of smuggling and the frequently referred to extent of our land and water external boundaries, it must again be borne in mind that a serious burden is likely to be thrown upon the federal government if

[4]"The Control & Sale of Liquor" (a mimeographed report issued by the Dominion Bureau of Statistics in 1930), page 17.

[5]Report of Consul General Linnell to State Department, Nov. 21, 1930.

prohibition is abandoned in carrying out the federal task of preventing the smuggling of liquor from wet states into dry states, since interstate roads, both primary and secondary, far exceed the international highways. The great increase in mileage of paved roads, made possible by federal aid and large state bond issues, and the extent of the use of automobiles would make this difficulty one of no inconsiderable proportions, in meeting which active local cooperation would be necessary.

As the foregoing indicates, while industrial alcohol and smuggling present some serious difficulties, they seem to me to be quite within the power of the federal government alone to deal with without any unreasonable expenditure or unduly large organization. The great problem in the enforcement of the National Prohibition Act lies in the ease with which spirits are manufactured in stills both upon a large and a small scale and the facility and extent to which wine and malt liquors may be and are made in and outside of homes. The increase in the production of corn sugar in this country from 157,276,442 pounds in 1919 to 896,121,276 pounds in 1929,[6] without adequate explanation in ascertainable legitimate use, is one indication of the extent to which the illicit manufacture of liquor in stills has increased. Cane and beet sugar, corn meal, other grains and molasses also afford other easily available material for the illicit manufacture of alcohol in stills. It is conceded that it is impossible to do more than guess at the total quantity of alcohol which is currently available from these sources; but the estimate of the Bureau of Prohibition of the Department

[6]The 1919 figures are taken from the U. S. Bureau of the Census, Biennial Census of Manufactures (1921), p. 89. The 1929 figures are taken from the Census Bureau, Department of Commerce, Census of Manufactures (1929). Release of July 7, 1930.

of Justice for the fiscal year ending June 30, 1930,[7] which is the lowest that I have seen for that year, places the total amount possibly manufactured from corn, cane and beet sugar, corn meal or other grains, and molasses at 29,950,000 gallons of absolute alcohol, equal to 59,900,000 gallons of 100 proof alcohol. The Bureau of Prohibition in the Department of Justice has also estimated the possible illicit production of wine and malt liquor during the fiscal year ending June 30, 1930, to be 118,320,300[8] and 683,032,000 gallons respectively. There is no method by which the correctness of these estimates can be checked with reasonable precision, but the expert information that the Commission has been able to obtain does not warrant any conclusion that the estimates, in general, are above the fact. The figures above quoted are exclusive of liquor estimated as possibly placed in circulation through smuggling and diversion of industrial alcohol. The total estimates reflect a probable per capita circulation of intoxicating liquor which, while still considerably less than before prohibition, is much too great to sustain any claim of reasonable enforcement or observance of the Eighteenth Amendment.[9] In the year ending June 30, 1930, according to the annual report of the Commissioner of Prohibition, there were seized

[7]"Possible Production of Illegal Liquor in the United States for the Fiscal Year Ending June 30, 1930," Bureau of Prohibition, Department of Justice, September, 1930.

[8]Subsequently reduced by 3,154,866 gallons deducted as the legal production of wine, leaving a corrected estimate of 115,165,434 gallons.

[9]The total quantity of intoxicating liquors estimated by the Bureau of Prohibition to be possibly in circulation from all sources in the year ending June 30, 1930, was approximately 69,829,218 proof gallons of spirits, 118,476,200 gallons of wine and 684,176,800 gallons of malt liquor. In the year ending June 30, 1917, the quantities of intoxicating liquors consumed were 167,740,325 proof gallons of spirits, 42,723,376 gallons of wine and 1,885,071,304 gallons of malt liquor. The figures last quoted are taken from the United States Statisical Abstract for 1922, page 697.

16,180 distilleries, 8,138 stills, 4,152,920 wine gallons of malt liquor and 34,183,427 wine gallons of mash.[10] Yet the statements made to the Commission indicate that intoxicating liquor is readily obtainable in every city of consequence in the country.

To break up the manufacture and distribution of intoxicating liquor made on this scale in thousands of stills and apparatus for the manufacture of wine and home brew scattered throughout the nation, both in cities and at many lonely spots in the country, the field force in the prohibition service on June 30, 1930, aggregated 1,786 for the entire country, made up as follows:

Agents	1,484
Investigators	109
Special agents	193
Total	1,786

Messrs. Dennison and Sawyer have recommended an increase of 60 per cent in the number of prohibition agents and of 100 per cent in the number of investigators and special agents. The adoption of these recommendations would mean the employment of 890 additional agents and 302 additional investigators and special agents, or an aggregate addition to the field force of 1,192, bringing the total prohibition field force for the entire country to approximately 3,000. The apparent conclusion that so moderate an increase would permit effective dealing with the enforcement problem I understand to be based upon the theory that

[10]Annual Report, Commissioner of Prohibition, 1930—page 111. The figures quoted do not include still worms or fermenters seized, the number of which was large.

by concentration upon the large, conspicuous cases and the organizing minds which direct the distribution of illicit liquor, the sources of supply may be effectively broken up.[11]

Mr. Dennison is a business executive and organizer of proven capacity and success. His judgment must therefore command respectful attention. Except, however, upon the theory that with improved efficiency in the federal enforcement agencies there could also be obtained more cooperation from state enforcement agencies, it does not seem reasonably likely that even upon the proposed plan of concentration upon sources of supply (which appears to me a proper administrative policy) a federal field force of approximately three thousand men could effectively prevent the operation of stills, the manufacture of home brew, beer and wine and the distribution of intoxicating liquors throughout the country. To accomplish a result of this magnitude in a country of the size of the United States would, in my judgment, require the services of many thousands of enforcement officers. Such a federal police force could not be maintained consistently with our governmental system.

Assuming that it were in fact feasible and desirable for the federal government to maintain a police force of the size requisite to cope with the illicit manufacture and sale of intoxicating liquor throughout the country, there would be required a corresponding increase in federal courts and federal penal institutions if the federal government were to carry the burden of enforcement without local aid. According to the reports of the Commissioner of Prohibition and the Attorney

[11]The authors of the study add, however, that small violators cannot be entirely neglected and that cooperation of local law enforcement officers is needed in dealing with them.

General for the fiscal year ending June 30, 1930, there were terminated in that year in the federal courts 52,706 criminal cases under the National Prohibition Act, involving 72,673 persons as defendants, of which there were convictions in 44,484 cases (54,085 defendants). 74.4% of the defendants in cases terminated were convicted. Of the persons convicted 48,577 or 89.8% pleaded guilty (a ratio which did not exceed the ratio in other federal criminal cases but which may be more significant in prohibition cases because of their far greater number).[12] In the same year there were 8,224 civil injunction suits disposed of in favor of the United States and 3,668 temporary injunctions obtained in prohibition cases in addition to approximately 3,000 libel suits.[13] The Commission has now under way a field study of the business of the federal courts in thirteen important districts. This investigation should make available for the first time detailed facts with respect to such matters as the time now actually spent in federal courts upon enforcement of the prohibition law, the manner in which that enforcement is dealt with, the extent to which it interferes with other business of the courts, and the possibility of any substantial and compensating relief to those courts from other changes in their jurisdiction or from the repeal of such statutes as the Dyer Act relating to the theft of motor

[12]A field study into the relationship between pleas of guilty and sentences would be necessary before any considered statement on this point could be made. An examination of the table in the Annual Report of the Commissioner of Prohibition, 1930, page 118, shows that the percentage of pleas of guilty is as high in some districts where substantial jail sentences are given in a large proportion of cases as in districts where jail sentences are rare and very short. It may be that in the first class of districts sentences are more severe where the defendant pleads not guilty and is convicted after trial so that an inducement to plead guilty is in fact offered.

[13]The figures are taken from the Annual Report, Commissioner of Prohibition, 1930, page 118; Annual Report, Attorney General of the United States, 1930, page 110.

vehicles. I should have preferred to express no opinion upon the federal court situation until this investigation had been completed, but upon the material now available in the reports of the Attorney General and the Bureau of Prohibition, it is difficult to avoid the conclusion that at least in many of the larger cities of the country the federal court organization could not meet increased demands from prohibition cases except by increases in the number of judges, court rooms and incidental equipment.[14] Reflection has convinced me that the bill authorizing the United States Commissioners to pass in the first instance upon petty cases is open to serious objection and would not in practical operation relieve the congestion existing in federal courts in metropolitan areas.

If the increase in the field enforcement force recommended by Messrs. Dennison and Sawyer should be

[14]The report of the Conference of Senior Circuit Judges (Annual Report of the Attorney General of the United States, 1930, page 4) describes the congestion in the federal district courts as continuing to be a major problem and recommends the appointment of five additional district judges. The Conference Report refers to suggestions made for the creation of additional districts and requests the Attorney General to make a survey as to the feasibility of consolidations or changes in existing districts. The total number of criminal cases pending in the federal courts on June 30, was in 1929, 31,153 and in 1930, 35,849. That the increase was due entirely to prohibition cases is indicated by the fact that the total number of such cases pending on June 30 increased from 18,385 in 1929 to 22,671 in 1930. The percentage of prosecutions pending under the Prohibition Act to total criminal prosecutions increased from 59.0 per cent at June 30, 1929, to 63.2 per cent at June 30, 1930. The number of prosecutions instituted under the National Prohibition Act increased only slightly from 56,786 in the fiscal year 1929 to 56,992 in the fiscal year 1930. But while the new prosecutions instituted thus increased only to the extent of 206, the cases pending at the end of the fiscal year increased by 4,286 from June 30, 1929, to June 30, 1930. Of this increase 3,040, according to a statement of the Department of Justice, were in the Southern District of New York, leaving a net increase of 1,246 for the rest of the country. A statement compiled by the Department of Justice shows that of the ninety-one federal districts in the United States, there were eleven districts each of which, either at the beginning or at the end of the fiscal year 1930, had more than 500 prohibition cases pending, and nine districts each of which had more than 300 such cases pending at one of such dates. Four of the eleven districts were included in those for which additional judges were recommended by the 1930 Conference of Senior Circuit Judges.

made, the increased efficiency of the field force should, in the ordinary course, be reflected in an increased number of cases for prosecution in the courts and especially in the number of serious cases requiring much time for trial.

In addition to the court problem, there is also to be considered the situation with respect to penal institutions. Assuming that the field forces were increased and that the courts were able to adequately dispose of prohibition cases, an increase in the number of convictions and in the gravity of sentences must be expected. The reports of the Commissioner of Prohibition show that the percentage of convictions receiving jail sentences increased from 28.5% in 1928[15] to 33.7% in 1929[16] and 41.4% in 1930,[17] and the average sentence in days per jail sentence imposed increased from 120.7 in 1928[18] to 140 in 1929[19] and 227.7 in 1930.[20] This has already resulted in a considerable increase in the number of violators of the National Prohibition Act actually confined in federal institutions. The number of long term liquor law violators confined in the five principal federal institutions increased from 1,887 on June 30, 1929[21] to 4,296 on June 30, 1930, at which date the liquor law violators comprised 34.8% of the total population of these institutions. This was substantially more than the percentage of violators of the narcotic acts (which was 22%) or of the motor vehicle act (which was 13.2%).[22] Of the 10,496 federal

[15]Annual Report, Commissioner of Prohibition, 1928, page 95.
[16]Annual Report, Commissioner of Prohibition, 1929, page 109.
[17]Annual Report, Commissioner of Prohibition, 1930, page 118.
[18]Annual Report, Commissioner of Prohibition, 1928, page 99.
[19]Annual Report, Commissioner of Prohibition, 1929, page 113.
[20]Annual Report, Commissioner of Prohibition, 1930, page 118.
[21]Annual Report, Federal Penal and Correctional Institutions, 1929, page 61.
[22]Bureau of Prisons, Department of Justice, unpublished data released December, 1930.

long term prisoners received from the courts during the year ending June 30, 1930, 4,722 or 45% were sentenced for violation of the Prohibition Act, while the number of such prisoners received under sentence for violation of the Narcotic Act was 1,752 (16.7%) and those received under sentence for violation of the Dyer Act was 1,458 (13.9%). The reports of the Attorney General for the fiscal years 1928 and 1929 are not made on a precisely comparable basis but they indicate that the prohibition law violators received in federal institutions under long term sentences in those years were 2,530 and 3,589 respectively.[23] These figures indicate a steady increase in the number of prohibition law violators flowing to federal institutions, an increase which it would seem must be accelerated as enforcement became more effective. The figures quoted include only federal long term prisoners. Until recently no information was available as to federal short term prisoners held in county and municipal institutions, but figures recently received[24] from the Bureau of Prisons of the Department of Justice show that in the year ending June 30, 1930 there were received from the courts under short term sentences for liquor law violations a total of 21,427 prisoners and that on June 30, 1930, there were present in county and municipal institutions 5,680 prisoners under sentence in federal liquor cases (which figure includes long term prisoners awaiting transfer to federal penitentiaries as well as short term prisoners sentenced to jail). As more men are arrested for violation of the National Prohibition Law and more are adequately tried, convicted and sentenced, the burden upon the federal penal institu-

[23]The above figures are taken from the Annual Reports of the Attorney General: the year 1930, page 315; the year 1929, following page 298; the year 1928, following page 292.
[24]Unpublished data released December, 1930.

tions seems bound to continue to increase at a rapid rate.

With respect to all the agencies required for enforcement, police, courts and prisons, the conclusion seems inevitable that the federal government alone cannot bear the burden of the enforcement of the Eighteenth Amendment. Adequate enforcement of the Amendment would require the assistance of local police officers as well as the machinery of state courts and penal institutions supplemented by a large measure of voluntary observance. The problem of enforcing the Eighteenth Amendment, therefore, reduces itself to an inquiry as to the possibility of securing the necessary cooperation from the states and cities and of arousing public opinion in favor of the enforcement and observance of the law. That such cooperation and public opinion do not now exist, at least in most urban districts, upon any effective scale, seems reasonably clear from the general statements and reports made available to the Commission and the amount of intoxicating liquor in circulation. According to the 1930 census, of the total population of the United States, 122,755,046, 30%, or 36,325,736, live in cities of more than 100,000 inhabitants each and 49,242,777, or 40%, live in cities of more than 25,000 inhabitants each. If the law is not enforceable in cities of the country where the use of alcoholic beverages is most likely to be abused, it cannot be considered as enforceable in the proper sense as a national instrument. What may be accomplished in the direction of securing the necessary cooperation and in the arousal of public opinion is a matter of judgment upon which men will react differently with different qualities of temperament and as to which the judgment of no ordinary individual, and least of all mine, is of particular significance. I was originally disposed to indulge some optimism in the matter upon the theory that improved federal enforcement might bring a change in the attitude of those who are now purchasing and drinking liquor and that improvement in public opinion might be attained by more consideration of the great difficulties involved in alternative plans of liquor control and of the danger of corruption, political intrigue and economic and social abuse which they involve, as well as by emphasis upon law observance and appeals to citizens to abstain from subsidizing violation of law aggravated at times by corruption and violence. But I find it impossible to justify such optimism in the face of the arguments stressed in the report of the Commission emphasizing the popular objections to the regime of a prohibitory law and the reasons which many persons have for believing these objections well founded. Without considering the validity of the objections and reasons thus stressed, as to which opinions will widely differ, it seems to me clear that they do not justify failure to observe the law. Their existence among great numbers of people including many respectable citizens must however, be recognized as a fact, and it is not open to doubt that leaders of opinion everywhere are regularly and openly drinking intoxicating liquor which can be furnished only in violation of the Eighteenth Amendment. After considering the arguments made in the report of the Commission I cannot find any reasonable ground for the expectation that public sentiment especially in urban districts, can be changed to the extent necessary to bring about the local cooperation required for the general enforcement and observance of the law. I have reached this conclusion with reluctance because I am deeply sensitive to the difficulties in finding any substitute method of controlling the liquor traffic which

will avoid the dangers of intemperance, corruption and political abuse found in the regulatory provisions prevailing prior to the adoption of the Eighteenth Amendment.

When alternatives to national prohibition are considered, the same state of public opinion, emphasized in the majority report, which leads me to the conclusion that the local cooperation necessary for the enforcement of the National Prohibition Act cannot reasonably be expected, seems to me to require the conclusion that repeal is the only consistent alternative. With great deference to the opinion of those who are so much better qualified than I to consider the matter, I do not think that to substitute for the Eighteenth Amendment a provision leaving the matter to Congress is any solution. Unless the Commission, after its opportunity for study, is prepared to recommend to Congress a concrete plan for dealing with the situation, the suggestion that the matter be referred to Congress seems to me not to dispose of the problem or to make any substantial advance in its disposition. Moreover, this proposal would mean that the liquor question would play a large part every two years in the election of Congress, that a fixed national policy of dealing with it would never be assured,[25] and that all the political influence of the liquor interests would be introduced actively into our national affairs. It is suggested that this would be preferable to having these interests active with each state legislature, but relegation of the matter to Congress would

[25]The suggestion that Congress might then elect to return to Prohibition does not seem to carry far. If Prohibition cannot succeed when given status as a fixed national policy by constitutional provision, it does not seem reasonable to hope that it could succeed when its continuance was open to attack every two years, or that the necessary organization for enforcement could be maintained and developed in the face of a constant doubt as to the permanency of the policy.

carry no assurance even of this accomplishment, since Congress doubtless would not undertake to force any state to be wet which desired to be dry, and that issue would still have to be fought out in each state. If it be a fact that no law can be adequately enforced which is contrary to local public opinion, no recommendation can consistently be made that the matter be left to Congress so as to enable the majority of that body to impose its view upon every community. If Congress should undertake to prohibit the saloon, the difficulties of effective federal enforcement in cities would not be substantially less than they are now in the absence of local public opinion and effort by local law enforcement agencies. If local opinion is against the saloon, as it should be, it will assert itself through state law. Nor is there any need for any amendment to the Constitution to permit of federal control in the matters which would fall properly within the field of federal control upon proper recognition of local public opinion. The power to regulate interstate commerce is adequate to permit Congress to control interstate movements from the wet states into dry states under a law of the general nature of the Webb-Kenyon act.

In considering the experience of Sweden and of the Canadian provinces in connection with systems of government control, it must be observed that while the per capita consumption of spirits under these systems showed a considerable drop in the earlier years of their operation, it has shown a quite steady per capita increase in both the Dominion of Canada[26] and in Sweden in the last several years.[27] I have not given elaborate consideration, however, to the operation of these sys-

[26]"The Control and Sale of Liquor in Canada." Canada Department of Trade and Commerce, Dominion Bureau of Statistics, Ottawa, 1930, page 19.

[27]Annual Reports of Swedish Royal Liquor Control Board (Rusdrycksförsäljning).

tems, because I think the evils which would flow from any federal dispensary system, either through direct government control or through a corporation the net profits of which above a limited extent would inure to the government, would present governmental difficulties as serious as are encountered in our present system. If an experiment with governmental control is to be undertaken, it appears to me better that it should be undertaken by individual states than by the federal government. It seems reasonably certain that any attempt to embark upon a paternalized permit system would not succeed in this country, would open the door to considerable corruption, and would transfer the bootlegger from the rich man to the poor man as his field for operation.

Summarizing, my conclusion is that the Eighteenth Amendment cannot be effectively enforced without the active general support of public opinion and the law enforcement agencies of the states and cities of the nation; that such support does not now exist; and that I cannot find sufficient reason to believe that it can be obtained. I see no alternative but repeal of the Amendment.

I do not favor the theory of nullification, and so long as the Eighteenth Amendment is not repealed by constitutional methods, it seems to me to be the duty of Congress to make reasonable efforts to enforce it, however grave the doubts as to ultimate success. The additions to the field forces and equipment which are set out in detail in the Dennison-Sawyer study appear to be a moderate proposal in this direction and would involve no seriously disproportionate expense for the effort at prohibition enforcement as compared with moneys otherwise expended for governmental operation. I therefore concur in the recommendations that the number of prohibition agents, inspectors,

storekeeper gaugers, warehousemen, investigators and special agents should be increased as recommended in that report with corresponding increases in the Customs Bureau and in the personnel and equipment of the Coast Guard. I do not think that any improvement in enforcement of the Eighteenth Amendment would result from an amendment of the National Prohibition Act so as to permit the manufacture of so-called light wines and beer. If the liquor so manufactured were not intoxicating, it would not satisfy the taste of the great majority of those who are now drinking intoxicating liquors, and if it were intoxicating, it could not be permitted without violation of the Constitution. Such legislation would moreover add to the difficulties of enforcement because if the permissible alcoholic content were increased, it would become harder to determine when the law had been violated. I agree that consistency requires that the National Prohibition Act should be amended so as to place cider and fruit juices upon the same basis as other intoxicating liquors; that independent denaturing plants should be prohibited; that there should be legislation adequate to eliminate the coverhouse problem in industrial alcohol; and that details with respect to the use of liquor for medicinal purposes should be provided for by regulation rather than by statute. These recommendations for immediate improvement in the machinery of enforcement represent, I think, a reasonable extension of federal efforts at enforcement which it is the duty of Congress to make so long as the Eighteenth Amendment remains in the Constitution.

MONTE M. LEMANN.

Washington, D. C., January 7, 1931.

Statement by Frank J. Loesch

On the evidence before the Commission, together with my experience as a prosecuting officer, and from personal observation, I have come to the conclusion that effective national enforcement of the Eighteenth Amendment in its present form is unattainable; therefore, steps should be taken immediately to revise the Amendment.

The revision should give to Congress the power to legislate upon the entire subject of the liquor traffic.

The traffic has transcended state lines and has become a matter of national concern. Even if it were a possibility of accomplishment in the near future it would be unwise to repeal the Eighteenth Amendment.

Such repeal would cause the instant return of the open saloon in all states not having state-wide prohibition.

The public opinion as voiced in the testimony before us appears to be unanimous against the return of the legalized saloon.

A strong reason, among others, why I favor immediate steps being taken to revise the Amendment is in order to destroy the power of the murderous, criminal organizations flourishing all over the country upon the enormous profits made in bootleg liquor traffic. Those profits are the main source of the corruption funds which cement the alliance between crime and politics and corrupt the law enforcing agencies in every populous city.

Those criminal octopus organizations have now grown so audacious owing to their long immunity from prosecutions for their crimes that they seek to make bargains with law enforcing officers and even with

judges of our courts to be allowed for a price to continue their criminal activities unmolested by the law.

Those organizations of murderers and arch criminals can only be destroyed when their bootleg liquor profits are taken from them. So long as the Eighteenth Amendment remains in its present rigid form the nation, the states, the municipalities, the individual citizen, are helpless to get out of reach of their poisonous breaths and slimy tentacles.

If not soon crushed those criminal organizations may become as they are now seeking to become supergovernments and so beyond the reach of the ordinary processes of the law.

It is asked, supposing the Amendment is revised, what legislation is to follow? What plan is there to take the place of a national prohibition act? Of the suggestions put before us the most carefully thought out is that proposed in the memorandum of Mr. Anderson. He has made a thorough study of what seems to be the most satisfactory system of liquor control thus far devised and his plan based on that study and on consideration of our experience in federal control of other important subjects seems to me to afford the best solution.

FRANK J. LOESCH.

Washington, D. C., January 7, 1931.

Statement by KENNETH MACKINTOSH.

Civilization will not allow this nation to end the long attempt to control the use of alcoholic beverages. The necessity for such control increases as the public feels more responsibility for the protection of the home and its children, as the medical profession gives more recognition of alcoholism as a disease, as industry requires more efficiency, as the machine age demands more alert and clear-eyed operators of its swift and intricate parts.

In this country any control must depend for its success upon the cooperation of both federal and state governments for the American people will not tolerate great interference in local communities by federal police. The federal government is restricted both by custom and necessity to a limited field of activity. It can not place an army of enforcement agents in the states, even if it had the means to do so. Public resentment would more than nullify any accomplishment it might be hoped to be attained. The limit of federal activity is that of control over these matters that have come to be recognized as being within federal duty and sphere. The control of importation, transportation and manufacture on large scale is as far as the national government can go with any hope of success, beyond that the habit and thought of the citizens of the states will give no countenance. But the federal government having the only authority, actual or practical, over these phases of liquor control must continue to exercise it in order to protect dry communities if for no other reason. The nation having once put its hand to that particular plow can not turn back though the share strikes many a rock and snag in the furrow.

There must then be built up a will in the states to undertake their part of the duty of control, to do the local policing, to curb the local violator, to destroy the local small producer, and to depend on the general government only for such help as it can give in accord with the tradition of federal jurisdiction. Without this and the development of a desire on the part of the individual for temperance no federal prohibition can be made even reasonably successful.

It is not to be wondered at that failure marked the first years of the effort to enforce the Eighteenth Amendment by inefficient and violent means, with an inexperienced personnel suffering from political and other interference and by attempting to exceed the scope of practical federal authority. Since the introduction of civil service and especially since the transfer of enforcement to the Department of Justice and the placing of it under the direction of intelligent and earnest officials, substantial progress has been made in some respects. And while the majority of this Commission think that even with further increase and raising of standards in personnel and added equipment reasonable satisfactory enforcement can not be attained in view of the opposition thereto in the populous centers of the country, and that the Eighteenth Amendment therefore can not become nationally effective, yet those holding this view recognize that some time must elapse before any revision of the Amendment can take place and agree that during such time every effort should be made to secure such enforcement as is possible. Even those expressing a hope for satisfactory results from a continuation of effort to enforce the present Amendment agree that if during that time the situation as it obtains now has

not been immensely improved there can be then no sane reason why the Amendment should not be revised to the end that those benefits which unquestionably have resulted from it be preserved and at the same time its deficiencies be remedied and further progress accomplished.

If it continues to be demonstrated that all that can be attained under the Amendment as now written is observance in those states where local cooperation is freely given and that the individual everywhere must be allowed to violate the law in his home because of the impossibility of there preventing his brewing, fermenting, and distilling, the result will continue to be both public and private nullification. That such a situation obtains now is tacitly, if not directly, admitted by the enforcement agencies themselves.

Of necessity the new regime will have the opportunity to alter this condition, if possible. But there can be no alteration unless the forces opposed to the use of intoxicants at once take up their long abandoned burden of teaching the benefits of abstinence, make it one of the principles of American character, and thus create a will to obey the law in both community and home. If a general public sentiment can be aroused throughout the nation for prohibition the law can be enforced as well as any other police law. This is a "consummation devoutly to be wished" and worked for. But if unattainable, nullification can not be tolerated, if we are to continue to have constitutional government. Such a condition means not government but chaos.

If such further effort is not productive of reasonable enforcement and observance and private and state cooperation, the revision of the Eighteenth

Amendment should take the form of making it more flexible so that there can rest in the Congress the power to meet changing conditions and differing situations in different localities. This can be done in such way as to prevent the return of the saloon, as to control the importation, transportation, and manufacture of intoxicants, as to destroy the profits of law violation, as to protect those communities where absolute prohibition is the will of the people, as to promote temperance nationally and at the same time to keep the government, both federal and state, out of the liquor business. It can not be that the genius of American people is not adequate to the solving of such a problem. In dealing with the great economic questions presented by transportation and finance they have evolved satisfactory methods of control. The conditions encountered there were no less intricate and were involved in no fewer difficulties and divergent viewpoints than exist regarding liquor. What has once been done can be done again.

With a flexible constitutional amendment it will always be possible to enact such legislation as will meet the then existing situations and not leave the federal government handicapped as it is now by too rigid a constitutional straight-jacket.

The bartender has given place to the bootlegger, and the latter, with more cunning and cash than the former had, must not be allowed to succeed by reason of society confining itself to but one inflexible way to thwart him. If the Constitution made it possible to deprive the bottlegger of his profits and to promote the doctrine of temperance the possibility for nation-wide prohibition would be rendered a reasonable actuality.

Mr. Anderson has presented in his statement a plan for control under the proposed revision of the Amendment, which is the result of careful and scientific thought and seems to meet the necessities of the situation more adequately than any other that has been so far suggested.

Progress comes through meeting actual present conditions. The Eighteenth Amendment met the condition then existing, and in addition to being an experiment noble in purpose, it has achieved splendid results in that it has destroyed the then existing organized liquor business with its sinister grip on our political life and abolished the legalized saloon, with its malignant influences. But the effect of these great benefits must not be sacrificed by stopping with an amendment which can not reach the later developed evils. What must be done is to continue the battle against intemperance by meeting present day problems with new weapons and fight the good fight until the American nation becomes sober and law-abiding. This can ultimately be done if we do not rest satisfied with what has been accomplished up to this time. The next advance must be to honestly and intelligently face the modern equipment of the illegal liquor business with new and efficient methods. Having come so far, it is no time now to beat a retreat. Take the private profit away from the criminals and make the business help support federal and state social service, public health, child welfare and development, and the many kindred public humanitarian agencies, including the teaching of the necessity of temperance, and in a surprisingly short time the main causes for criticism of present conditions will disappear; and with a constitutional amendment fitted to meet such

new conditions as may arise, a steady forward march can be maintained.

Though the Eighteenth Amendment has not produced all that some may have dreamed it might, yet the fact should not be overlooked that it has marked a long step forward. It is now time to take the next step in the same direction. To stand still now would mean final loss of all that has been so far gained.

The alternative to progress can only be nullification and the consequent ultimate destruction of organized representative authority. No constitutional mandate can be permitted to become a mere *brutum fulmen.*

KENNETH MACKINTOSH.

Washington, D. C., January 7, 1931.

Statement by PAUL J. MCCORMICK

From the evidence before the Commission I have reached the conclusion that the outstanding achievement of the Eighteenth Amendment has been the abolition of the legalized open saloon in the United States. Social and economic benefits to the people have resulted and it is this proven gain in our social organization that has justified the experiment of national prohibition. I am unable to find that there has been any further general moral improvement shown. It has been so clearly established that contemporaneously with national prohibition there has been developed such a widespread spirit of lawlessness, hyprocrisy and unprecedented disrespect for authority that in fairness and candor it must be stated that in the final analysis of conditions now, no other national moral improvement can be credited to prohibition. Nevertheless, the gain should not be jeopardized until it has been demonstrated after the fairest possible trial that the experiment is completed and has proven to be a failure.

The evidence has raised the doubt in my mind as to whether the enforceability of this law has been conclusively determined. I am not entirely convinced that complete and irreparable failure has been shown, neither am I satisfied in the light of the evidence before us as to bad enforcement machinery that the law has had that fair trial that a solemn constitutional provision should be given. Until quite recently the federal enforcement organization, agencies and methods, were very unsatisfactory. They are still inadequate. More improvement is needed before they can be said to be sufficient and before any indubious conclusion can be reached as to whether the Amendment can be nationally enforced.

I believe it is well within the established facts to conclude that fanatical, illegal and corrupt methods of enforcement throughout a long period in the decade of national prohibition, have been proximate causes of an extensive public sentiment against the enforceability of this law that is generally prevalent at this time. It has been proven to my entire satisfaction that there is today neither proper observance nor adequate enforcement of prohibition throughout the country. I am not entirely convinced, however, that the situation is utterly hopeless. I feel that much can be done to mollify and to change public opinion by intelligent, dispassionate and reasonable legislation and administrative effort. If improvements that appear to have been brought about by Civil Service requirements and by the Prohibition Reorganization Act of 1930, did not hold out some degree of hope for the law, I would favor abandonment of the experiment now and the immediate invocation of constitutional processes by state conventions to revise the Amendment in the form suggested in the report of the Commission. This report, however, makes recommendations which, if followed and made effective at once, will, I believe strengthen the law and may operate to reclaim public opinion in many important localities where indifference and even hostility is pronounced. If sincere public sympathy can be nationally developed for this law it can be intelligently enforced as adequately as other police regulations.

It is evident, however, that national prohibition cannot be properly enforced by the federal government alone. State cooperation, supported by wholehearted favorable local public opinion is absolutely necessary. It is not unreasonable from the facts before the Commission to believe that an improved enforcing policy, organization, personnel and equipment can restore to a sufficient degree state cooperation and public favor so as to make national prohibition reasonably and adequately enforceable except in a few metropolitan localities. At least the possibility of bringing this about within a reasonable time is sufficient to warrant further trial of the experiment.

There is another reason that has dissuaded me from the conclusion that the Amendment be modified immediately without further trial. It is my inability to suggest or find any other satisfactory remedial substitute for the existing law. My study of the systems of liquor control in other countries and of plans that have been submitted to the Commission to supplant present conditions in the United States leaves me in doubt as to whether any of them would be adaptable to our diversified, populous and extensive nation or to the heterogeneous aspect of its people. The plan developed by Mr. Anderson and presented in his statement seems to me to be the best, and if after further trial prohibition is not enforceable I should favor serious consideration of this system. I believe that the experience in one of the states of the dispensary system has demonstrated the insufficiency of such a solution as a national institution.

Absolute repeal is unwise. It would in my opinion reopen the saloon. This would be a backward step that I hope will never be taken by the United States. The open saloon is the greatest enemy of temperance and has been a chief cause of much political corruption throughout the country in the past. These conditions should never be revived.

The states favoring prohibition should be protected against wet commonwealths. This right would be de-

feated by remitting the entire subject of liquor control and regulation to the several states exclusively. Federal power incident to taxation and interstate commerce was insufficient in pre-prohibition days to protect dry states from encroachment from without their boundaries. There should be retained in the Constitution an express grant of federal power to preserve prohibition in those states which locally adopted it.

It is my belief that a solution of this vexatious problem would be accelerated by ascertaining the majority sentiment of our citizenry upon the desirability of prohibition as a national policy. This public attitude has never been directly expressed through legal processes. It could be learned by direct submission of the repeal of the Eighteenth Amendment through state conventions and under Article V of the Constitution. I favor and recommend such action. I think it should be undertaken immediately. The submission processes should be arranged and timed so as to avoid confusing the prohibition question with party or other issues or campaigns.

I have signed the report of the Commission. I believe it to be an impartial and dispassionate composite expression from all of the material that has come before the Commission. I concur in the findings of fact stated therein. I do not concur in all of the reasons, observations and statistics stated in the report. I am in accord with all of the Conclusions and Recommendations except that in which a revision of the Eighteenth Amendment is suggested immediately. I am not convinced by the evidence that the experiment has had a fair trial under the most auspicious conditions, and I believe an opportunity should now be given to the Congress and the administrative agencies to immediately give it such trial. If within a reasonable time observance and enforcement conditions are not clearly proven to be nationally better than they are now, then the Amendment should be revised as recommended in the Commission's report. I believe there is credible evidence before us that justifies the opinion that if the Congress enacts the recommended changes at the present session, one year would be a reasonable time to indubitably conclude whether or not the Eighteenth Amendment can be properly enforced as a national mandate.

To hopefully look forward to any satisfactory settlement of this momentous question it is not sufficient that National Prohibition have a fair trial, it is essential that its fair-minded proponents and the general public believe it has had a fair trial.

PAUL J. MCCORMICK.

Washington, D. C., January 7, 1931.

Statement by Roscoe Pound.

As I interpret the evidence before us, it establishes certain definite economic and social gains following national prohibition. But it establishes quite as clearly that these gains have come from closing saloons rather than from the more ambitious program of complete and immediate universal total abstinence to be enforced concurrently by nation and state. Thus the task is to conserve the gains while finding out how to eliminate the abuses and bad results which have developed in the past decade. Those results are due chiefly to: (1) the enormous margin between the cost of producing or importing illicit liquor and the prices it commands; (2) the hostility or at best lukewarmness of public opinion in important localities and of a significant part of the public everywhere; and (3) the tendency of many states to leave the matter to the Federal Government and of the Federal Government to seek to confine itself to certain larger aspects of enforcement. Instead of the two governments each pressing vigorously toward a common end, as contemplated in the Amendment, they allow enforcement in large part to fall down between them.

Americans have had a perennial faith in political mechanics; and, in the spirit of that faith, it is urged that the organization and machinery of enforcement and the legislative provisions may be so far improved as to bring about an adequate observance and enforcement which admittedly do not exist. But there is no reason to suppose that machinery and organization and equipment will change public opinion in the places and among the classes of the community where public

opinion has proved an obstacle, nor that they will succeed in the teeth of public opinion any more than they have in the past. Hence, while making enforcement as effective as we may, so long as the Amendment as it is remains the supreme law of the land, we should be at work to enable the fundamental difficulties to be reached. This, it seems clear, can only be done by a revision of the Amendment. It can be done only by so redrawing the Amendment as, on the one hand, to preserve Federal control and a check upon bringing back of the saloon anywhere, and, on the other hand, allow of an effective control adapted to local conditions in places where, as things are at least, it is futile to seek a nationally enforced general total abstinence.

Objection is made to immediate steps toward revision on the ground that they will hamper and discourage enforcement; that there has been no fair test of enforceability; and that no assuredly workable systems of control are at hand if revision of the Amendment were to make them possible. As to the first, the conditions which call for revision are recognized by the Bureau of Prohibition in its program for an enforcement abdicating a large part of the task which the Amendment imposes on the Federal Government. I do not understand how a frank endeavor to deal adequately with the parts of the task which it is giving over, while seeking to enable it to do more thoroughly what it is attempting to do, should discourage its performance of the restricted task. As to the second objection, the Amendment and the National Prohibition Act, enacted in an era of enthusiasm, enforced in a decade of prosperity, backed by an exceptional machinery for special enforcement both Federal and State, and guarded by strong organizations urging

action and jealously watching for lack of zeal or want of efficiency seem to me to have had the best chance they are likely to have of showing what they can achieve. My fear is that obstinate attempt to maintain them at all hazards as they are will give impetus to a reaction in which the gains will be lost.

Federal control of what had become a nation-wide traffic, and abolition of the saloon are great steps forward which should be maintained.

As to what might be done if the Amendment were revised, it would be possible to retain or come back to complete prohibition throughout the land, or to retain it where it is effective, protecting such areas in their policy, and yet to establish some form of control for localities where complete prohibition has proved or may prove ineffective. It requires an unwarranted lack of faith in American political ingenuity to assume that no such forms of control may be worked out. Mr. Anderson has proposed a well thought out plan, based on study of systems of liquor control and their operation. His plan deserves careful consideration as the best and most complete which has been brought to our attention. This or some like plan for adapting national control to local conditions may well be the next forward step.

ROSCOE POUND.

Washington, D. C., January 7, 1931.

Statement by George W. Wickersham

I have signed the report of the Commission, although, as is probably inevitable when eleven people of different antecedents and temperaments endeavor to agree upon a contentious subject, it is more or less of a compromise of varying opinions. In so far as it states facts, I believe it to be generally accurate. Every effort has been made to make it so. I should have preferred to have it state more facts and fewer broad generalizations from unstated facts. But the difficulties in securing accurate statistics, owing to the unsystematic and unscientific manner in which they are commonly kept in this country, often makes it impossible to get reliable statements of fact, although there may be sufficient available information to afford a fairly reliable basis of generalization.

I am in entire accord with the conclusions "that enforcement of the National Prohibition Act made a bad start which has affected enforcement ever since"; that "it was not until after the Senatorial investigation of 1926 had opened people's eyes to the extent of law breaking and corruption that serious efforts were made" to coordinate "the federal services directly and indirectly engaged in enforcing prohibition," and that not until after the act of 1927 had extended the Civil Service law over the enforcement agents, were there the beginnings of such an organization as might have been expected to command the respect of other services, the courts and the public, and thus secure reasonable observance of the law and enforcement of its provisions as well as other laws are enforced. Until then, too, enforcement largely had expended itself upon a multitude of prosecutions of petty offenders; it meas-

ured success in enforcement by the number of cases—most of which were trivial and in few of which were substantial penalties imposed. I cannot believe that an experiment of such far reaching and momentous consequence as this of National Prohibition should be abandoned after seven years of such imperfect enforcement and only three years of reorganization and effort to repair the mistakes of the earlier period. The older generation very largely has forgotten and the younger never knew the evils of the saloon and the corroding influence upon politics, both local and national, of the organized liquor interests. But the tradition of that rottenness still lingers, even in the minds of the bitterest opponents of the Prohibition law, substantially all of whom assert that the licensed saloon must never again be restored. It is because I see no escape from its return in any of the practicable alternatives to Prohibition, that I unite with my colleagues in agreement that the Eighteenth Amendment must not be repealed and, differing with some of them, I have been forced to conclude that a further trial should be made of the enforceability of the Eighteenth Amendment under the present organization, with the help of the recommended improvements. I am entirely in accord with the views expressed in the Report that Prohibition cannot be accomplished without the cooperation of the States and the active support of public opinion. This cooperation has been and still is sadly lacking in many States. Even where there is an adequate State law and a good State law enforcement organization, public sentiment often prevents enforcement. The crucial inquiry respecting the National situation is whether it be too late to expect or to hope for any more favorable turn in public opinion as a result of better organization

and methods of enforcement and a campaign of exposition of the evils of the old state of affairs and the dangers of a return to the saloon and corrupt saloon politics. I think that if a proposed amendment to the Constitution simply repealing the Eighteenth Amendment, were to be passed by the requisite majorities in both houses of Congress and submitted to the States, to be considered by Conventions called for the purpose in each State, the delegates to be chosen in an off year and the Conventions to be held in a year when there is no presidential election, we should have intelligent discussions of the question and a result which would reflect the sober informed and deliberate opinion of the people. Such a procedure might remove the issue from party politics. If the result were to support the Eighteenth Amendment, public opinion would promote observance and sustain a reasonable, intelligent enforcement of the law such as would furnish a test of Prohibition that would conclusively demonstrate whether or not it is practicable. If the preponderating opinion should oppose Prohibition, the way would be opened to a revision of the Amendment such, for example, as the one recommended in our report. Even then there would remain the difficult question of how to allow the manufacture and sale of intoxicating liquors without the return of the saloon. The best method thus far suggested is a modification of the Swedish system. Yet I have great doubts if such a system would work in our country. I think the pressure to obtain books authorizing purchase of liquor would be so irresistible, that all benefits of the system would be lost; or else, the intrigues of organized liquor interests would exert such influence in Congress, that the distinctive characteristics of the system would be destroyed and an abundance of liquor soon

flow for all who wished it. The whole subject is one of great difficulty. There is room for difference of opinion on most of the elements involved. Therefore, despite the well financed active propaganda of opposition to Prohibition and the development of an increasingly hostile public opinion, I am not convinced that the present system may not be the best attainable, and that any substitute for it would not lead to the unrestricted flow of intoxicating liquor, with the attendant evils that in the past always were a blight upon our social organization.

GEORGE W. WICKERSHAM.

Washington, D. C., January 7, 1931.