The Economic Club of New York

63rd Meeting

The Volstead Act and the Enforcement of Prohibition

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Introduction

William Church Osborn, President

Fellow members of the Economic Club and guests, we have the honor tonight of welcoming as our special guests representatives of a very ancient race who have just come in. You will be addressed on their behalf by Mr. John Collier, a Research Agent of the Indian Welfare Committee, with which you are familiar.

You possibly know much already about the mission of our guests to the Eastern States. I ask for them a most hearty welcome and most careful attention. Mr. Collier, will you please come forward. Let me present Mr. John Collier. (Applause)

John Collier

Research Agent of the Indian Welfare Committee

I am asking first if the Indian delegates will not sing to you the “Morning Song”.

(Pueblo Indian guests sing the “Morning Song”.)

Now, in a very few minutes I shall try to tell you something practical. These men in the balcony are the elected delegates from the ancient Pueblo communities of New Mexico. The Pueblos of New Mexico and of Arizona are the last remnants of the civilization of the Aztecs. The Aztecs

have gone and the Mayan civilization of the Yucatan has perished and all its books have perished, but these Pueblos are the living survivors of the Mayan and Aztec civilization.

There are twenty of these Pueblos in New Mexico. There are nine thousand Indians altogether in the twenty Pueblos. They live on tiny areas of land which were created out of the desert by these Indians before Columbus discovered America. When the white men came into New Mexico, they found civilized communities of Indians dwelling in beautiful towns, maintaining a complicated agricultural life and utilizing an irrigation system five thousand years old, and these Pueblo towns have a continuous history going back further than the pyramids, and antedating Babylon.

Let me only add that these communities which, incidentally, have never waged war against the United States, are governed according to a Republican system of government. Elected representatives, chosen annually, who appoint an Executive Committee and in addition, the discovery of the Supreme Court as an institution in government, is due to the Pueblos of New Mexico. Every Pueblo has its Supreme Court Justice, called the Cacique, or High Priest, to whom matters involving jurisdictional quarrels and the profounder questions of community life are referred, and he advises.

These are the oldest republics on the planet. Now, in New Mexico, the areas they occupy are so tiny that a map this big (indicating) would not show them twenty feet away, if that were a map of

the State of New Mexico. Now, why are they here? They are here on the first visit of the Pueblo Indian to Washington and the East since the year 1863. In that year, at the invitation of President Lincoln, the Pueblos sent their governors to Washington. President Lincoln placed in the hands of these Pueblo Governors documents which had been enacted by the Congress of the United States and signed by Abraham Lincoln, granting them these tiny tracts of land which they had created out of the desert, confirming the earlier land grants that Spain had made to them. At the same time Lincoln conferred on each Governor a silver-headed cane with his name engraved on it, and that cane was a token that he knew about these remarkable democratic communities, and he meant for them to go on and govern their own lives and live their own peaceful ways.

The cane which he gave them passed on year by year to each annually elected governor, and is that governor's insignia of office. Since that day when the Great Emancipator gave a pledge as solemn as any nation can give to its dependent wards, a pledge by Congress based on prior treaties negotiated by the United States, and verbally by Abraham Lincoln, and in writing confirmed by him, since that date white people have been appropriating the tiny green areas created by the Indians. Squatters have come on, and these Indians, being Indians, having not votes, having no civil status, save that of wards, have not been able to protect themselves legally, but it was the duty of the Bureau of Indian Affairs to protect them, and the Bureau has not protected them.

They have submitted to the theft of their land, which is their life, without bloodshed, protesting

and protesting, but always in vain. The point has been reached where today the Pueblo Indians and communities are living on less than one acre per capita. It takes ten acres to support a family with any kind of decency in New Mexico. The point has been reached where these self-supporting Indians, who got no Government subsidy, and ask for none, are living on per capita incomes per annum of less than Forty Dollars. If you take all their produce and all they earn, and all they consume, it is less than Forty-eight Dollars a year. In Taos, in Tesuque, they are slowly starving, but they get no rations and they don't ask for them.

All of these three thousand odd people who hold Pueblo lands illegally, hold their land under a clouded title. The Supreme Court, in 1917, in the San Naval decision, declared that no land had been alienated or could be alienated by those Indians. That implied duty rested on the Government to get their land. The Supreme Court held that Congress has plenary power. Pursuant to that decision by the Supreme Court, called the San Naval decision, there was introduced in Congress and passed in the Senate in September a bill called the Bursum Bill. That bill was drawn by the attorney for the Indian Office, which is a Bureau of the Department of the Interior. It was drawn on instructions of the Secretary of the Interior collaborating with Mr. Twitchell, the attorney of the Indian Office, and another man who was the attorney for some Mexican claimants to the Indians' land. The bill was called an administration measure, and as such it passed the Senate, but later it was recalled from the House by The Senate on motion of Senator Borah.

Meantime, in the House of Representatives, Congressman Snyder from this State, Chairman of the House Committee on Indian Affairs, introduced a bill which, in its essentials, is as inequitable and as ruinous to the Pueblos as the Bursum Bill.

What do these bills do? The Bursum Bill required the United States Court to grant immediately a clear title to every squatter on the Pueblo land, whether he was there one hundred years ago or twenty-five years ago, or twenty years ago, or yesterday, with the one exception, that if he got there in the last twenty years he has got to pay money to the United States Treasury for his loot, but not to the Indians, and the Indians have no option about selling, but if he got there more than twenty-two years ago, he keeps it and pays nobody anything. This is the Bursum Bill, which goes beyond that and destroys the tribal institution of self-government of the Pueblos pledged to them under treaty and by Abraham Lincoln.

I hold in my hand a clipping from the afternoon papers. Since last Monday hearings have been in process before the Senate Committee on Public lands. Senator Lenroot is presiding, and it is to appear before that Committee that this delegation of seventeen Pueblo Indians came to Washington. Gentlemen, here are the very words:

"The Secretary of the Interior denounces the propaganda incident to this attempt to loot the Pueblos. He makes an explicit statement in which he emphatically denied that the Interior Department was responsible for any proposed legislation intending to deprive the Indians of their

land. Into the record of that Senate Committee last week for four days in succession, the Commissioner of the Indian Affairs and the attorney of the Bureau of Indian Affairs read an exhaustive statement, to the effect that the Bursum Bill had been framed by the Bureau of Indian Affairs under instructions from the Secretary of the Interior, and that he accepted full and affirmative responsibility for it," and thereafter, under a cold, slow remorseless cross-examination from Senator Lenroot, the attorney for the Indian Office, Col. Twitchell, admitted in detail, point by point, every charge that had been made against that outrageous bill, that it deprived the Indians of their land and the right to plead in court for their land; that it ruined them, that it looted them, and all this on the record.

I cannot go beyond saying this, that the struggle to preserve the Pueblos from extermination is not a political issue in any way. In the Senate, the strongest man for it, fighting for the Pueblos, happened to be a republican. In the House, the bill which is designed to give them back some of their land and to put water on their dry land, is father by Leatherwood, a Republican from Utah. There is no party issue involved.

How did these Indians get here? I told you how poor they were. They are living on income of Forty Dollars a year and less per capita. They felt that they must appeal over the heads of the Bureau of Indian Affairs and the Department of the Interior to the Congress of the American people, and that it was life or death.

They met in a great Congress November 5th. They voted to send their delegates. They chose the delegation and then they went to work to raise the money. How did they raise the money? They sold their horses, those that were not too thin to sell to anybody. They sold their ancient, beautiful pots. They sold their turquoise rings. They borrowed right and left from the traders at exorbitant rates of interest. They took food out of the mouths of their malnourished children, and wives, and communities, and at an enormous sacrifice they raised Thirty-five hundred dollars to send their delegation to Washington. Not enough to carry them back home, and now they have come here to protest against wrongs that no Indian committed against the United States, and wrongs committed by the white men, and the Government of the United States, in admitted violation of treaty and pledge and sentimental obligation and trusteeship. That is why they are here.

We are asking the question whether these Indians shall be allowed to starve their children and that is what it means, in order to help put before the American people the truth about an outrageous plot to annihilate the oldest civilized democratic community in the western hemisphere, for the sake of getting a little land that they themselves created out of the desert.

I want to say this: Having been deprived of their land, these agricultural people, gradually they have sent their young people out into the railroad towns and the mines, remote and desolate places, over periods of years, to work, to earn money, to send it back to feed their wives and babies. The inevitable results has been that the boys all have come back home, and they always

do come back home, and have brought with them tuberculosis and trachoma, the eye disease that makes men blind, and the venereal diseases. These diseases brought in by the young people who had to go out to work, are ravaging the Pueblos and are receiving no treatment from the United States Government which prohibits the State Department of Health from going on to these Indian lands, nor does even the Public Health Service go on to the Indian lands. The Indian Office maintains a medical service so deficient that it had better not exist at all, and the Indians are perishing from these diseases.

They are coming here to plead for a correction of that state of affairs immediately, and not they, but we, the general Federation of Women's Clubs, whose spokesman I am, are pleading for some money to use this winter in checking the ravages of tuberculosis and venereal disease in the norther Pueblos of New Mexico.

I am going to make two please to you: You are exceedingly important body of men. You represent the preponderance of political power. I am asking you to take to heart this violation of our national honor as you would take to the heart a similar violation of our national honor if it were committed in Syria or the Philippines or in some remote place.

I am asking you to take action against these predatory bills, the Bursum Bill and the Snyder Bill, and then I am asking you to help these Indians and their friends financially to wage their fight and help out the emergency medical treatment of the northern Pueblos.

The men who should receive telegrams on this subject are Congressman Snyder, Chairman of the House Committee on Indian Affairs. “Mr. Snyder, when are you going to hold those hearing on Pueblo land bills?” Snyder drew a bill like the Bursum Bill, and having heard what happened to the Bursum Bill in the Senate, he does not want hearings, but he has got to give them. The Indians must be heard, and then register a protest, at least on broad lines, against any measure that will violate our treaties and our pledge to these Indians who, before the white man came, were already Christian on every moral meaning of that word; who are Quakers in their philosophy; who never waged offensive war against anybody; who have the genius of hospitality; who are so sweet and subtle and kind that they maintain discipline in their towns without fights or whips or police, or any mode of compulsion; who, rising to the extreme of cruelty, may apply mockery against the foolish Indian who wont’ do team work, and who call their policemen “the delight makers”. The job of the policeman is to make fun of a bad man, and it is very effective.

I must not go on a minute later. The Pueblo Indians will sing one more song, “The Buffalo Song”. I trust you will help them and their friends.
(“The Buffalo Song” sung by the Indian guests).

I am going to ask Antonio Romaro, a representative of the Pueblo of Taos, to rise up and thank you on behalf of the Pueblo Indians.

DR. ELY: Let him speak a few words to us.

ANTONIO ROMARO: (Addresses the audience.)

MR. COLLIER: I want to say that there is a constructive bill before Congress, which is the Jones-Leatherwood Bill, and Senator Jones of New Mexico is the Senator who is fathering the new bill. I want to add, that if you desire to send contributions for this work or to be advised further regarding any particulars of this struggle, you can do so through myself, John Collier, care of Mr. Robert Ely, our good friend indeed in this struggle at the Economic Club. (Applause)

MR. OSBORN: I think that no one in this audience has listened to the moving and striking appeal of Mr. Collier without feeling that some action should be had. The Chair will recognize Major George Haven Putnam.

MAJOR PUTNAM: Mr. President and fellow members of the Economic Club. I am sure that it is the consensus of opinion of this meeting that all measures proper should be taken to defeat the bills of Senator Bursum and of Representative Snyder, which bills propose to appropriate property belonging to the nation's wards, and sacred to them by Abraham Lincoln, and that we give our cordial approval to the efforts of Mr. Jones, Senator Jones, in order to secure justice for the Pueblo Indian.

I move you, sir, that it is the sense of this meeting, and that the resolution, if approved, shall be forwarded to the representatives in the Senate and in the House of Representatives who have the responsibility in their hands. (Applause)

MR. OSBORN: I take it the motion is seconded. Those in favor will signify by saying "Aye"; opposed say "No". The motion is unanimously carried. (Applause).

Fellow members of the Economic Club, we are about to hear a formal discussion on a subject which is discussed informally wherever two or three are gathered together in the United States. (Laughter and applause)

But, gentlemen, the officers of the Economic Club desire it to be definitely understood that the subject for discussion is not the value or the validity of the Eighteenth Amendment to the Constitution of the United States. If you will examine the program, you will note that the subject is, "The Volstead Act and The Enforcement of Prohibition."

There is a widespread feeling that the use of intoxicating liquors, that the sale and transportation of intoxicating liquors in the United States, is frequent and systematic; that there is corruption among the officers appointed to enforce the law; that there is a disregard for the law of the United States.

Without taking any position upon the truth or falsity of that feeling, which must vary largely came from the individual observation of the individual members, your officers have felt that a discussion of the Volstead Act and the amendments which may be required, should be considered in a constructive spirit, with a view to determination of all the facts to which I have alluded.

We have secured for this occasion four gentlemen of national reputation, familiar with the subject at issue; their views are somewhat divergent. I incline to the opinion that they are extremely divergent, having sat at the table with them during the evening. (Laughter) But I am credibly informed that they met before upon the field of battle, and that we need not see anything remotely approaching manslaughter during the course of this evening. (Laughter)

To begin the discussion – perhaps it will be a debate, perhaps it will be a discussion– I have the great pleasure of introducing Mr. Congressman Honorable John Philip Bill, Member of Congress from the old state of Maryland. (Applause)

First Speaker

The Honorable John Philip Bill

Maryland Congressman

Mr. President, members of this very important and representative Club, ladies and American Indians: My father used to have a story which he handed down to me in trust, and he said the beauty of this story was, it would fit any occasion and cause no harm to the feelings of anyone. The story is as follows:

There was a boy who came back from college to the old hometown where they had the family custom of reading the scriptures every morning before breakfast, one chapter a day, beginning at Genesis and going to the end of the Book throughout the year. This boy came home with certain improper notions and one day, or one evening, he took two pages of the Bible and pasted them together, and the next morning, when his grandfather started to read, it was back in Genesis, and he read at the bottom of the page, "and when Noah was four score and ten years of age he took to himself a wife and she was", and he turned the page over, "forty cubits long, and twenty cubits wide, fifteen cubits high, made of cypress wood and lined inside and out with pitch and tar." (Laughter) The old gentlemen hesitated for a moment, took off his glasses and wiped them and read it again. He said, "My friends, man and boy, these sixty years I have been reading the Bible and I never saw that before, but he said, it is there, I accept it. It is so, but it does show that some women are extraordinarily well made." (Laughter)

Now, the application of that story, and you can apply it to any situation, that is its beauty, is this: Tonight you will have two very distinguished men, Mr. Wheeler, than whom in the United States is none who knows this situation better, and Dr. Wiley, discuss one side of this very important

question, and you have Colonel Gillett, whom you all know, and who knows this subject, and myself, talk from the other point of view. I want you to forget what you have been reading since you were man and boy, these sixty years, in any book, and look for one moment on this problem before us in a new and imperfectly unprejudiced way.

At the same time, you know history does not change and human nature does not change, and what we have today is precisely the same situation that existed in the days when Noah built that ark, and I know now why it is that Noah followed the custom of the American traveler who goes to Paris and gets a little tight as soon as he hits Paris, after crossing on an American dry ship. I now realize that the ark was a dry ship. I now realize that the ark was a dry ship and therefor I can understand why it was that Noah went directly to the vineyards of Mount Ararat as soon as he got out. (Laughter) There have been some who complained that the ark was a wet boat, and that the dove was sent out to get a branch of green mint, and that Noah was grievously disappointed when the dove returned with nothing but a bunch of live branches, but that question remains open. The fact remains that Noah was very closely interested in the prohibition problem immediately on leaving a dry ship.

Kipling tells us that in the twilight of the Magic Jungle, in a sort of singsong of little Mowgli, old Baloo recited, –

> "As the creeper that girdles the tree-trunk, the law runneth forward and back."

It may not be amiss for me to say as a preface to my remarks that in 1916, before anyone of us ordinary mortals dreamed of the possibility of the Eighteenth Amendment, using this little verse as a test, I called attention to the fact that in antitrust prosecutions, in the crusade against the white slaver, in the enforcement of pure food laws, the interstate commerce cases, in the suppression of fraudulent use of the mails, the power of the Attorney-General runs forward and back throughout all the states of this great Union, and the activities of the Department of Justice wipe out state lines and from year to year increase the power of the Federal Government and its Executives, of whose growth they are the most striking illustrations.

The Eighteenth Amendment and the Volstead Act have gone farther into the personal life of the individual citizen than any previous growth of Federal power, and today, when Constitutional Amendments are being seriously suggested providing that the Federal Government shall extend its control to Domestic Relations, that is to say, to marriage and divorce, and also to child labor, directly in the States, the great questions behind the eighteenth Amendment and the Volstead Act become of vital and immediate importance.

The subject for discussion tonight is, “The Volstead Act and the Enforcement of Prohibition.”

This subject contains three specific and independent topics. (1) Prohibition as declared by the Eighteenth Amendment; (2) Enforcement of this Prohibition, and (3) The Volstead Act as a method of Enforcement.

The Volstead Act is one of many possible efforts at enforcement, but enforcement itself is the sole method of making the prohibition of the Eighteenth Amendment effective. Therefore, unless we agree to put the Eighteenth Amendment in the same ineffective class as the Fourteenth Amendment, we must have some form of enforcement, but we need not adhere to that method offered by the Volstead Act.

I shall propose for your consideration the following substitute for the Volstead Act. Repeal the Volstead Act and enact the following:

Section 1. Each State shall for itself define the meaning of the words "intoxicating liquors" as used in Section 1 of the Article XVIII of the Amendments to the Constitution of the United States, and each State shall itself enforce within its own limits its own laws on this subject.

Section 2. Any person who transports or causes to be transported into any State any beverage prohibited by such State as being an "intoxicating liquor" shall be punished by the United States by imprisonment for not more than ten years or by a fine of not less than $10,000 nor more than $100,000 or by both such fine and imprisonment.

The first section of this proposed enforcement act is based on the theory of local option; the second section is based on the Webb-Kenyon Act, by which the United States guarantees the

States from outside interference. The proposed substitute taken as a whole, permits concurrent action each in their own sphere by the United States and by the States to carry out the provisions of the Eighteenth Amendment.

In 1907 the anti-Saloon League approved my declaration for Local Option made as a candidate for the Maryland Legislature. In 1914 I advised the American Express Company that the Webb-Kenyon Act was constitutional, and that they should not ship liquor into West Virginia. The Supreme Court sustained my view, and Mr. Wayne B. Wheeler very ably and successfully argued that view in the Supreme Court in the appeal in the cases of the Clark Distilling Company against the Western Maryland Railway Company and the State of West Virginia, and the Clark Distilling Company against my client, the American Express Company and the State of West Virginia, which cases were decided in 1917.

I do not expect, however, that Mr. Wheeler will agree with my proposed substitute for the Volstead Act. He will probably say of it what he said at the City Club in Cleveland last October about the proposed amendment to the Constitution of Ohio permitting 2.75 beverages, which proposed amendment was afterwards defeated, “Nullification has always been indefensible,” said Mr. Wheeler, “but now it is reprehensible. When the doctrine was first invoked in the name of States right, there was an honest doubt concerning its legal application. It was finally settled on more than one hundred battlefields in the Civil War, and it has never lifted its head in decent society since then until the outlawed liquor traffic, in the name of concurrent power, attempts to

nullify our National Constitution and Government of laws."

I offer for consideration this substitute for the Volstead Act, and I shall invite your attention to certain considerations relating to the Volstead Act, to enforcement acts in general, and to the Eighteenth Amendment itself. I think I can show you that there can be enforcement by concurrent power of the United States and the individual states which will not nullify the Eighteenth Amendment, and which will be satisfactory to those of us who have not and who never have had any connection with any liquor traffic.

Let us consider, first, the Volstead Act. Before the Eighteenth Amendment, many States had one-half of one percent. Prohibition laws. These States wanted such laws, and no one seeks to disturb their satisfaction with them. But the Volstead Act imposed this standard on other States that did not want such a law. In the one-half of one percent dry States, the Volstead Act was not needed: The State law was sufficient to satisfy their people. In the so-called wet States, the law has been a failure. It has been a failure because it was based on misstatement of fact. The Volstead act declares that an intoxicating liquor is anything containing one-half of one percent or more of alcohol by volume which is fit for beverage use.

This is a legislative lie, but even a legal lie remains untrue in fact. In any community where everybody believes that a lie is the truth, for all practical purposes such a lie becomes the truth, and there is no need for laws on that subject, but in those communities which know a lie when

they see on, the inherent instinct for truth makes enforcement of even a legalized lie impossible.

Beverages containing one-half of one percent of alcohol are not in fact intoxicating, and are therefore not prohibited by the Eighteenth Amendment. Why, then, is not a Volstead Act an immoral law, seeking to enforce a lie?

I do not ask you to accept my statement on this. I shall give you the testimony of Mr. Volstead himself, of Federal Prohibition Commissioner Haynes, and of the Superintendent of the Anti-Saloon League of Maryland that one-half of one percent is not intoxicating, and that therefore the fundamental basis of the Volstead Act is false.

On Friday, June 10, 1921, before the Committee on Rules of the House of Representatives, discussing cider and homemade wine, Representative Cantrill asked Representative Volstead the following question, "According to your construction, it was not the intent of Congress that it would be a violation of law if wine was made at home containing one-half of one percent of alcohol?" To this, Representative Volstead replied, "No, my contention is this, that it might contain 1 or 2 or possibly 3 percent without being intoxicating."

On May 2nd, 1922, Federal Prohibition Commissioner Haynes wrote me officially, "That under the provisions of Section 29, Title II of the Volstead Act, cider and other non-intoxicating fruit juices, manufactures exclusively for use in the home of the maker are not necessarily limited to

less than one-half of one percent of alcohol, but must be intoxicating in fact to be in violation of the Volstead Act." He also stated that "no specific alcoholic limit had been fixed" and that as present advised his office was not disposed to take action against the manufacturer for use in the home of the maker of cider or other fruit juices containing not more than 2.75 percent of alcohol by volume.

I at once, on June 12th, 1922, asked him to fix the "specific alcoholic limit" of cider and homemade wine. On June 20th, 1922, he and the Courts have not yet definitely settled the question."

After some more correspondence on July 3, 1922, Mr. Haynes wrote me that his statement of May 2nd was a "misapprehension". Finally I got the Secretary of the Treasury to ask the Attorney General for a ruling as to what "non-intoxicating' meant. The Attorney General has not yet rendered an opinion, but these proceedings show that even the Government itself agrees to the falsity of the fundamental one-half of one percent declaration of the Volstead Act.

The Superintendent of the Anti-Saloon League of Maryland, on July 10th, 1922, said that any man who owns an apple tree, whether it be in his backyard in the city or on an extensive farm, can use his apples for cider. Furthermore, he added, he can let it stand and get hard and, should he desire, he can give it to guests in his home. In view of the fact, vouched for by the Secretary of Agriculture that hard cider contains six percent of alcohol, we have Mr. Volstead, Mr. Haynes

and the Superintendent of the Anti-Saloon League of Maryland agreeing that the fundamental statement of the Volstead Act, that beverages containing one-half of one percent are intoxicating, is not true. So, the Volstead Act being based on untruth, cannot prevail. I charge that, being based on untruth, it is a failure, and again I do not ask you to take my own statement. The President as well as the most ardent prohibitionists admit that today it is a failure.

On December 8th, 1922, the president said to Congress, "There are conditions relating to the enforcement of Prohibition which savor of nationwide scandal. It is the most demoralizing factor in our public life." The President also referred to "men who are rending the moral fiber of the Republic through easy contempt for the Prohibition law." I admit a contempt for the Volstead Act and I do not hesitate to admit it. I stand on the principle, "Ye shall know the truth, and the truth shall make you free." The Volstead Act is based on a lie, and it cannot stand. It ought not to stand. There can be no respect for laws of this kind.

That the Volstead Act is a failure is attested by Representative Upshaw of Georgia, who has exhorted the Governors of the States, led by the President and Vice-President of the United States and all the Members of the Cabinet, and followed by every Member of Congress and by every United States Senator, to declare "that they will never again build up a bootleggers' barbarous business by drinking illicit liquor." If Representative Upshaw did not have proof that the personal actions of these high officials showed they considered the Volstead Act a failure, he would not have asked them to stop their wicked deeds.

Again, Representative Crampton of Michigan on January 18th, 1922, in the House, referred to the "activities of rum smuggling along the Atlantic Coast", and said, "the extent to which the smuggling trade in liquor, narcotics and aliens, has recently grown is sufficient to challenge the consideration of every thoughtful citizen." He then added, "the report of actual seizures made by the enforcement officers shows the amazing growth of this trade."
I believe Mr. Upshaw and Mr. Crampton to be sincere, personal, and political supporters of the Volstead Act, but I think their charges prove it is a failure.

If the Volstead Act cannot stand, what shall be done to enforce the Eighteenth Amendment? Let us consider for a moment enforcement of other Constitutional Amendments.

The Fourteenth Amendment is not enforced and nobody is attempting to enforce it, but that is not the only amendment that is openly nullified. The Medical Beer Bill, or Volstead Act, Jr., deliberately ignores certain guarantees of the Constitution. Section 6 of this Act provides punishment for any Prohibition enforcement agent or other person who shall search a dwelling without a warrant, but your or my automobile may be stopped on a lonely road at night and your wife or mine may be searched by prohibition agents in violation of the Fourteenth Amendment which says, "the right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures, shall not be violated." There is no law to protect the persons, papers and effects of the people, but we do not hear from those who framed the

Volstead Act that the Fourteenth Amendment is nullified.

Again, the theory of the Fifth Amendment against double jeopardy, has always been taken to mean that people shall not be tried and punished once by the State and again by the United States for one and the same offense. Yet we find no outcry from those who claim to cherish so highly Constitutional rights, when the Supreme Court very correctly declares in U.S. vs Lanza that the United States and the States each get a year in a New York jail and another year in a Federal jail for selling a high official one bottle of moonshine at one time in one place.

Again, the guarantee of the Sixth Amendment is that "in all criminal prosections, the accused shall enjoy the right to a speedy and public trial by jury." The United States Courts are crowded with Volstead Act cases that have not been speedily tried, many of them having been on the docket over two years. Yet, those who oppose what they call "nullification" of the constitution, make no complaint, but try to substitute trial by injunction for the trial by jury under the Volstead Act. The Assistant Superintendent of the Anti-Saloon League of Maryland said, On June 20th, 1922, "a great of nonsense has been uttered, from time to time, about the sacred right of a citizen to be tried by a jury of his peers." He then added that "in nine cases out of ten, a Judge, can pass with more certainty upon cases than a jury of twelve men, some of whom", said he, "at least are likely to be ignorant, if not prejudiced." He then complained that "Jurors often forget their oath on account of their sympathy for the offender and refuse to turn in a verdict when the case clearly shows the guilt of the accused." The purpose of the Sixth Amendment was to guarantee

that twelve jurors and not one Judge should decide the guilt of American citizens, but we do not bear those who believe in the Volstead Act charging that such statements attempt to nullify the Constitution.

I had rather see forty percent of all the criminals, and I have been a United States Attorney for five years, escape than have the view of one judge substituted for the sacred right of trial by twelve men. (Applause)

And finally, the Fourteenth Amendment. Section 19 of the Penal Code of the United States penalizes those who conspire to violate the guarantees of the Fourteenth Amendment. In 1911, as United States Attorney for Maryland, I convicted the Supervisors of Elections of a County for conspiring to disfranchise colored citizens, proving that the Fourteenth Amendment has been and could be enforced if the sentiment of the people in the States where it is violated desires it enforced, yet we do not hear those who are back of the Volstead Act insisting on enforcement of the Fourteenth Amendment or raising the cry of nullification of the constitution.

Constitutions are declarations of principles, supposed to be fundamental and permanent. Enforcement laws are intended to carry out the spirit of the Constitutional principles.

We have seen that the interpretation of the Fourth, Fifth, Sixth and Fourteenth Amendments can be liberal, and at times enforcement, as in the Fourth and Fourteenth Amendments, totally

lacking. Therefore, why should we not apply a liberal interpretation to the enforcement of the Eighteenth Amendment?

The Volstead Act is based on a misstatement of fact. It should be repealed and a true standard applied to decide what are intoxicating beverages. Under the law I suggest, the States could not say Constitutionally that the forty-nine percent whiskey is not “intoxicating”, but they could say that 2.75 percent beer, or beer and light wines or a higher alcoholic content are not “intoxicating”, and the Supreme Court would say, as it did of the one-half of one percent declaration of Congress, that a State’s declaration to this effect is not improper.

In closing let me say one word in general on law enforcement by the Nation and the States. The Constitution does not provide the details of the Federal Judicial system. The Judiciary Bill, debated in the Senate in July, 1789, did this. This Bill, which was prepared by a committee of which Charles Carroll of Carrollton, a great lover of freedom, was a Member, was bitterly opposed by some of the Members of the Senate. “I opposed this bill from the beginning”, wrote Senator Maclay of Pennsylvania. “It certainly is a vile law system, calculated for expense and with a design to draw by degrees all law business into the Federal Courts. The Constitution is meant to swallow all the State Constitutions by degrees and thus to swallow, by degrees, all the State Judiciaries.”

We who stand for the old theory of the Nation and the States feel that in order to enforce the

Volstead Act, as Senator Lodge once said 500,000 spies would be necessary.

We stand today at the parting of the ways. Shall we provide that 500,000 spies in an attempt to enforce an immoral law, a law based on a legislative lie, or shall we leave enforcement to the States by reasonable State laws which conform to the practices and desires of their people? Personally, I am for a more liberal interpretation of the Eighteenth Amendment so as to permit the legal sale of wine and beer in those States which want them.

I am willing to take any modification of the Volstead Act which will bring back the old freedom of the states and bring to us the right to have light wines and beer. (Applause).

MR. OSBORN: The next speaker is noted throughout the length and breadth of the United States for the cold eye that he casts upon the adulterations of food. I suspect, without knowing, that he has an eye of similar coldness to the adulteration of the Eighteenth Amendment. (Laughter) I suspect that his view on this subject could be best illustrated by an incident told me by a country banker last week who said that a candidate to borrow some money had come in to see a friend of his, and the friend, being a banker, had looked on him with a very doubtful appearance. Finally, as a result of persistent urging by the would be borrower, he finally said, “I will tell you. One of my eyes is glass. If you can tell me which it is, I will make the loan.” The man looked at him intensely for a minute and he said, “It is the right eye.” The banker said, “you are right. How did you know?” The same said, “Because it was so much more sympathetic than the other.”

(Laughter and applause)

The next speaker, the quality of whose optics we are about to determine, is Dr. Harvey W. Wiley, who needs no further introduction. (Applause).

Second Speaker

Harvey W. Wiley

Gentlemen of the Economic Club and fellow orators, I wish everybody here tonight had a glass eye. I fear that I am speaking to a body of men that are rather in sympathy with the eloquent address that you have just heard. I want to say I enjoyed it immensely myself and I don't know but what if the Volstead Act is repealed, that I will join you in putting his measure over. (Applause)

I am not a lawyer, God be thanked for that (laughter and applause) and so I am not quite certain that the legal phrases I am about to use are correct. But if John Barleycorn be dead, and legally I suppose he is dead, I propose to introduce the corpus delicti. If he is not dead, and some think he is quite pragmatic, then I want to invoke the habeas corpus. (Laughter and applause)

If I can produce the body of John Barleycorn, living or dead, and tell you something about it, we can have some basis of fact on which to base our opinions, and not be guided merely by

sentiment or predilection of a personal character.

INTOXICATING BEVERAGES

I want to say that the word “toxic” is a Greek word and means “poisonous”. “Intoxicating”, therefore, in its etymology means “poisoning”, as applied to the particular kind of poisoning produced by alcohol. It is commonly known in this country as drunkenness. This, however, does not in any sense alter the original meaning of the term. That branch of scientific study which treats of the effects of drugs upon the human system is known as pharmacology. Some of my scientific friends may wonder why I, who am not a professed pharmacologist, will undertake to relate some of the pharmacological facts that are well known. The answer is entirely a simple one. Alcohol is an acknowledged poisonous substance, producing intoxication the symptoms of which are well-known. Every observing citizen of the United States is, to some degree, a pharmacologist insofar as alcohol is concerned.

PROPERTIES OF ALCOHOL

Alcohol, when not modified, means ethyl hydrate. Absolute alcohol means pure alcohol from which all water has been removed. It is a most difficult product to make because of the great affinity that strong alcohol has for water. It is one of the most “drying” agents known. Commercial alcohol, sometimes known as velvet or natural spirits, contains from 95 to 96 percent pure alcohol and from 5 to 4 percent of water. Proof spirits is a mixture of equal parts of water and alcohol by volume. Whiskey is a distilled spirit made from a fermented mash of

cereals, the starch of which has been converted into sugar by malt. The kind of sugar made is known as maltose. Starch is not directly fermentable. It must first be converted into a sugar before fermentation takes place. Whiskey contains from 45 to 50 percent alcohol by volume and traces of various other alcohols, acids, esters, ethers, aldehydes, oils and numerous compounds thereof. It has been estimated by chemists that a well aged whiskey or brandy contains from 30 to 40 components, all of them produced by fermentation or formed from those produced by fermentation or formed from those produced by fermentation on aging, or derived from the wood in which the whiskey has been stored. Potable whiskey is whiskey stored in wood, usually oak, for four years during which time many aromatic and good tasting and smelling compounds are obtained which improve the organoleptic properties of the beverage and form a part of its medicinal qualities. Bottled in bond whiskey is whiskey as described above which has been stored in wood for not less than four years, in a bonded warehouse, under the supervision of the bureau of Internal Revenue. It is bottled in this bonded warehouse under the supervision of the Revenue agents and is put in packages which are fractions of a gallon. The volume of the fraction, its age and distillery in which it has been produced must be contained upon the label which is a green revenue stamp placed by the Revenue Agent over the cork after the bottle has been filled and stopped. The revenue stamp, when not counterfeited, is a certificate of age, purity proof, and volume of the contents, giving also the locality in which they are produced. The Bottling-in-Bond Law was enacted by Congress in 1897, fortunately before the rectifiers lobby was organized. Rectified whiskey is not whiskey at all but alcohol properly diluted and artificially colored and flavored properly to resemble the genuine article.

In order to safeguard the rights of the sick, I addressed a letter to the Prohibition Commissioner in the spring of 1921, asking him to make regulation which would provide only bottled in bond spirits for medicinal purposes. The American Medical Association meeting at St. Louis soon thereafter, without any knowledge of the action which had been taken, passed a resolution of similar import. Acting under these suggestions, the Commissioner of Internal Revenue has issued a Treasury Decision No. 3418, approved December 22nd 1922. This decision states it is issued, "in the interest of the public health and to prevent the use of impure, harmful and poisonous liquors." The regulation goes into effect on April 1st, 1923.

OTHER ALCOHOLS

The most common alcohol after ethyl is known as methyl or wood alcohol. This alcohol is not formed by fermentation, but by the distillation of wood. Crude, unrefined methyl alcohol is a far more deadly poison than ethyl alcohol, due largely to the very poisonous congeners it contains. It acts specifically upon the optic nerve causing blindness, when it does not kill. There are other alcohols which are generated at the same time with ethyl. The most abundant of these is amyl alcohol. This is the chief constituent of that miscellaneous complex found in distilled spirits known as fusel oil. Next to ethyl it is the most abundant constituent of whiskey other than water. Contrary to common belief it is not eliminated by the aging process but helps form various combinations which modify and, to a certain extent, restrict the poisonous effects of the mixture and improve its taste and medicinal qualities.

WHAT IS INTOXICATION

The final result of introducing toxic substances into the body is found in varying degrees of disturbances of the equilibrium known by the general term of intoxication. The smaller the quantity of the toxic agent, the less the intoxicating effect. There is o doubt in the mind of the pharmacologist that intoxication begin just as soon as the toxic agent, even in the smallest quantity, enters the circulation. Large experience has shown that in the human family there exists a very wide degree of susceptibility to alcoholic poisoning. Some persons are affected by very minute quantities of the toxic agent. Others are far more resistant. Continued use tends to raise the degree of immunity, as is also the case with opium and tobacco. A person is first intoxicated in a manner which he hardly recognizes himself and which his friends, not knowing he had been drinking, would fail to detect.

It would be unscientific to claim that the first glass of whiskey was not intoxicating because, perhaps, the person who drank it might not exhibit visible signs. It has just as much to do with making him intoxicated as the last glass which renders him insensible to his surroundings and paralyses all his faculties. Objection has been made to the Volstead Act because it does not permit a higher percentage of alcohol in a beverage than one-half of one percent and arguments and statements have been presented asking for a modification of the Volstead Act, and still have it within the limits of the Constitutional inhibition, which will permit as much as 27.5 percent by weight, that is 3.40 percent by volume of alcohol in a beer and an indefinite amount, not stated,

in that very unknown article known as light wines.

In this connection it may be of interest to quote from an address I made embodying this point in April 1916, before the American Medical Society for the studying of alcohol and other narcotics. “The ordinary beers of commerce contain from 3 percent to 7 percent of alcohol. This includes all the varieties of beer, namely ale, porter, stout, etc., Cider contains from a very small amount of alcohol at the time of fermentation begins to 5 percent or 6 percent when the sugars in the apple juice have been abundant. Wines contain from 6 percent to 7 percent for the light wines to 11 percent or 13 percent for the stronger wines and from 14 percent to 22 percent for the so-called fortified wines.”

Insofar as the constitutional provision applies, there can be no distinction made between beer and wine, as to the content of alcohol that may be permitted, I may say that the so-called light wines are those made far to the north in the wind producing areas, especially in Germany, where the sugar content of the grape, on account of the short season and the lack of heat, does not rise above 15 or 16 percent. In the fermentation of the grape sugar, the theoretical content of alcohol which may be obtained is one-half of that of the sugar present. In practice, however, the theoretical content is not attained. These wines have very poor organoleptic properties, are not attractive to the taste and are usually quite acid, containing as much acid in fact as the wines in which from 20 to 30 percent of sugar is found at the time the grapes are well matured.

It would be difficult even now to find any competent pharmacologist who would testify that a beverage containing 7 or 8 percent of alcohol is non-intoxicating. The universal experience to the contrary would be quite sufficient to put such testimony to shame.

A decision by the Supreme Court of the United States as to the quantity of a poisonous or deleterious agent which may be used in foods, and that also includes beverages, has been issued as No. 548, October Term, 1913, Mr. Justice Day delivered the opinion of the Court, which was as follows:

> "It is not required that the article of food containing added poisonous or other deleterious ingredients must affect the public health, and it is not incumbent upon the Government in order to make out a case to establish that fact. The act has placed upon the Government the burden of establishing, in order to secure a verdict of condemnation under this Statute, that the added poisonous or deleterious substances must be such as may render such article injurious to health. The word "may" is here used in it ordinary and usual signification, there being nothing to show the intention of Congress to affix to it any other meaning. In thus describing the offense, Congress doubtless took into consideration that flour may be used in many ways, in bread, cake, gravy, broth, etc. It may be consumed, when prepared as a good, by the strong and the weak, the old and the young, the well and the sick; and it is intended that if any flour, because of any added poisonous or other deleterious ingredient, may possibly injure the health of any of these, it shall come within the ban of the statute."

In view of the above opinion of the Supreme Court, it seems to me that our legislators were wise in limiting the permitted quantity of alcohol in any manufactured beverage to the minimum quantity stated in the Act. Any larger quantity might often tend to intoxicate the weak or the sick or the non-resident and very susceptible person. I think all of us has had occasion to observe how much more rapidly some people become visibly intoxicated than others.

The ordinary German beer made prior to the World War, contained about 2.75 percent by weight or 3.40 percent by volume of alcohol. It was my good fortune while in Germany to note the effect of beer, of this kind when drunk rather freely in producing intoxication in persons who were accustomed to drinking beer freely every day. I refer particularly to the great Kaiser Kommers held at the University of Berlin in November 1878, on the occasion of the return of Emperor William I. To the Capitol. After having been in a sanitarium at Ems from the preceding June, owing to an attempt made upon his life by an anarchist. At a Kaiser Kommers the students sit down at 7 o'clock in the evening. They drink beer, eat rye bread and sing songs until 7 o'clock the next morning, when they adjourn to attend the first lectures of the University while it is still dark in November. The American students had a table to themselves and I presided at this table. The quantity of beer which is drunk by each person is carefully measured at a Kommers and the one who can drink the most and is most resistant to visible intoxication receives a prize. He must, however, be able to walk a chalk line fifty feet long without wobbling in order to get the prize. Modesty forbids me to say who won the prize.

There was one President of the United States – his name was Theodore Roosevelt – some of you m ay remember that he was once President of the United States (applause), when I, as the sponsor of the Pure Food Law defining bonded whiskey, such as I have just told you, was material which is properly aged and which contains all the elements that need to be put into it, and properly ripened by aging, then the question came, "What are you going to do about it?", and application after application went to the President of the United States asking him to ratify the decision of the Secretary of Agriculture which was opposed to my opinion in regard to whiskey, and after a long deliberation I said to Mr. Loeb, "I just want one word with you and want you to ask the President of the United Sates before he approves the opinion of my superior officer to hear me on this subject:, and Mr. Loeb phoned me that the President says he will see me, and so, after six weeks of listening to those people who wanted my opinion overruled, he sent for me. I went down there with a peripatetic laboratory to lecture to the President of the United States. The newspaper men who always surround the door of the White House said, "What are you going to do with all those bottles?" I said, "I am going to give a lecture to the President of the United States." "Well", they said, "you think you are, but you will get the lecture yourself. He will do the lecturing." (Laughter)

But I had an audience, not as large as this, but, I hope, more sympathetic than this. I gave a lecture that lasted for two hours. Mr. Roosevelt sat there with Mr. Loeb. He never interrupted me but now and then to ask for further information on the point, and when I had concluded this long

address he came around on my side of the table, took my hand in his right hand, slapped by clavicle with is left hand–I think it is broken yet– and said, “Dr. Wiley, I have heard nothing but whiskey for six weeks.” He had a strong falsetto voice, “and you are the first man who has ever given me a single idea.” I felt quite encouraged and finally my view of what whiskey is was confirmed. It lasted as long as the Roosevelt Administration. When the next administration came in, it was reversed and so remains reversed, but the whiskey is just as good as it was when I said what it was just the same. (Applause)

If the quality of alcohol be raised to seven or eight percent to include the lowest grade of undesirable wines, it is readily seen how much greater certainty there is of intoxication with the increased quantity of alcohol. From the scientific point of view as interpreted by the Supreme Court the limit fixed by the Volstead Act is quite high enough to be safe.

A striking case of the ability of small quantities of alcohol to intoxicate has just come to me in a letter from a correspondent, dated Denton, Tex., Jan. 9, 1923. It relates to an infant a few weeks old, a healthy, beautiful baby, which has two or three crying spells each day, which greater worried its mother. The mother also is in perfect health. She called in her physician who gave her a prescription for a pint of whiskey. She was to put a little of it in water and give it to the baby when it cried. She found that within a few minutes of administering the whiskey the baby became drowsy. Here is a case that comes well within the rendering of the Supreme Court, the case of a baby with the least possible resistance to toxic effects. The writer said she thought the

administering the whiskey to the baby was a crime and asked my opinion concerning it. I replied to her as follows: “I do not like to criticize a professional brother. I may say that about 49 percent of the physicians of this country think that whiskey has no therapeutic value at all, even for grown people. Fifty-one percent think there are certain cases, usually in extreme old age, where whiskey has some beneficial effects. I take the side of the 49 percent. Evidently the child is intoxicated every time he takes a spoonful of the mixture of whiskey and water. I, however, grant to the attending physician the full right and privilege to give the child what he thinks best. There is no reason, however, why you should not say to the physician that you do not wish his further services and apply to one who would not intoxicate the baby.”

QUICK ACTION OF ALCOHOL

The stomach absorbs very little food and very little water. Alcohol, however, is quickly absorbed through the wall of the stomach and thus quickly enters the blood. In this way it reaches all the vital organs promptly and every degree of intoxication may arise according to the susceptibility of the patient and the quantity of alcohol used. Alcohol accumulates particularly in the brain and liver. In cases of deep intoxication it acts very much like strangulation. The right side of the heart and the lungs are engorged with blue blood while the left side of the heart and the arteries are practically empty. When death comes from drunkenness the same condition exists as when it comes from drowning. Evidently, therefore, the effect of alcohol first of all is to interfere with the absorption of oxygen. Alcoholics are very prone to cirrhosis of the liver and to fat infiltration both into the liver and the heart.

THE EFFECT OF PROTOPLASM IN THE CELLS

The original cells which form the tissues of the body contain nitrogenous matter similar to albumen in the egg, which is called protoplasm. Alcohol tends to harden the protoplasm. The late Professor Minot who wrote a scientific book on old age claims it is the hardening of the protoplasm which distinguishes the old from the young. Alcohol, therefore, tends to speed up old age. IT is believed by experts that alcohol also tends to produce that condition of inelasticity in arteries known as hardening of the arteries. This, by back pressure of the heart, produces leaky valves and enlargement of the heart, a kind of disease which has greatly increased in the last twenty-five years, in this and other countries. Alcohol has a distinct injurious effect upon the germ cells, both of the male and the female. The children of those addicted to the use of alcohol are quite likely to be deficient in vitality and thus to become subject to all kinds of infectious diseases. There is no one pharmacological fact which has a better substantial evidence of its verity than this.

ATTITUDE OF LIFE INSURANCE COMPANIES

The Life Insurance Companies are acknowledged to be wise business organizations. While they claim that life insurance is a safeguard for old age and for the inheritors of policy holders they are very careful to see that these policies are only issued to those who by heritage and by their own vitality are fit subjects and are expected to live for a long while. The data have been correlated of forty-three American Life Insurance Companies to show the effect upon the

percentage of mortality upon policy holders divided into four groups. First, those who did not use alcohol; those who were very moderate drinkers; those who have been addicted to the excessive use of alcohol at times, and those who are rated as moderate drinkers, not using more than two glasses of beer or one glass of whiskey per day. In the second group, the percentage of mortality is 18 percent higher than among the total abstainers; in the third group it is 50 percent higher and in the fourth group 86 percent higher. These data show that the use of alcohol, even in moderation, is indicative of an earlier death and when used in quantities of two glasses of beer and one glass of whiskey per day, the tendency to an early death is overwhelmingly increased. This is undoubtedly due to the deleterious effects of alcohol upon vitality.

Careful examinations have also been made as to the effect of mentality and memory of small quantities of alcohol. Unfortunately, many of the physiological tests of this kind, showing that alcohol is always a depressant and never a real stimulant, have been made by scientific men known to be inimical to alcohol. While it is not fair to doubt the accuracy of scientific investigations because of some preconceived sentiment, yet when we can get data which are entirely free of this handicap we regard them as of more value. Fortunately, in this country, we have access to data of this kind.

The investigations made by the Nutrition Laboratory of the Carnegie Institution at Washington, have entered upon the study of alcohol in a larger and more through manner than has ever been done before. While the investigation is still going on, several papers have been published

containing the results. It is found, for instance, that the knee jerk which is a normal phenomenon, is greatly diminished under the influence of alcohol of only eight to twelve teaspoonfuls. In these cases the jerk was greatly depressed by the small quantities, and sometimes entire eliminated when the larger quantities were given, namely only twelve teaspoonfuls.

The eyelid reflex under these conditions was slowed by 7 percent and the movement of the eye lashes decreased by 19 percent. In some cases eight teaspoonfuls accelerated the eye reaction while twelve teaspoonfuls depressed it. Sometimes even the faradic electrical stimulation was diminished by 14 percent. The general conclusion was reached that these small doses decreased organic efficiency, that is, vitality. They were, therefore, intoxicating.

The American Medical Association, containing a great majority of the practicing physicians of this country, have gone on record more than once in favor of prohibition as it is now administered. The House of Delegates, which is the legislative body of the Association, in 1917 passed these resolutions:

"Whereas, we believe that the use of alcohol is detrimental to human economy, and whereas its use in therapeutics as a tonic or stimulant or for food has no scientific value; therefore,

"Be it resolved, that the American Medical Association is opposed to the use of alcohol

as a beverage; and

"Be it further resolved, that the use of alcohol as a therapeutic agent should be further discouraged."

The President of the Association, Dr. Arthur Dean Bevan, in his retiring address before the Association in June, 1918, said:

> "I want to plead for the united action of the organized medical profession of this country to secure protection by law against the injury that drink is doing to our people, not as a political measure but as the most important public health measure that could be secured. In this crisis, when we and our allies are fighting not only for ourselves but also for humanity and civilization, we must organize the entire nation in the most efficient way possible, and this cannot be done without eliminating drink."

The final knockout blow, however, was given to alcohol as a beverage before the enactment of the Eighteenth Amendment or the Volstead Act by Congress with the approval of the President when nationwide war prohibition was declared for the purpose of increasing to the utmost the resources of our country for the dreadful war in which we were engaged. If the country can be made more virile and efficient in time of want by prohibition it follows logically that it can be made more virile and efficient in time of peace. So, following this war prohibition came the Eighteenth Amendment and the Volstead Act.

In closing my address I desire to say that just now the enforcement of the prohibition act is hindered by a class of citizens, fortunately not very great in number but very active, in business, who temporarily range themselves on the sides of law-breakers, risking the penalties of fine and imprisonment attached thereto, to supply whiskey and other spirits of questionable purity to satisfy existing thirst, so-called. Thirst is a wrong name to apply to a beverage which induces persons to drink a good deal more water even than the administration of common salt. Those who drink whiskey in this country are the real drys and require the largest quantity of water, while those who are opposed to drinking whiskey are the real wets and require the minimum quantity of water for their normal metabolic process. That thirst will die out with the existing generations.

I doubt if any of the patrons of the bootleggers are giving their children any of the alcoholic beverages which they surreptitiously obtain. The new generation now coming on will reach manhood and womanhood without forming the habit of craving alcoholic beverages. We can see, therefore, every year as our children grow up a diminishing demand and when the new generation shall have arrive, after 25 or 30 years, the bootleggers will be without clients. We have only to be patient and we can say with unction with the celebrated visitor who has just been with us, “Every day in every way the alcoholic habit is growing less and less.”

I hope to live to see my boys come up before the Volstead Act is repealed, because they are not going to get any taste for alcohol as long as that Volstead Act endures, and the new generations

will come up with no desire for alcohol, and the bootlegger will have no clientele in 25 years from now. (Applause)

So be patient, my friends. Let this thing work itself out in a cool and scientific way, and we will have in the future a generation freed from this great curse of the consumption of alcoholic beverages which every insurance company will tell you shortens your life by an average of at lest five years for those who use them, and they are men who are not moved by lines of any kind of legislation, or sentimentality, theological or political.

So let us stand firmly by our faith and firmly by the Act of the Congress, firmly urging everyone to obey it and appreciate it, and bring up a race of people who, thank God, will be freed from the thirst for alcohol. (Applause)

MR. OSBORN: I have pleasure in saying that the Very Reverend Father Baily, Dean of the Chapel of Windsor Chaplain to the King, has honored us by his presence, and I wish to express to him our gratification that he should be present and have heard this discussion.

Dean Bailey, we thank you, and extend to you our best wishes and regards.

In spite of Dr. Wiley's opening dissertation, I have to admit that I am a lawyer of sorts, and in that capacity I am reminded of that legal or judicial definition of drunkenness which has come

across my observation. It was given by a Scotch Judge, and many of you doubtless are familiar with it, and is as follows:

> "He is not drunk who from the floor can rise again and drink some more; but he is drunk who'neath the table neither to rise or drink is able." (Laughter and applause)

The next two speakers are old and skillful antagonists. No introduction by me is necessary – not old in years, but old in experience. No introduction is necessary from me when I present to you Colonel Ransom H. Gillett, counsel of the American Association Against the Prohibition Amendment. (Applause)

Third Speaker

Colonel Ransom H. Gillett

Mr. President, ladies and gentlemen, I have had two distinct shocks and surprises tonight, when I heard so eminent an authority as Dr. Harvey W. Wiley relate the things that might happen to the human being when he drinks alcohol as a beverage. I was distinctly shocked to find that I am still alive. (Laughter)

When I arrived, I had concealed upon my person probably the most eloquent speech ever composed by the brain of man, but unfortunately, it dealt with a phase of this particular subject which is not covered by the topic under discussion here tonight, so I am going to discard the

printed words and in company with the large majority of fellow citizens rush in where angels fear to tread, and attempt to discuss the question of the Volstead Act and the enforcement thereof.

The last part of this subject does not lend itself to discussion, because there is no enforcement of the Volstead Act to talk about. (Applause) I say that in all seriousness, that you cannot go into a village or a hamlet or community of people in the broad confines of the United States without aqcquir5ing or running across the opportunity to buy a drink of intoxicating liquor. And I don't care what name you call the particular liquid that is handed to you. If you are fortunate enough to own a home and have money enough to buy fruits and ingenuity enough to extract their juice, you may legally possess and drink intoxicating liquor. If you have not those qualifications that I have just mentioned, but have simply the money, your neighbor who possess them can supply your wants, and will do so on the slightest provocation. (Laughter)

That applies, gentlemen, in the country districts, places with which I am more or less familiar, having eked out a miserable existence in those portions of our country known as the "apple knocking" districts. Prohibition and enforcement thereof by the Volstead Act has succeeded in substituting the bootlegger for the saloon keeper. It has brought about a condition of affairs where there is more intoxicating liquor, as defined in that act, prepared in the homes, under the vigilant eye of the children, tasted and drunk by them, than ever before in the history of a civilized race. (Applause) And I feel quite confident in making that statement, because there are

no statistics that can be brought to disprove it. That is simply the personal observation of every observing man and woman in this room.

The Act itself, as a means of prohibiting the use of intoxicating liquors, as a beverage, is a definite failure, and I need no more authoritative source for that statement than the President of the United States who has found it necessary to call together the Governors of the several states to take counsel upon this ter4rible condition that has arisen here because of the presence of this Act; whether it be true or be a lie is of no moment, and it is a healthy sign when gatherings such as this give up the time to consider and patiently listen to the more or less sensible and nonsensical remarks that are made by previous speakers and myself in connection therewith.

It is not a question of liquor now. We can get and we do get just as much liquor today as we ever got, and you can get the bonded whiskey that our Dr. Wiley prescribed for our sick bothers if you have got the money to pay for it, and if you stand in well enough with the bootleggers who have entry into our official circles.

So it has passed beyond the question of drinking intoxicants, and it has come down to a question of governmental policy, and when we consider the Volstead Act from that standpoint we must do something bout it, else our form of government is as a tinkling bassoon, a sounding cymbal, and we are heading straight back to the autocratic, tyrannical form of government which marked the early gathering together of the human race into communities and towns where the word of the

ruler was law, and not the reason of the individual. (Applause)

We are gradually transforming our government from our servant into our master, and it is but a short step from the master to the tyrant, and unless we, as citizens of this great country, take some affirmative action in the premises, our children and our children's children may be in the very position that these Indians who come here tonight, pleading not for justice, but for absolute rights. We may see our descendants in their position, struggling under the impositions of the hand of a tyrant that we have imposed upon ourselves in our endeavor to wipe out what we consider to be the social evil.

Social evils are not cured by legislation. Social evils are cured by education. The trouble with the Volstead law, the trouble with any prohibition act of a national character, is that it is purely and simply a local ordinance, and nothing else, and you cannot make a general rule to cover exceptions. The quickest way in the world to enforce prohibition in this country is to educate every man, woman and child to the point where he won't drink alcohol, and then you have got prohibition, but until you reach that point, until the man or woman or child's educated quits drink of his own free will, and stays away from it, so sinful we are, so sunk in the wickedness and vice, some of us, we are so sunk I the sink of our own iniquity, that we shall want to do so, and we won't be made to do otherwise.

Now what is going to be the remedy? I think the time has come when even the most fanatical

prohibitionists are convinced that they cannot stop the use of alcohol as a beverage by law. I think that has been admitted and will be admitted by the speaker who is to follow me. We won't do it by passing laws, fixing the arbitrary percentage of alcohol in a beverage which will make it intoxicating or non-intoxicating because, while some of us may be able to stand a beverage containing eight percent of alcohol and not be intoxicated, still others cannot stand even one-half of one percent of alcohol and not be intoxicated. And so I say we are wasting our time trying to fix an arbitrary percentage of alcohol which will make it intoxicating or non-intoxicating. It is a useless expenditure of time and it is not a way of solving the problem we are faced with, and in time we are going to discard it entirely.

Of course, everybody can always do the other fellow's job a little better than he can, and had my constituents up-State had the good judgment and good sense to elect me to the House, instead of defeating me in the primary as they did, no doubt I would have given them the same degree of wisdom and service that I now render some few clients who are foolish enough to employ me, to the United States as I do to them.

But my idea is this: Let us get away from this question of fixing any arbitrary standard which will apply in Maine as well as in San Francisco, but let us get down to the principles of local self government under which this country grew great. We were originally scattered colonies living under different conditions, under different laws. We instituted and founded the form of government which made a clearing house, the central power, the means of keeping together these

peoples, and the different interests living under different laws and different states of climate and other conditions. Think of the difference between the Puritans of Massachusetts and the people who landed on the James River down in Virginia. Think of the condition that exists today between our people in New York and the condition such as exists in the Philippine Islands, and it is a curious thing that the Volstead Act does not run to the Philippine Islands. There are no enforcement officers there. The law won't work in the Philippines and won't work in New York and won't work in Texas and North Dakota, there is something wrong with it and something has got to be done about it, and the idea that every citizen has on that subject is about the most important thing in his life today. We must take thought of some practical solution of the dilemma in which we have been hurried in our endeavor to get rich, as I say, of a social evil that was gradually curling itself and would have cured itself in the long run, and how are we going to do it? My idea, purely personal, is that if the Federal Courts will pass an act along the line suggested by Mr. Hill tonight, that the test of what shall and shall not be an intoxicating liquor is its intoxicating quality as a matter of fact and not as a matter of law, I think, giving the States concurrent power guaranteed them under the Second Section, to incorporate such laws as will truly and loyally carry out the provisions of what we all believe the Eighteenth Amendment to mean, not what some of us believe. I do not believe myself, when, as in my peripatetic visits to Montreal, I drink whiskey or gin at the end of the day, I am perfectly convinced in my own mind that I am not drinking that for beverage purposes. I am drinking that for stimulating purposes and I always get results. (Laughter)

There is a whole lot in the Amendment if you will read it that does not meet your eye until you have sat down to study the conditions which it was designed to meet and to correct. We have seen, on the one hand, badgered and bedeviled into passing that thing by the misconduct of a certain class of men who had money invested in exploiting our manifold human weaknesses, and having reached that point of virtue where our legislators who were elected upon an entirely different platform finally did make us good, so far as they could – they did their duty very well – then we have committed our courts and our scientists and our well-meaning but somewhat overzealous organizations, of which the next speaker is the most noted exponent, we have allowed them to tell us what we meant when we did do what we did do. (Laughter)

Now, I must also plead guilty of being a lawyer, but even Dr. Wiley knows that you gentlemen are not interested in the fine distinctions made by expert witnesses in this question; you are not interested in the fine drawn legal distinguishment between this case and that case and the other case; it makes but small difference to you as commonsense individuals whether the Supreme Court of the United States, or the Shah of Persia declared that one-half of one percent of alcohol in a beverage made it intoxicating; you know that it is not. (Applause) And in spite of the fact that I am a lawyer, so do I.

A good many years ago there was an oracle at Delphi, and the oracle for a long, long time ruled what was then the civilized world, because the oracle was always dealing in subjects of the profoundest attention, and things about which the common man knew nothing, and as long as the

oracle stuck to those subjects and those things it was the recipient of many offerings and stood well in the community and had the great reverence and respect of everybody, but as soon as the oracle began prophesying and talking about things that the common man knew about, its reputation was gone in a generation. So long as our legislatures, our law makers an dour judicial bodies devote their time and attention to things that we want them and pay them to do, so long as they do not try to tell us something that we, as common everyday ordinary men, are concerned with, that we know about, things that we are familiar with, so long as they will stick to their own profession, just so long we will have some regard for the ideals which they represent, but in this particular case there is not a man here tonight who does not know in his heart that the definition our court has put upon intoxicating liquor is false, and they feel in their hearts that no judge, no bench of judges, can make true that which is false. The court might decree that the sun shall set at five o'clock in the afternoon, as they did last summer, or two or three years ago, and we would acquiesce in that pleasant fiction, but we would know that the sun would not set until it went down on the western horizon.

It is the same situation here. We are not confronted now with the evils of the drunken gang that used to debauch our legislators and be the proprietors of these life-saving stations that dotted our streets in those days; that is past and gone. There are no such interests now to preserve the rights which we have jeopardized in an endeavor to do away with that thing. It is up to us. We cannot "let George do it", because the minute we send George to Congress or the State Legislature, or put him on a bench, or give him any other public office, his point of view changes from the point

of view of the man in the street and becomes the more or less subservient intellect of the company in which he sits.

In Washington today, men are sitting down, they are making laws representing the State of California, and I doubt very much if one of those men has lived consecutively for two years in California since he was elected to Congress. What does he know about the state of the public mind in California? He knows only what somebody tells him. He does not know from direct personal contact. That was the way the Volstead Act was passed. Our representatives in Congress were assured by self-constituted agents that their communities thought certain things along this line, and that they must do those things or else their political lives would be imperiled. Without investigation, without thought, and answering to the urge of the pressure that was put upon them, they permitted this thing to go through. You see the result. There has been a feeling of unrest. There has been a feeling of dispute and of revolt stirred up in this country, the like of which no man has ever seen.

I do not pretend for a moment that it is all due to the prohibition question. A great many other factors have come in to make that spirit which we all know exists and which is a sort of spectra which confronts all of our public men. But it has added to it; it has furnished material and argument to the Bolshevik and to the Anarchist, to the man who is ready to tear down and never ready to build up, such as we have not known in many generations.

The ideas that your law makers ought to put into effect are not the ideas that they get from Washington or any place else, but from their constituents, and from nobody else. How many men here have taken the interest to give this question one minute's patriotic study?

It is well enough to make a jest. It is quite all right to put over certain more or less ridiculous statements about what prohibition has done and what it will do, but your law makers cannot help you unless you tell them what you want. Your judges will not truly interpret that law unless they know what you think, in a republic such as our, we have no rulers, we have no masters. We are our own keeper. We cannot rely upon decisions of the courts and still be free citizens. We cannot permit, if we know a thing is untrue, we cannot permit the mere fact that the court has declared that the law is the truth, to shake our belief in the fundamental truth of life.

It is a subject that requires far more careful consideration, far more intellectual attention that it has received up to now. It is not a question of destroying the liquor traffic; it is not a question of the evils of the saloon, nor the unsanitary effects of alcohol upon the human system. You are face to face now with a condition of government that you alone can solve. (Applause)

MR. OSBORN: The next speaker is one who will ably and confidently tell us his way out. The Napoleon of Prohibition, Mr. Wayne B. Wheeler. (Applause)

Fourth Speaker

Wayne B. Wheeler

Mr. Chairman, ladies and gentlemen, I think it was Daniel Webster who once said that the past is secure, but what of the future? I know you have all enjoyed thus far this feast of conflicting arguments about this important question, and I will add what little I can to it, because it is a great pleasure to address a club whose purpose it is to create and bring about the expression of an intelligent public opinion upon the social and economic questions of the day.

That purpose in any club will make for better American citizens, whether we agree upon a proposition or not, so I am glad to speak to you about this question tonight as the National Prohibition Act and the enforcement of it.

This National Prohibition Act is based upon the Eighteenth Amendment, which was written into the Constitution after more of preparation on the part of the people and with a larger proportionate majority for it than any other part of the organic law of our land. (Applause)

It took seventy-two State legislative bodies and two Federal legislative bodies to adopt it. Now, in spite of that, we had ninety-two State legislative bodies and two Federal legislative bodies for it. Our enemies could defeat it by thirteen State legislative bodies. If they could not muster thirteen State legislative bodies to defeat it, they never can rally seventy-two State legislative

bodies and two Federal legislative bodies to repeal it. I say now that it is in the constitution to stay as long as the flag floats over this Republic. (Applause)

Now the question comes, is this a fair proposition? It has been said here tonight that in any law you must depend upon reason for it if you are going to get ultimately the respect of the people. This policy of government is based upon two fundamental principles of government. The first is that the people, and I this country that means the majority of those who function in government, have the inherent right to better their conditions in any unit of government when they proceed in a legal and orderly manner to do it, and do so according to the constitution of our country. That right of the people is an inherent right of government, just as McLean said in one of the great decisions many years ago, that it was a right of the individual before we had government, and then when governments were organized in the states, we called it the police power. Then, when the states wanted to give to the Federal Government the power to help them, they delegated that police power, or gave them equal power over it, and as the Supreme Court has recently said, that when the states had delegated that power to the Federal government, it took some authority that the state had over that question.

Now, what power has the state had over it? They have had over that the inherent power from the beginning that they could protect the public health and the public morals and the public safety, and that anything that injured these essentials of government, to the perpetuity of government, could be removed.

That leads to the second proposition that anything that does injure the public health, the public morals and the public safety has no inherent right to exist at all. We do a great deal of talking about natural rights and inherent rights, but remember that there are no such rights for a traffic or a business that injures the public health, morals or safety, and every Supreme Court of every state of our United States, and the United States Supreme Court, has held over and over again that the beverage liquor traffic was a menace to the health and the safety and the morals of our people. That is the reason why those laws were upheld when they first started to enact them in the states. When they first came before the courts and Webster presented to the court the greatest argument the United States Supreme Court has ever heard presented on behalf of the liquor traffic and the argument was raised that if the man was injured, it was himself and the state had no right to interfere. What was the reply? And it is as sound as holy writ, that there is in that statement an assumption of fact that does not exist. It does first injure the individual in his health, which it undermines, in his morals which it weakens, and in the abasement which follows, and that is not all, as the court went on to say. But it injures those who are dependent upon that individual. Therefore, society has the right to step in and say that a thing that is a detriment to the health and the morals and the safety of the people cannot be tolerated in the interest of carrying out that fundamental purpose of government, to better the condition of the people, as soon as the majority want that done.

Keep this in mind, my brothers, that there is no tyrant here that is putting these laws over. You

would think, as you hear some of these men talk, that there is just a half a dozen fellows who get together and shoot this legislation across, ram it down the throats of the people, but remember that the people who rule in this country are the majority, and it is up to you and up to me, if there is a policy of government on the statute books that we do not like, to enter the forum where we have a right to change that, and if you have a majority with you, you can change that law by orderly process of government, and the minority always must obey the will of the majority, unless we are to have chaos and anarchy in this Republic. (Applause)

I have listened with a great deal of interest to the fear that has been expressed here that one day this great Republic and the majority of the people in this great Republic will come to the point where all of their privileges will be taken away from them, and we would be in the position of these Indians who appear here tonight asking for our help in establishing their rights. Do you know that is not a fair comparison for this reason? From the very beginning of this government intoxicating liquor has been treated differently than any other commodity, and why? Because, as the courts have said, and the legislative bodies have said, and every intelligent body of citizens that has gone into it has said, that it is different in that it menaces these fundamental principles which underlie the perpetuity of the government.

It was right across, here in New Jersey, where the court of last resort said many years ago that intoxicating liquor is in a class by itself, to the treatment of it there is no analogy of law.

And I remember when I presented the argument to the United States Supreme Court in behalf of the validity of what was known as the Webb-Kenyon Interstate Liquor Shipment Law, the attorneys on the other side argued that if the courts sustained that principle, then there was no limit to which governments could not go. You could prohibit tea, coffee, you could prohibit certain kind of apparel, what you could wear, and that the innocent things in life could be destroyed by applying the same principle.

However, Chief Justice White said, as he wrote the opinion for this court, that the dread which was expressed concerning this kind of legislation had no foundation, because it was the exceptional nature of the commodity that was affected here that determined its validity, and if there were any commodities included in the prohibition that were not within the reason and the authority of that constitution, it would not be upheld. If you think, any of you, that you can put a law through that will prohibit some innocent traffic or commodity, you try it and see how long it will stay on the statute books. In the first place, you never could get the average citizen of this country to prohibit a thing of that kind. In the second place, you never could get the majority of a legislative body to do it, and if you did, it would not stay there in the Supreme court of a state or of the United States for twenty-four hours after it got there for final decision. It is simply a scarecrow that they are holding up to you. The reason why beverage liquors have been destroyed is because they have been a menace to our country, and as the Supreme Court said, “They are a source of crime and misery to society.” Those were the exact words that were used by an impartial tribunal, not prohibitionists, and they do not sit as prohibitionists. The majority of the

men that are on the bench today are men who are not personal advocates of prohibition legislation, but fortunately, the overwhelming majority of them are men who, when they took the oath of office to support that Constitution and to construe the laws as they are written in conformity with that Constitution, they do so, and that is the reason that these decisions come from them, and not because somebody has presented an arbitrary plan of legislation to the Congress, or the State Legislatures, or to those referendum votes that are being taken in the cities.

What kind of law should we have to enforce the amendment, because the Constitution says that the manufacture, sale, transportation and importation of beverage intoxicants shall be prohibited, and lays the responsibility upon, first, the Federal Government, and second, the State, to enforce that amendment by proper legislation.

Imagine, if you can, that you are a member of Congress and you stand there as every Congressman does, and holds up his right hand and promises to support the constitution of the United states without mental reservation or purpose of evasion, and then you pass that amendment, and then you have the decision of the Supreme Court that the responsibility for the enforcement of that amendment rests upon Congress, first of all, because that was the question then before them, the obligation to define this term, “intoxicating liquor”, and to enact a measure and a code to enforce that Eighteenth Amendment. This was their bounden duty to do under this Constitution, and just as long as it stands we all admit it ought to be enforced according to its

intent and purpose. What would you do? You would say, as a practical man, “Well, let us find what kind of legislation is proper and necessary legislation to prohibit the be beverage liquor traffic,” and you would find out at once, as did Congress, that thirty-three states had already prohibited the beverage liquor traffic, that 2338 counties out of 3032 counties in the United States had prohibited the beverage liquor traffic; that in addition to that, large numbers of townships and municipalities and villages and residential districts in the outlying sections of the country had prohibited the beverage liquor traffic. Some of these units had experimented with this thing for more than fifty years, and what did they find? That first of all, in defining this term, “intoxicating liquor”, that thirty of those thirty-three states had used the standard one-half of one percent or less. A dozen of the states had covered all alcoholic liquors. Two states only had the one percent standard, and one had a different standard. In the other states they operated under option laws, in townships and villages, and in this connection, if you looked up and read Justice Brandeis’s opinion, his great opinion on this subject, and in seeing whether congress had passed that law and based it upon fact and upon reason and what was practical enforcement of a similar policy of the Government, and these Congressmen said, with practical unanimity that they used one-half of one percent standard, and that they could not legalize if we were going to make it one percent or two percent that would not allow them to sell any liquor in those thirty-three states, nor in those additional counties, villages and townships, where they had prohibited it, but in a small section outside, it would leave it to them still as to whether they should have a different standard than that which was the uniform standard throughout the country, and they did just exactly what you would do as a practical man, you would say, “If it has been the uniform

experience of the states that it is necessary in order to enforce prohibition, we will at least try that out, for as long as the states have deemed that necessary in order to comply literally with the Act, why should Congress take a standard that had no precedent and no place where they could show it was a success in its enforceability." That is what the Congress was facing, and these men were not enacting a lie into legislation, because nobody ever thought one-half of one percent would make an average man or any person intoxicated. You would burst before you could get enough into your system to make you intoxicated. It was put through because it would not intoxicate you. If you put a standard out that would allow intoxication, you would destroy the purpose of your Act. There never has been legislation enacted that has considered that when you are prohibiting intoxicating liquor, that you must define just as to what is actually intoxicating. If you do that, why you would have to put as high an amount in that glass as ten percent or fifteen percent, and you would get the maximum amount of alcohol and you would get drunk on it, just the same as was found in some of the states that a fellow could sit there and drink two glasses of two percent beer and he would get the same amount of alcohol as anyone would in one glass of four percent beer.

Liquor is the slipperiest stuff on earth. Give it an inch and it will take four miles, and you talk about two percent, and then they will hunch it up. Dr. Wiley was right, and he gave you the scientific end of it. I am giving you the practical end of it, because ever if every man in Congress felt as my genial friend, Mr. Hill, feels, he could not legalize the sale of 2.75 in any but a fraction of this country, and why should Congress enact a law in direct conflict with what is almost the

universal standard in this country today? It would only result in increased lawlessness. It would make a lot of people believe, if Congress set the standard at 2.75, that they could sell that, and if they did they would violate the state law, and they could go to jail. That is all there is to this whole proposition, that you are going to get something here by raising the alcoholic content. If you raise it to two percent, the fellows that want the real stuff will make a fight for tee percent and then on to four percent.

Don't fool yourselves for a minute, because the law prohibits the thing, that those who have the alcoholic thirst want, and that is where our trouble is. It is the man that got that thirst under the old system and who wants the alcoholic liquor at this hour. Put in two percent and 2.75, and you just have added enough for the fellow to get that old thirst still going. But Congress faced this problem from the practical standpoint, and I believe they have settled it right.

All this talk that has been going on reminds me of a story that I have heard down in Kentucky. A young lady down there, who was not very well informed about some things, went into a book store and said, "I want a first-class story to read while on a trip", and the clerk said, "I have a fine one here, the Kentucky Cardinal". She said, "I am not at all interested in ecclesiastical history." He said, "You are mistaken. This Cardinal was a bird." She said, "I am not even interested in his private life." (Laughter)

When some of these people start telling you this thing is a lie, they are deliberately trying to

mislead you into believing that Congress and the states and the courts have thought that one-half of one percent was intoxicating, so it was defined on that basis. It was just the opposite. The Supreme Court has repeatedly said that when you enact a law against an evil, it carries with it inherently the right to enact in the law the necessary machinery for its enforcement, having a reasonable relation to that thing, and that is the reason why all these laws have been consistently upheld, and in my judgment they are going to keep them on the statute books, because they have demonstrated that when you enforce an enforceable prohibitory law, it brings good results, and when you try to write into it a beer and wine amendment, a light wine and beer amendment, you destroy the very purpose of the law, first of all because there is no such thing as light wine that is not intoxicating liquor. The courts have repeatedly held that, and I can give you a score of decisions where Supreme Courts have taken judicial notice that wine is an intoxicating liquor.

How about your beer? In pre-prohibition days, it was about three and one-half percent and yet the courts took judicial notice in most of the states that it was an intoxicating liquor.

Out in old Wisconsin, one of the lower courts said “that a person who does not know that beer is intoxicating liquor is a driveling idiot.”

Before we think any more about beer, let me say that another Supreme Court said, commenting favorably upon the language of the lower court in characterizing that commodity, said that the idea of beer and light wine is an illusion.

We enforced this thing in 1870 and we are enforcing it infinitely better than we enforced the old regulatory statute.

I ask you whether any of you remember the old days when they used to elect Mayors on the theory that they would not enforce the Sunday closing law? Go over into Massachusetts and take the records and you will find town after town where more “speakeasies” were running right in some towns than saloons; that is, there are “speakeasies” or have been in those communities since this country has gone dry.

You go down into this thing and find out what effect it is having upon the consumption of liquor. Now I know my friend, Col. Gillett, said he would make his statement because there weren’t any statistics on it, there were no definite statistics on it, but there are some things that are trustworthy, at least in those respects. Do you remember about a year an da half after this law went into effect, we had made statements that there was a large decrease in the consumption of beverage intoxicants, and a good many papers said they did not believe that, and some of them made their own survey, and one or two papers at a large expense made their own surveys in this country, and you remember, I think it was seven articles that they wrote in the series, and when you read the first one this is what they said, that making every allowance for home brew and for moonshine liquor and for that which had been illegally withdrawn from these warehouses, there had been a decrease in the consumption of beverage intoxicants under the Eighteenth

Amendment of seventy percent.

If our enemy will give that kind of testimony, and I think that was conservative on their part, I think it was greater than that – I say to you it is a success and not a failure.

An act that will reduce it seventy percent or even fifty percent in a year and a half is an overwhelming success and not a failure.

Look at your courts right here in New York city, as to the amount of drunkenness. Take the last three years, including 1922, when there has been an increase in arrests for drunkenness over 192, and what does it show? Before that time, the yearly average was around 14,000 to 19,000 and it showed 14,290 arrests for drunkenness a year. In the years following, what is it? – 6,911, a decrease per year of 7,379 or fifty-one percent. Take Boston, and it is a little over fifty-one percent and so on down through the states. On the average, it runs a little more than fifty percent decrease. But that does not tell all the story. Why? Because in most of our states, when you had the saloons, you never arrested a fellow until he was out and becoming a nuisance on the streets. I remember in the city of Cleveland when Mayor Baker, afterwards Secretary of War, used to run his campaign there, one of the things he used to say, and he carried it out, that I that city they were not going to do certain things with regard to these sumptuary laws; that they would play the Golden Rule. A fellow who got drunk, they would get him into the hands of his friends, make the saloon keeper take care of him, or the policemen were asked to do the best they could, and the

records show there that they would take as high as 20,000 men per year down to the Police Court; take care of them there until they were sober enough to go home, and they never arrested anywhere more than forty-five or fifty percent of those men who were intoxicated.

What happens under Prohibition? In a community where they are antipathetical to it, the officers of the law will arrest men right and left, because they feel they can discredit the law. In those cities where they are trying to enforce the law honestly and rigidly, they arrest a man who shows the slightest sign of intoxication and make him tell where he got his liquor, and if he does so, he is treated with some leniency. So that under prohibition you are seeing a much larger percentage of those who get drunk arrested, and if you will just take those things into consideration you will find we are making more progress under this law as it is than some of you think.

We are making headway, and what we need is better enforcement. If there are corrupt men in the Department, we will help to get them out. I think it would help if you will put them under the Civil Service instead of taking them and appointing them there because of their political affiliations. (Applause) I think the time has about come where we ought to penalize the man who buys it as well as the man who sells it. (Applause) We dare you to applause that, Mr. Hill.

That would bring about a higher respect for the law. Every law is the foundation of orderly government. Without it every guaranty of life, liberty and the pursuit of happiness is insecure. Without it, civilization goes back to chaos and to anarchy, and the only guaranty that you will

have that you can enjoy your personal liberty, or your property rights, or your home, would be the brute force that you could exert against the invader. You carry on respect for the law through ratifying and upholding the necessary legislation to enforce the Constitution.

Encouraging the lawbreaker is the very leprosy of the social order. It instills its deadly poison into the veins of our jurisprudence and hamstrings the efforts of honest officers in their efforts to enforce the law.

If you think the law is not being enforced, you go to those three hundred men that are under indictment under the Conspiracy Act. Go to Reisenweber's Saloon that is closed up for a year. Go on down to Cincinnati where that millionaire bootlegger tried to make his millions out of this thing and is now on his way to the penitentiary. Go on out to Cleveland and see two or three of your great lawyers out there under sentence to the penitentiary for being in conspiracy with bootleg clients and trying to violate the Eighteenth Amendment and the National Prohibition Act. Go on our throughout every section of the country and see those that either have been sent to jail or are on their way to jail.

Let us all get together and stand by this law as long as it is in the Constitution, and when it has had a valid opportunity, as Chief Justice Taft said in his great decision, the American people have no pride of opinion; give it a fair trial of about ten years, and if it fails they will change the Amendment, but while it is there it must be enforced.

Let us all, as good, true Americans, live up to that American creed that there is one law I this land for all, not one law for the Jew and another for the Protestant; that whether a man is for the law or against it, if we live up to the laws our country is safe.

I believe in the United States with is government of by and for the people, whose just powers are derived from the consent of the governed, a sovereign nation of sovereign states, comprising a Union, one and inseparable, established upon those principles of equality, justice and humanity, for which the American patriots sacrificed their lives and fortunes and preserved it for us.

"I believe it is my duty, therefore, to love it and support its Constitution; that includes the Eighteenth Amendment; to obey its laws; that includes the National Prohibition Act; to respect its Government, to defend it from all enemies." My brothers, let us live up to that American creed, and by that spirit we will establish loyalty to law, and we will protect this Government. It will endure and the whole world will follow our example. Thank you. (Applause)