

The Economic Club of New York
68th Meeting

Prohibition – The Next Step

November 30, 1926

Hotel Astor
New York City

Table of Contents

Sir Alan Cobham.....	5
General Lincoln C. Andrews Enforcement Office of the Prohibition laws	7
Professor Irving Fisher Professor of Economics, Yale University	15
Dr. Fabian Franklin Professor and Author	26
Mr. Wayne B. Wheeler General Counsel & Legislative Superintendent, Anti-Saloon League	39
The Honorable Phelps Phelps Assembly of the State of New York	50

MR. ELY: Gentlemen of the Club, it gives me great pleasure to present to you the new President of our Club, Mr. Walker D. Hines. (Applause)

Introduction

Walker D. Hines

Gentlemen of the Economic Club: I very greatly appreciate the firmness and kindness and brevity of the Secretary's introduction. I want to emulate him in brevity.

I think this Club is distinguished for several important characteristics. I want to mention just two of them. One of them is its promptness. We were scheduled to begin dinner at seven, and dinner began at seven. We were scheduled to begin the speaking at 8:20, and the speaking begins at 8:20. Once in a while there is a falling off from the time table in the way of shortening, but not of lengthening the time.

The President allotted 10 minutes for his opening address, but I want to re-assure you by telling you that it will take less than five. (Laughter) That is an error on the right side, and under Mr. Ely's able administration we don't have any errors on the wrong side, so we are bound to come out even with the game, if not ahead of it.

The other characteristic of the Club is the characteristic of its desire to hear both sides. We are going to hear a question discussed tonight which may have more than two sides, but the Club, with its usual fair-mindedness, sense of fair play, will listen with respect and interest too all the sides that may be presented.

Before the discussion on the subject begins we are going to have the pleasure of hearing from a guest of honor who has come over here from England. He is the sort of man that appeals to me very strongly, because I have spent most of my life in talking, and I am particularly impressed by the man who spends his life in doing things. This gentleman is a man who looks to the future. He deals with the transportation of the future, the navigation of the air. He has made some of the longest flights on record – the longest flight on record. He has gone from London to Capetown. He has gone from London to Australia, and a very interesting and important feature of his achievements is that he comes back from the places he goes to (Laughter and Applause) So that he not only flew to Capetown, but he flew back from Capetown. He not only flew to Australia, but he flew back. I think I can guarantee, however, that tonight he is not going to fly into a discussion of Prohibition. He may have some misgivings as to whether he would get back if he did that. (Laughter and Applause)

But it is a very great privilege on my part and on the part of the Economic Club to have as a guest of honor tonight this distinguished gentleman who does things, and who does things which mean so much for the future. I take the greatest pleasure in introducing Sir Alan Cobham.

(Cheers and Applause)

Sir Alan Cobham

Mr. President, Ladies and Gentlemen: Tonight I feel very proud indeed to be here, especially to be the guest of honor on such an occasion as this. In fact, I have been

overwhelmed ever since I have arrived in the United States, which was only two or three days ago, and on my first visit to this side of the Atlantic.

As you know, I have a cause. The Prohibitionists may have a cause; the Moderation League may have a cause, but I am very proud of my cause. It is the cause of aviation, and everywhere I go I try to further that cause, because I believe in it so much. So that you must be lenient with me wherever you hear of me, if I am perpetually talking or having something to do with flying. To my mind aviation is one of the greatest of modern developments, and as a new development it has come about for the benefit of mankind and should be taken advantage of as such.

I am told that I must only speak for five minutes, as you want to get on to the debate. The only message I have to give is to lend a kindly ear to everything in connection with aviation, because we have got to develop an aviation mentality. I think everybody is very hard on us in the aviation world or, at least, the public in general, especially the young generation, and in this respect I can tell you one little story about a little boy who was kept waiting when I was returning from Australia. He was disgusted because he had to turn up on parade somewhere near St. Thomas' Hospital by the House of Parliament there, and somehow the scoutmaster had given him the wrong hour. He said we should arrive at 1:30, whereas the schedule time was 2:30. I was not late. I arrived there to the minutes. However, to the small boy I arrived 1 hour late, and he went home and told his father about it and his father said, "What did you think about the show?" "It was a very good show, you know, but he was an hour late." So his father said, "You cannot grumble at that; he had to come a long ways." The boy said, "I had to stand at attention, and I

had to stand an hour, and he was an hour late.” His father said, “Yes, but remember, he had to come 28,000 miles.” The boy said, “Yes, that is all very well, but he was sitting down all the time.” (Laughter and Applause)

Well, again, you know it is the younger generation that are going to make aviation, and it is only a question of the way you look at things. Only here a little while ago I met another small boy – these stories are all true – and this small boy lived at an aerodrome. He was the son of a Sergeant-Major, and he had airplanes buzzing above his head from the moment he was born. He knew all about flying machines. He could distinguish them and their horsepower and new all about the building of them, and one day his father took him for a walk over one of the bridges over the river to show him the wonderful sea-gulls which he had never seen, and he looked at them for a moment and turned to his father and said, “You know, they are just like aeroplanes.”

So it shows that it is purely the way you look at those things, and I feel sure that if we keep on in the cause of aviation we shall eventually win.

Again I want to think you for the wonderful reception that you have given me tonight. I am looking forwards to a great time over here. I am having it already, and I do hope I may, in my little way, do my very utmost to further the cause of aviation in the United States. I thank you very much. (Applause)

MR. HINES: the next speaker is a real general. We have various sorts in this country. Once in a while I have been called a general myself when I wasn't looking. But this time we have a gentleman who graduated at West Point, spent his whole life in the Army, was twice in service in

the Philippines, was twice an instructor at West Point, and I imagine both of those billets were rather troublesome. Maybe they got him in tight places. I think, though, now perhaps he is in the tightest place he has ever been in. (Laughter)

We are going to have the privilege of hearing him tell you how he does it. It is a very great pleasure to be able to introduce to you General Lincoln C. Andrews, the Enforcement Office of the Prohibition laws. (Applause)

General Lincoln C. Andrews

Enforcement Office of the Prohibition laws

Gentlemen, I am in a tight place. I left the Army after the Great War to find what our President Roosevelt called, "The adventure of life." Let me say I have found it. I have had more adventure in the last year and a half than I ever thought possible in any one man's life. As I look ahead, I can conceive even of wanting another World War, so that I may find a peaceful occupation. (Laughter)

In the subject of the evening, "Prohibition – The Next Step" I shall address myself to Prohibition and leave the others to consider the next step. I find myself as a sworn officer of the law in a position where I have to face facts as I find them, and not concern myself with theories, however tempting it may be. We will follow, then, along that line, and I will deal with facts as I conceive them to be.

I wish I could deal with absolute facts that must be accepted as facts. But finding that I could not find the facts when I first went to Washington was the first of the serious jolts that I got. We are trained to study a situation give us to solve, find its elements, determine the force, see what we have got to do, what we have got to do it with, and then decide how we are going to do it, and it seemed to me that I was not given very much data to work on.

I used to think about the tremendous advantage and necessity of having some sort of governmental machinery to determine the results of this, what all must understand to be, a tremendous sociological experiment, the government spending \$10,000,000, \$15,000,000, and \$25,000,000, and not knowing definitely what was being accomplished. Facing that, as I for thirty years faced our military policy, I have come to feel that he was indeed a major prophet who selected the national motto – “In god We Trust.” (Laughter) Personally I have always liked that other one, “God helps him who helps himself.”

This is the situation as it seemed to me, and I believe that it is a fair analysis of the situation which we face today. The nation, through 100 years of effort toward determining to eliminate the commercialized liquor traffic, had reached a point where they had adopted a constitutional amendment which, in effect, is a law against the manufacture, transportation and sale of liquor, and that amendment put it in the power of the Federal Government to exercise legally in every community in the United States the local police power which, up until that time, had resided only in the sovereign states. Thanks to a thoughtful House of Representative, the states did retain their police power although as the resolution passed the Senate they would have lost it, and reposed

that policy power solely in the Federal Government. If anything shows that this legislation was the result of war-time spirit, the fact that the Senate could pass such a resolution as that certainly proves it.

Now, here is the Federal Government giving the local police power to enforce in the local communities of the country a law that intimately affects the personal habits of the members of that community. At the same time, however, the states reserve to themselves that same police power in the concurrent jurisdiction. There is the situation, the foundation of the situation that I tried to solve when I took over office and tried to administer the law.

Looking back through the history of the evolution of this national Prohibition Act, facing the facts as they existed in the country as to our form of government, as to the spirit of the people, it seemed to me that there was only one sound, safe, reasonable solution, and that was that the Federal Government should divided with the states the enforcement of this law, and sold concentrate its effort upon the elimination of the commercialized traffic in liquor, and just confine itself to that. Then each community that wished to be dry could be dry. Then we would be undertaking to do something that we could do, because it certainly is possible for an intelligent government to wipe out the commercialized liquor traffic, the manufacture, transportation and sale of liquor in quantities sufficient to justify an organization behind it such as the bootleg organizations are over the country. That policy was adopted. Toward that end we

have worked. We are organized to carry that on. There are one or two other thoughts that I want to put in your mind along that line.

One of them is, we realize that a law is but the written expression of an accepted standard of living on the part of the members of a community, and to be successful there must be a preponderating majority of the members of the community who observe the law, in order that the police and court authorities of the community may enforce it against the recalcitrant minority. In other words, a law has got to have popular support, and that has been a fundamental consideration in the work that we have been trying to do. So administer the law that the people may quick resent it, may feel that it is administered fairly, intelligently, justly, and legally.

Another consideration, if you stop to think a moment, you cannot hold a policeman responsible for law enforcement. The criminal class, or the criminal, fears and respects law only when he knows that if he be caught and found guilty his punishment is sure and is prompt. That is a moving consideration in any law enforcement, and that is a consideration which points directly to the judicial machinery. It is the prosecuting attorney and the Court that has to enforce a law, and only when they are so situated that they may do it promptly and surely against the guilty will the criminal class be fearful of that law, and that is really what brought me to Washington. That was the argument that made me feel that I ought to take hold of this situation and do the best I could to try to help clean it up.

There was such disrespect for Federal Law that it seemed to me it was a serious problem for citizens to consider. The chief of the Secret Service told me that the old tradition which has always maintained in the criminal class that you must not get the Federal Government after you because they never would let up, they would hunt you into other countries, you are absolutely sure of punishment if you had violated the Federal law, -- that has all gone, he said, and sure enough, with a law which made so many men criminals under the Federal law, and which did not provide additional judicial machinery to meet that circumstance, we were arresting thousands that could not be tried and brought to punishment, and through their knowledge of that the attractiveness of bootlegging as a safe profession, as well as a lucrative one, was resulting in a serious disrespect for law throughout the country. That consideration brought me to the form of organization which was adopted, by which the Federal judicial district was made the unit for the Prohibition organization, and the unit of agents, enforcement officers, set up under a leader in each district, and that leader instructed to team up with the Federal District Attorney so that he and the District Attorney could work together and bring to court those cases in that district of violations whose punishment would most surely operate toward law enforcement and respect for law.

How have we gotten along? We have made some progress. We went out to try to eliminate the commercialized liquor traffic. It was an organized traffic. Its most attractive source of supply and the most conspicuous, was smuggling in of liquor. Liquor was smuggled as the result of thorough organization; men of wealth and brains at the head of a group of men who could hire ships, hire spies, hire gunmen, bribe the necessary officials, possibly the Coast Guard, Port

Authorities, local police, and bring the liquor into this country. To break up this cleverly-organized, cleverly-run, very wisely advised, legally, groups of organized law violators, was a very interesting problem. I have enjoyed it. They are not licked yet. They are on the run. We have only one more treaty to write, and I think it will be written soon. Our working agreement with foreign powers is working. Ship after ship is being put out of business. Pretty soon the bootlegger cannot sell you imported liquor and make you believe that it is imported. He can today because there is still some coming in. but the day will come when you won't have the satisfaction of believing him when he tells you that it is imported.

The next source of supply was the diversion of industrial alcohol, another interesting problem. Alcohol diverted from industry was cheap; liquor made from that alcohol was cheap. The market that bought the liquor was gullible, not cheap. The bootlegger had already turned to that source of supply before we commenced to cut down on smuggling, because he could make more money out of it. The government has got to protect legitimate industry. There are thousands of men in legitimate businesses who have to use alcohol. We have got to see to it that they have a supply, that they are not embarrassed and handicapped and hindered by regulations and, at the same time, we have got to sift out from among them hundreds who have taken out permits and are pretending to do legitimate business for the sole purpose of diverting alcohol to the liquor market. There has been a delicate problem. That problem, too, is being solved; steadily, just as sure as mathematics; month after month the illegitimate permits are disappearing, and ultimately there will be no diversion of alcohol, and that source will be gone.

Sacramental wine, in a limited field, but in almost unlimited quantities, was a pleasant source of supply. It is eliminated. It is eliminated in this City right now. I told you I was going to give you the facts as I saw them. (Laughter)

The next source of supply we had to deal with was the manufacture of real beer in the old line breweries. That was a tough nut to crack. It is not entirely cracked. However, we have got an organization that has learned the game, and next season it will be hard to get real beer. I give you that for your satisfaction. (Laughter)

Those were the sources of supply for the liquor traffic when I took hold a year and a half ago. All the time, always, there has been the little still, and the littler bigger still. The liquor traffic has turned now to the illicit distillery for its source of supply, and that will be its continuing source of supply, and our control of that will be what we make it, how clever we can be. Their favorite stunt now is to take a private residence in a nice part of the City and leave it on the outside a nice private residence, and on the inside a distillery, with a tunnel to some obscure place where the supplies are brought in and the liquor carried out and those private residences, of course, are a man's castle and must not be invaded. That offers quite a serious problem, but we are finding ways to get them now and then. Then they go out in the country to secluded places in some gully or woods, off on a dirt road, and there build a distillery. But I feel that wherever they are dealing in quantities sufficient to justify an organization, a commercial business, sooner or later we ought to be able to discover its whereabouts and then it is short work. But the small distillery, the private

still for the man's own consumption, those, I feel, must be matters for local police in communities where it exists.

Now there is the situation as I see it. A successful Federal enforcement against the commercialized liquor traffic which in the end, will eliminate all sources of supply except the illicit distilleries and we will probably eliminate most of them, if they are any good. It is a horrible situation.

Gentlemen, I want to speak a word to the matter of our division of duty between the State and the Federal Government. The success of the Prohibition law, to my mind, depends absolutely on whether or not the communities in this country are going to re-assume the responsibility for self-government and enforce their own laws. Forty-five of the States have these prohibition laws today. Strange as it may seem, even in dry states when the national law was passed, people turned to the Federal Government for the enforcement of the law. They just said, "Let Uncle Sam do it." Even police officers, even Courts, as well as private citizens, and I think there is where the Federal Government made its mistake, in accepting the invitation, in accepting the responsibility. But the people are acquainted with the fact that they have got to accept that responsibility themselves for local enforcement and there, I think, lies the solution of the problem along the lines of enforcement of the present law. The Federal Government can and will do its part in wiping out commercialized liquor traffic, making it possible for the State and for the community to be dry, if they want to be dry. The people can do their part.

Thank you very much. (Applause)

MR. HINES: Gentlemen, before the discussion begins, and this does begin the discussion now after this interesting outline by General Andrews of his methods of enforcement, I want to go back into history a little and refute what I have always felt in a certain implication involved an element of slander on my beloved native State of Kentucky. The motto of Kentucky, and General Andrews referred to mottoes – rather, the coat of arms consisted of two well-dressed gentlemen clinging rather uncertainly to each other over the motto, “United We Stand, Divided We Fall.” I always felt that motto carries very slanderous implications, because all my life in Kentucky I had seen many gentlemen who were able to stand without holding on to anybody else, and I mention that as showing how those who select our mottoes ought not to overlook entirely a sense of humor.

As I say, the discussion has begun and we are to have, at the opening of it, the expression of the views of a distinguished economist and distinguished expert in social phenomena, a gentleman who for 28 years has been a professor of economics at Yale. It is a very great pleasure to introduce Professor Irving Fisher. (Applause)

Professor Irving Fisher

Professor of Economics, Yale University

Mr. Chairman, Ladies and Gentlemen: It is a great pleasure to speak to an audience of this kind on any subject, and particularly on this subject, for two reasons. In the first place, what the character of the next step is, and what the success or failure of Prohibition may be in the future, I

believe, depends upon men of this character, intelligent, public-spirited leaders of our big centers more than on any other element of the population.

And the second reason is that I believe a large number of you do not agree with my position at this time. I like to speak to the unconverted. (Laughter) There are three groups of people in relation to this subject. First, there is the so-called fanatical dry. I say so-called because I do not like to call other people names no more than I like to be called names myself. But mean a type of whom I have met many, and for whom I have much respect who, on principle, believe in Prohibition, whether it works or not. The second group consists of what might be called, or so-called, the fanatical wets. They are people who, on principle, are opposed to any interference with their so-called personal liberty and who will not listen to the pros and cons of Prohibition, but will close their mind on the wet side with that same fanatical determination as the fanatical dries close theirs on the other.

And there is a third group which, I believe, embraces the majority of the people of the United States, who might be called the pragmatists, who are not so much interested in so-called principles or theories, but who want to know who it works, who cannot, irrespective of the facts of the case, decide what their attitude is. I have myself been misrepresented, and I want to say, in order to characterize myself if I may at the outset, that I belong to this third class. It is harder for me to make up my mind for the future on this subject than it is for people who belong to the first or second class.

We must face the facts, if we belong to this group, to find out what our attitude towards Prohibition is. And yet I want to say, all it a confession or call it boasting, as you will, that I am myself a fanatic on l subject, and I have been ever since I read Tomas Huxley, who said that every scientific man should be a fanatic on the truth, and I believe that any mistake that can be pointed out in regard to my attitude here tonight, will be corrected. I do not mean, of course, that I know the whole truth, that I have papal infallibilities. All that I can boast of is that when the truth is demonstrated I am willing to change my mind, and I have changed my mind on this particular subject. I have changed it because of a study of the facts. I used to disbelieve in Prohibition as the average man in the east does, who knows nothing about it, and it was only when I went to the west and studied the west and saw the experience in Kansas and Oregon and other western states that had tried Prohibition or a long time, that I was convinced that it was and will be the final solution of this veracious problem.

I know as well as you do that Prohibition is not a complete success, or anything like it. I know that it is a partial failure, and to a very large extent, a failure. But so has every effort been to solve this problem. I regard Prohibition merely as one means to deal with the liquor problem, a problem which has been with us for many generations. Top make up our mind on this subject, as the Moderation League tells us, we must face the facts. That is the one point in which I am unqualifiedly in accord with the Moderation League.

At the outset, then, let me say, though, I shall leave it to my opponents here tonight to elaborate it, that we must admit that there is a great disrespect for law.

It would be cowardly in any one who would stand forth as a champion of the Constitution and the law to blink the unfavorable conditions. In certain circles, chiefly the rich, there is more drinking since national prohibition, not less. There has been corruption among elective and appointive officials charged with its enforcement. In certain cities and certain sections of the country the lack of enforcement of the Volstead Act and of concurrent state laws has bred a general and dangerous disrespect for law. Friends of law and order must not walk blindfolded in the midst of those glaring defects of non-enforcement.

The pernicious effect of the example of the rich and law-defying – that class among our influential citizens whom Theodore Roosevelt denounced, as regarding themselves as above the law, -- cannot be too much deplored.

We have still as a survival in society the persistence of the ideal of aristocratic vice, which has come in conflict with the modern ideal of increased social responsibility. This heightened social sense is brought about by the production of more powerful instruments of civilization which may at any moment become death-dealing, if entrusted to hands and brains that are stupefied by drink.

The abolition of the saloon and of drinking in clubs and at public dinners is an unequivocal sign that the new ideal of social responsibility has progressed. But the employment by the brewing and distillery interests of their alliance with the survivals in us of this gentlemanly tradition of drink accounts for the existence today of bodies of distinguished membership organized under

the names of Personal Liberty Leagues, Model License Leagues, and so on, and the exploiting for commercial purposes of the slogan of personal Liberty wherever they mean License.

These new and old organizations, proclaiming their love of law and order – and of beer and wine of all percentages of alcoholic content – have been made use of by more sinister interests to spread the current exaggerations about prohibition.

Year by year the liquor dispensers have sought weak places in the cordon of enforcement and made the most of them. They have found that the penalties imposed were light. They made the most of their personal liberty propaganda. They hunted up the high respectables who believed in drink, law or no law, and utilized their example in defiance of the law. The police were not encouraged to enforce it. A reaction toward non-enforcement was inevitable. But beginning with 1924 the curve of relatively slackened enforcement is seen to moderate, and this tendency is increasingly observable in the recent statistics.

By the courtesy of the dinner committee of the Economic Club I have had placed beside the plate of each guest tonight copy of a chart showing the chances that drunkenness will cause divorce in this country are about half of what they were before national prohibition.

The significant fact, illustrated by this chart, is that married couples in the United States are divorced less for reasons of drunkenness than before prohibition. The divorces on account of drunkenness are rated in terms of the number of married couples. The conclusion from the official figures is beyond dispute that the hazards of disruption of married life because of drinking have been reduced by about one-half since pre-prohibition days. My sources for this

conclusion are drawn from the publication of the Census Bureau at Washington on Marriage and Divorce, 1924, which is its latest publication on this subject.

This chart is a new one to appear with more than 40 others in the revised edition of my book, "Prohibition at Its Worst." The Association Against the Prohibition Amendment and the Moderation League of New York tell us to "face the facts." By all means let us face the facts, and accept them, no matter where they lead. My book will admit freely the really damaging facts that have been brought out by the opponents of Prohibition. It will also expose, in a fashion that will meet the approval of every reputable economist and statistician, the glaring mishandling of statistics that pervades the reports of the Moderation League to make the facts look more damaging than they are.

For example, you will note that the chart on Prohibition and Divorce that lies before you, on its upper line records the high average of divorces on account of drunkenness that prevailed before the prohibition era. Then the line descends, throughout the period of war-time restrictions of the liquor traffic and the first 3 years of national prohibition. Thereafter, during 1923, a reaction of non-enforcement is shown as the lines moves upward when it proceeds about on a level, but far below the pre-prohibition high water mark of divorces for drunkenness, through 1923 and 1924. That is, the chart expresses the decrease of drunkenness divorces following prohibition.]

The other charts show, in like manner, the decrease of many other evils. They all look more or less like this chart. It is typical of a group of charts that will appear in my revised book on such

subjects as “Drunkenness in 349 Cities of the United States,” selected by the Moderation League and based on their statistics; “Drunkenness in Indiana,” again using the statistics of the Moderation League, but omitting the figures for Indianapolis, which are discredited by the Police Department of that city; “Drunkenness in 626 Cities of the United States,” as authenticated by the police departments of those cities; “Drunkenness in States Formerly Dry,” which the chart of the Moderation League distorts, as it also perverts the figures for Indiana, to make it appear that the line of drunkenness has shot up above the pre-prohibition level since national prohibition; and “Deaths Due to Alcoholism in the United States.” In all its exhibits the Moderation League fails to account for the larger increases of population since 1910, thus distorting its results.

In some few cases – and here we face the facts – the line has continued to rise since the end of the first year of national prohibition. This is true in the case of “Deaths Due to Alcoholism in Connecticut and New York;” deaths from the same cause in New York City, and “Insanity Due to Alcoholism in Wet States,” as distinguished from states formerly dry. But in one of these cases has the level risen to a point near the high level of deaths from this cause in pre-prohibition days.

Counter-balancing these will appear a large group of charts in which during 1923, 1924 and 1925 the line descends again, indicating that the reaction of non-enforcement of the prohibition law has been definitely overcome.

This is the case in the states formerly dry, if we reckon fairly the gains from the beginning of state prohibition in those commonwealths. My chart will show that after state prohibition,

probably three quarters of drunkenness as measured by arrests has disappeared in this group. The moderation League in its 1926 report has deliberately distorted its figures on this subject, comparing conditions today, not with the conditions before prohibition, but with the improved conditions in the prohibition states when the measure was a new broom, and in some ways swept cleaner than today. The real gains from prohibition must, of course, be measured relative to pre-prohibition levels, and so measured, in most places and in most respects, statistics record large gains.

In recent years the line descends again in the cases of “Drunkenness in Massachusetts,” going to the low level of 1920; “Drunkenness in New York State” – if allowance be made for the increased severity of police officials in making arrests, as compared with pre-prohibition days; “Arrests for Intoxication as Contrasted with Arrests for Traffic Offenses;” “Juvenile Criminality in New York City,” which is now less than at any time since the beginning of National Prohibition; “Crimes Against Chastity in New York City;” “Assault and Battery in New York City;” and “Deaths Due to Cirrhosis of the Liver in the United States and in Connecticut” – which is by far the best index of diminished drinking of alcoholic beverages.

In several extremely significant cases the reaction of non-enforcement after the first year of prohibition has never appeared, and my charts will show that conditions have constantly improved. Allowing for the increased severity of arrests since prohibition in Connecticut, the line has descended each year, showing that three-quarters of pre-war drunkenness in that formerly wet state has probably disappeared; similarly, drunkenness has dropped from large and

increasing figures before prohibition to small and decreasing proportions in Boston. The same is true in wet and wicked New York City and in New York State as a whole. In New York City juvenile delinquency has gone down in successive years, until now it is but half what it was before prohibition. It is the same with arrests for keeping disorderly houses in the metropolis. With the passing of the saloon another age-long evil, that of institutionalized social vice, has all but disappeared, and these arrests are only three percent of what they were before national prohibition. Even profanity as a public nuisance is passing in the chief city of the United States, as evidenced in a reduction of 80% of arrests for this cause since pre-prohibition days. Foul language has largely disappeared along with the mud and filth and slums. Finally, a chart will show that with the virtual extinction of the American saloon the per capita consumption of alcohol in the total United States, including the best obtainable estimates of amounts diverted into illegal traffic and illegal home brewing and distilling, has probably gone down one-tenth of what it was.

One of the chief exhibits of the Moderation League relates to drunken motor car drivers. The absolute number of arrests under this head has increased enormously. Allowing for the increase of motor vehicles from 1919 to 1924, which was 132%, the Moderation League notes that arrests for drunken driving increased 354%. I have already referred to the chart showing that the increase of arrests of this nature is relatively far less than the increase of arrests for traffic offenses of all kinds; in fact, that it is almost negligible. Moreover, in the case of drunken drivers we have to deal with a phenomenon that has nothing to do with the imposition of the prohibition law. That is the acquirement by the masses, especially during the last seven years, of machines

potentially as dangerous as the locomotive. With it has come the licensing on a gigantic scale of amateur drivers, out of all proportion to the licensing of professional chauffeurs.

Not only is there a pronounced increase of amateur drivers, but the character of the population that has come universally to own and drive cars is radically different. In many cases the automobile has fallen into the hands of reckless and dangerous elements. Under any form of control of the liquor traffic the arrests for drunken driving would increase for a considerable period, with the cheapening of the manufacture of automobiles and the maintenance of high wages in the United States.

Moreover, accidents from automobile driving which, in most cases, lead to arrests for drunken driving tend to increase far faster than the mere increase in the number of cars. Rather, they increase with the number of times automobiles pass each other – which is, probably, approximately as the square of the number of automobiles. If there are 100 automobiles in a city, each has the possibility of colliding with the other 99. That makes 100 by 99, or 9,900 possible collisions. But if there are 1,000 automobiles, ten times as many, the number of possible collisions is 1,000 by 999 or 999,000, which is not ten times as many but about a hundred times as many.

I do not know whether automobile accidents have or have not increased as the square of the increased number of cars, as this computation of possible collisions suggests; but if this is the case, an increase in the number of cars of 132% (i.e., an increase in the ration of 2.32 to 1.00)

would naturally result, other things equal, in an increase in the number of accidents – and in the number of arrests, of 5.38 fold. That is an increase of 438%, instead of the 354% which the Moderation League finds.

These considerations should bring the figures of arrests for drunkenness among drivers more nearly into line with the demonstrated facts concerning decreased totals of arrests for drunkenness in general among the states and cities of the country.

The Moderation League, also, makes much of the recorded increased percentage of arrests of persons under 22 years old in Washington, D.C., since national prohibition became effective. I have a report from Major Edwin B. Hesse, Superintendent of the Police Department of the nation's capital reading: "Prior to July 1, 1923, it was not an offense to be intoxicated in the District of Columbia." I have already published my figures of the facts for New York City, with its larger population than Washington, showing that the arrests of first offenders for drunkenness have diminished absolutely from 19 per 10,000 populations to less than six per 10,000 populations in Greater New York and the ration is still diminishing. The new recruits for the army of drunkards in that wettest of cities are steadily disappearing. Could there be a better test of the effect of prohibition in producing a sober younger generation through wiping out the saloon in America?

Against the facts of substantial gains, economic, hygienic and social, the extremists among the wets have directed a barrage fire of assertions as sweeping as they are general and vague, to the

effect that the whole country is being debauched and its youth inflamed by prohibition to the wildest excesses and crimes.

To pragmatist observers of recorded facts all this means little. If there is any important body of facts which proves them and is valid it has yet to be produced. I find alleged facts, largely discredited and so badly manhandled statistically that no economist of repute will father them, presented in the statistical tables of the Moderation League. I have exposed their defects. I find opposed to them a body of facts showing the substantial benefits which I have outlined to you tonight. I have carefully traced from official documents the history of the personal liberty leagues, past and present, and shown that, however sincerely used by innocent people; the personal liberty slogan is, in origin and effect, little more than a camouflage for the liberty of the brewers to resume their parasitic traffic.

In China, where the vice of opium is popular, I can imagine the formation of personal liberty leagues in the cause of the legalizing of the opium traffic. Opium is a narcotic poison. So, according to all scientific testimony, is alcohol. Intrinsically the arguments for personal liberty to take alcohol would be equally good, or bad, in defense of taking opium. And yet this is the proud issue of many of the state elections and many of the Congressional elections in this civilized country during the fall of 1926. The coldest and most exact scientific testimony on the effect of moderate drinking of the lightest beers and wines all points to one conclusion. Measured by its effect on precision of movement, labor efficiency, or health, a man who takes one glass of bear is one glass of beer drunk. All of the symptoms of intoxication, only in lesser degree, are present in

its imbiber. It is to produce these symptoms subjectively that he drinks it. And such intoxicants have been put outside the pale of the law by a majority in this country strong enough to embed it in its very constitution.

Coming finally to this fundamental fact of the quality of every alcoholic beverage as a harmful intoxicant, both medically and legally, as an observer with an eye to the facts I am driven to this conclusion. The defects of enforcement of the 18th Amendment, mainly due to inadequate public sentiment behind the law in certain populous sections of the country, show that the passage of constitutional prohibition was premature. But can we now, at this late date, go back and begin all over? We have had a century of halfway licensing measures, which have proved ineffectual. In view of the good accomplished by national prohibition, defective though its enforcement is, may it not be more practical to go forward instead of backward?

We can go forward now by marking out a course to educate public opinion after prohibition which, by rights, should have been done before prohibition. The facts are accessible in sufficient quantity and variety to enable them to be weighed – the facts good and bad, favorable and unfavorable. If prohibition at its worst, during these first trying years when New York, for instance, was far from ready for it, and when, consequently, it has proved so bewildering and offensive to many good people, is nevertheless actually accomplishing its main purpose of suppressing the saloon and lessening the use of alcohol, we may well think twice before giving it up until it is tried out further. (Applause)

MR. HINES: Gentlemen, the next speaker, by way of preparation for the delivery of his address this evening, was professor of mathematics for 18 years at John Hopkins. Then by way of further preparation he was editor of the Baltimore News, associate editor of the New York Evening Post, and editor of the review, and then he wrote a book on Prohibition. So I think you will agree with me that he has eminently and preeminently prepared himself for the address he is going to favor us with tonight. We are most fortunate indeed to have this gentleman here and it is a privilege to introduce Dr. Fabian Franklin. (Applause)

Dr. Fabian Franklin

Professor and Author

Mr. Chairman, Ladies and Gentlemen, I am not going to talk about facts in the sense to which my predecessor, for whom I have very great respect, seems to limit the word "facts". There are many facts that cannot be measured at all by statistics, and insofar as they can be measured their value cannot be estimated by any numerical measurement. I propose to limit myself to them, and do not intend, or had not intended to say a word about statistics. But, unfortunately, my speech is going to be deadly serious and it struck me that there was an opportunity to say a word about these statistics that were just handed to us which, while I do not attach much importance to it as a criticism, does seem to me to have some significance and which, moreover, will give me an opportunity to say a word that has a trace of humor in it, and I am going to trust to the clemency

of our distinguished President to let me have the 5 minutes which he generously sacrificed, for the purpose of this, which is not to be recorded as a part of my speech.

Mr. Irving Fisher is a man for whom I have had a life-long respect, as a keen thinker on economics, a careful and profound student of statistics. He gives us this which he has taken out as a chosen sample. I do not say that there is anything wrong about it. But I do say that very much depends – and this is shown in a microscopic way – there isn't one of the things that he has said which hasn't another side which, if some able statistician who believed in the other side were here, he could present that side. I am not going to attempt a controversy at all. These statistics show that there has been a great decline in the percentage of divorces granted to people because of drunkenness, the number of divorces. They also show more than that. I want to be perfectly honest, and I know Professor Fisher wants to be perfectly honest. They also show an absolute decline in the number of divorces granted on account of drunkenness. But there is one very pretty little line on this which has nothing to do with drunkenness at all. He tells about the number of divorces. Well, we have the number of divorces in 1906, in 1916, and the number of divorces in 1924, and the intermediate things interpolated, because they had to be interpolated, no census being taken in those intermediate years. Now, we all know that the number of divorces, and these are the total numbers, to the percentage of people or the married couples living at the time, the ratio of divorces granted in any year to the number of married couples enjoying their connubial bliss in this country at that particular moment – we know very well that in spite of all the advantages of matrimony, that percentage has been increasing steadily as far back as anybody can remember, and it has continued to increase under prohibition.

I do not ask Professor Fisher to call attention to that, but I should like him to note this remarkable fact, that not only has the total proportion of divorces kept on increasing during these years from 1916 to 1924, not only has it kept on increasing in this prohibition period, but the percentage of increase has been much greater than before. Mind you, not the actual increase, but the percentage of increase in that proportion. We have in 1906 462 per 100,000. In 1918, 566 exactly 100. That is 21½ %. You see, I was once Professor of Mathematics and I spent a long time studying this. From 1916 to 1924 it is only eight years, but there was an increase of 184. Of course, they started with a larger number, and that makes an increase of 34% in eight years, which makes almost exactly a rate of 43% in 10 years. The rate of increase has not only kept on increasing, and not only has the rate of increase been maintained, but the percentage of increase has been doubled in a brief time.

What does that mean? I don't say it had been because of Prohibition, but here comes my little story. On or about the blessed year, 1919, when the 18th Amendment was about to be passed, I sat on a little park bench in Tarrytown, just a little Common which some generous landowner had allowed benches to be put on, and people used to sit there, and there were three or four old countrymen sitting on an adjoining bench and they were talking, people almost as old as I am, and they were talking about this Prohibition that was coming on, and one of them sitting on the next bench said, "Well, drinking has broken up a lot of families." "Yes," said the other, "and so is Prohibition going to break up a lot of families," and it looks as if it had done so.

I am very serious about these things, and I just thought I would say that because I could not resist the temptation.

We have come here to consider “the next step.” But before we can think to any good purpose about the next step we must first of all get our bearings. Where do we stand, whither are we drifting, what goal are we to aim at?

On one thing both sides are agreed. The present situation is intolerable. But what ought to be done about it is a question of which the two sides are wide as the poles asunder. All this might go without saying.

But the truth is, that even on our side of the case there is far from being anything like entire agreement, not only as to the remedy but even as to the source of the trouble. And on these points I propose to speak as plainly as I can.

Many ardent opponents of the present law direct their attack chiefly upon the Volstead Act. But the real trouble does not lie in the Volstead Act. It lies in the 18th Amendment. Whether or not the Volstead Act goes beyond the requirement of the 18th Amendment is a minor question. It is all well enough to attack half of one percent. It is all well enough to agitate for 2.75%; because even so puny a victory as this over the Anti-Saloon League would be a sign of strength on our part, of weakness on the part of the enemy. But in itself I care nothing about half of one percent and I care nothing about 2.75%. If we are to get anywhere in this appalling situation we must

have in view something infinitely more important. We must realize that the situation in which the country finds itself and out of which it must escape if it is to save its soul alive, is not the result of accident but the natural and legitimate outcome of the 18th Amendment itself.

The 18th Amendment is not a mere error; it is an outrage, it's a crime. (Applause) It is an outrage because it imbeds in the organic law of the nation a statute regulating the personal conduct of our 100,000,000 people, thus placing the conduct of their daily lives under a restraint which they are unable to remove by any ordinary process of legislation. Such an act is an anomaly, a monstrosity, a thing the like of which has never been imposed, or attempted to be imposed, upon a great nation of freemen. It would be a monstrosity in any nation; it is peculiarly a monstrosity in ours. For, besides placing beyond the reach of the ordinary processes of government a law which ought to be capable of repeal or modification in accordance with the will of the people, it also utterly sweeps away the principle of State self-government, which has been the very cornerstone of our American institutions. I am not speaking of any abstract doctrine of State sovereignty or State rights. I am speaking of the possession by each state of that practical, but none the less fundamental, control over the ordinary concerns of daily life which has been cherished by every state in the Union, North and South, East and West, for 150 years. That the preservation of that spirit – the spirit of state self-government – is vital to the continuance of our institutions and traditions has perhaps never been declared with more emphasis that was done by President Coolidge in a recent speech. The 18th Amendment would be a monstrosity in any constitution; in ours it sins not only against the very idea of the Constitution, but also against the vital principle of our Federal Union.

The purpose of putting bone-dry Prohibition into the Constitution was to make the Volstead Act, or some act essentially like the Volstead Act, virtually unrepealable. And what was this thing which it was thus intended to place, year after year, decade after decade, generation after generation, beyond the power of the people of the United States to remove by any ordinary process of popular government? In form, what it forbids is the manufacture, transportation or sale of intoxicating drinks; in substance and purpose what it forbids is the drinking of them. Right or wrong, wise or unwise, justifiable or unjustifiable, it is a restraint upon personal liberty. Everybody but a fool admits that some restraints upon personal liberty are justifiable; everybody but a fool admits also that some are not. I think I may go farther than this. I can find no word better than “fool” to characterize any man who will say that because some restraints on personal liberty are justifiable the idea of personal liberty is a delusion, the plea of personal liberty in regard to Prohibition impertinence. I shall not waste time on arguing with people who think that because we do not object to being required to drive on the right hand side of the road, we have no right to object to compulsory teetotalism. Millions of our people do so object; people quite as respectable, quite as high-minded, quite as patriotic, as those who wish to coerce them. When the invasion of personal liberty takes this shape, it may still be possible for the supporters of that invasion to contend that it is justified; but it is absurd for them to contend that it is anything but a denial of personal liberty of the most serious character and on the grandest possible scale. We have sold our birthright for a mess of statistical pottage. (Laughter)

And this brings me to the third and last count in the indictment of the 18th Amendment as a Constitutional outrage. The purpose of our Constitution, and of any Constitution at all like ours,

is to place certain things beyond the reach of the ordinary vicissitudes of public opinion or of popular passion. These things are, first, the structure of the Federal Government; second, the division of powers between the Federal Government and State Governments; third, the preservation of certain fundamental rights of life, liberty and property. Until the 18th Amendment was adopted, these purposes, and these alone, were safeguarded by the tremendous bulwarks of the Constitution. The safeguards of liberty were inserted in it in order to protect that priceless possession against attack. The founders of our nation know that liberty is in danger from the tyranny of majorities as well as from that of oligarchies and monarchies; accordingly, the Constitution says; no mere majority, no ordinary legislative procedure shall be competent to deprive the people of the liberty that is hereby guaranteed to them. But the 18th Amendment says, No mere majority, no mere legislative procedure, shall be competent to restore to the people the liberty that is hereby taken away from them.

To say that no provision of any such character – I do not mean Prohibition, but any restraint on personal liberty – if proposed at the Constitution Convention in 1787, would have had any chance of adoption is grossly to understate the truth. If any member of the convention had been so fatuous as to propose it, he would have simply been laughed out of court. But even this is not all. Thirty years ago, twenty years ago, the preposterousness of such a proposal would have been recognized by nearly every man of sense.

How it got into the Constitution is a large question into which the limits of time forbid me to enter. But although it is in the Constitution that it is preposterous, the feeling that it is an atrocity, resentment against it not only as tyranny but also as a perversion of the Constitution, fills the hearts and mind of thousands of our best and most patriotic citizens. The framers of the 18th Amendment thought that the hopelessness of any attempt to get rid of it would render it immune from serious attack. Their expectations have been utterly disappointed. The apparent impossibility of changing the law, so far from insuring acquiescence, has intensified hostility and has driven hundreds of thousands of our best people into the conviction that the only way to re-assert the principle of liberty is to treat the law with contempt and to refuse any aid or comfort to the National Government in its attempt to enforce it.

The violators of the law are to be counted by the million – good men, bad men, indifferent men. And what makes the situation so hopeless from the standpoint of law enforcement is that the bad men are wholly unchecked by that force – infinitely the most powerful of all the forces that support the authority of law – the condemnation of the whole body of decent opinion in the community.

The result is the appalling condition with which we are all familiar. I don't propose to enter into the quagmire of statistics. I don't care to insist that our side is right and the other side wrong in regard to the question of the increase or decrease of drunkenness. Whether it is somewhat more or somewhat less is, in comparison with the great facts that stare us in the face, a minor question. Even if drunkenness has diminished, it would still remain a question whether the same result

might not have been brought about as has been done in other countries – as was being done in our own long before the 18th Amendment – without bringing on the frightful evils which we have witnessed. Neither shall I go into the details of those evils that all recognize, prohibitionists as well as anti-prohibitionists, is the appalling extent to which contempt for this law, violation of this law, the undermining of respect for law in general, has been carried during these seven years of the prohibition regime.

Look around you! Who is there that has any respect for this law? It is true, of course, that that half of our population (or thereabout) that favor the law and life it respect the law – if you can call that respect which is merely having your own way. But who else? You can count them almost on your fingers. Let along the question of enforcement; to what extent is voluntarily obeyed? Just ask yourselves a simple question: What would happen if liquor could be freely made and sold and the law attempted simply to prohibit drinking? To ask the question is to answer it. Not the most hide-bound prohibitionist would dream of attempting to enforce the law if the means of breaking it were physically at the free disposal of those who wish to do so. The crime of drinking would be absolutely co-extensive with the desire to drink. If now it falls short of being universal, it is not because of any willing obedience but simple because of the physical difficulty of obtaining the means whereby it can be broken. That is not the way with other crimes. Arson is not controlled by prohibiting the sale of matches. Forgery is not kept within bounds by prohibiting the sale of ink and pens. All but a very small fraction of the community refrain from arson and forgery because they think of arson and forgery as crimes; and all but a small fraction of that small fraction are restrained by the fear of punishment, and the knowledge

that the universal sentiment of the community is behind the government which metes out the punishment. All that the courts and the police have to do is to keep this small fraction of a small fraction within as narrow bounds as possible. In the case of these crimes it is the whole people arrayed against the few criminals; in the case of prohibition, what we have is a war of one-half of the people against the other half.

Now, what are we to do about a law that results in so horrible a situation? “Enforce it or repeal it,” so many people say. It is an easy thing to say. But suppose you can’t repeal it? Suppose that the more rigorously you enforce it, the more odious become the means of enforcement? Shall we sacrifice everything we hold dear for the sake of persisting in forcing this insane measure upon a vast minority, very likely an actual majority, of the people?

No. Besides enforcement and repeal – besides modification, which if it amounts to anything, the prohibitionists tell us, would contravene the 18th Amendment – there is another course. Call it nullification if you will; there are times when a course for which we have perhaps not better name than nullification is the only remedy for intolerable evil or intolerable wrong. Such was the case with the Fugitive Slave law; such was the case with the Negro Suffrage Amendment in the South. Whether by formal nullification through the state legislature, or by the direct action of the people these laws were practically nullified – one of them in the North, the other in the South. In the case of prohibition we have to look squarely in the face the fact that, whether we like it or not, we are going to have nullification of the one kind or the other. Either Congress must give us relief by some form of what all good prohibitionists will call nullification that we now have by

the spontaneous action of tens of millions of individual Americans from the Atlantic to the Pacific and from the Great Lakes to the Gulf.

You can't get 50,000,000 individuals voluntarily to obey a law which they don't respect; and you can't force them to obey it without sacrificing everything that has made and kept us a free people. But can you not get them to respect it? Somebody may ask. The time has been when possibly that question might have been asked with some degree of hopefulness. That time is now long past. The very idea has almost faded out, in view of the pathetic futility of every effort that has been made to advance it. Have you ever heard of a single human being who has given the slightest heed to the solemn appeals of the Committee of 1000, or Attorney General Sargent, or President Coolidge, or anybody else, that we should respect this law because it is in the Constitution? It has degraded the Constitution. It has disastrously impaired, in the hearts of millions of good citizens, that instinctive attachment to the Constitution which is one of the country's greatest safeguards. Among countless thousands of men who are not good citizens, it has enormously increased that disrespect for the laws in general which they already entertained. Who shall measure the evil that has thus been generated? In comparison with this, what a paltry business it is to estimate the so-called success of the amendment by statistics of drunkenness, even if these were at all reliable. We have a country divided against itself as it has never been divided since Appomattox; and divided by an issue not arising out of the very nature of our situation, as the slavery issue did, but one that was thrust upon us by a single frenzied act – that of putting into the Constitution a law which does not belong in any Constitution, which is

particularly preposterous in such a Constitution as ours, which is resented as tyrannical by 50,000,000 of our people, and which is eating at the very heart of our political life.

I think it must be pretty clear from all this, what I think must be the nature of the next step or steps that we ought to take. Although our ultimate goal must be the repeal of the 18th Amendment, we must endeavor, at a much earlier time than that can be achieved, to get Congress to pass a law which shall really and truly relax the rigors of the Volstead Act. Whether such a law should take the shape of permitting beer and wine – real beer and real wine, no. 2.75% make-believe – or should take the shape of a transfer of discretion to the separate states, such as is proposed in the referendum recently passed upon by the people of this state or such as has long been embodied in the Democratic platforms of the State of Maryland, is a question which I need not particularly discuss. In either of these ways a great breach would be made in the solid wall of bone-dry national prohibition. That a real measure of relief of this kind would go far towards lessening the immediate evil of the existing situation I feel confident; and this in itself would be a sufficient reason for adopting it. But in my opinion an even more important result of it would be that it would bring repeal of the amendment into something like hailing distance. Stupendous as are the difficulties in the way of that repeal, impossibility is no longer the word for it, as it was seven years ago, or five years ago, or even two years ago. I have no such utter contempt either for the intelligence of for the patriotism of prohibitionists as not to entertain the hope that when it has been clearly shown that the 18th Amendment is repugnant to the sentiments of half their fellow citizens, many of their best and most earnest leaders will have the wisdom to

recognize, and the courage to declare, that the amendment was a disastrous error, and that the time has come to retrace the step into which their enthusiasm has betrayed them.

In addition to this we must work for a conclusive expression of public sentiment in every one of our 48 states. Many who desire this are in favor of a general national prohibition referendum – a count of heads throughout the entire Union. I am inclined to think that this, though perhaps the shortest cut, is not the best means of attaining the end desired. I think a better way, though a slower one would be to agitate for the proposal by the legislature of every state or an identical referendum. Some states would adopt this suggestion sooner than others, but in almost every state the persistent proposal of it, year after year, would be almost sure to get the approval of the legislature some time or other; for to deny it would be clearly to fear an expression of the will of the people. And when these referenda had been voted on, we should have a pretty clear picture of the state of feeling not only throughout the Union, but, what is fully as important, in each of the several states.

What form this identical referendum should take is a matter deserving of the most careful consideration. If I may venture an expression of my own judgment, I should say that the most desirable form would be something less complex than that which was voted on by the people of New York a few weeks ago. After all, what we want the people to say is not whether they approve or disapprove of a particular form of legal enactment; we want to get from them an expression of sentiment on a simple question which everybody can understand. I think the referendum might take the form of two questions:

1. Do you favor the enactment by Congress of a law which shall permit the manufacture and sale of beer and light wines in any state that desires to permit it?
2. If this is impossible under the 18th Amendment, do you favor the repeal of that amendment?

With this suggestion I must bring my remarks to a close. I have not attempted any elaborate presentation of special arguments. I have only touched upon what seemed to me the main and vital points of our situation. We are laboring under the operation of a revolutionary measure, the seriousness and the far-reaching consequences of which were not realized even by its opponents, with the exception of a very few, until after it had been fastened upon us. The 18th Amendment is a morbid excrescence of upon our Constitution. It has generated disrespect for law upon a scale unheard of either in our own experience or in that of any other great nation of freemen. It is eating at the very vitals of our public life. We must not rest satisfied until we have out this cancerous growth out of our body politic, whether it takes five years or 10 years or 50 years. And if we cannot out it out, or until we can cut it out, we must do all that is possible, by national legislation, by the pressure of public opinion, by passive resistance in its thousand forms, to make this diseased excrescence upon our Constitution as innocuous as possible. (Applause)

DR. HINES: Dr. Franklin has subjected the officers of the Club to a very, very great temptation. If there has been any occasion when we would have felt we were justified in relaxing the rule as to time, I am sure this would have been the occasion. (Applause) But in this matter also a

principle is at stake, because we must maintain this rule in order to keep to our schedule and we must keep to our schedule so that our members can know what to count on when they come here.

The speech of Dr. Franklin showed that he was in a state of mind not dissimilar to that which a fellow Kentuckian of mine found himself in when he was in the Penitentiary. I think perhaps Dr. Franklin feels that he is almost in the Penitentiary when he is subjected to these restraints. After this man got in the Penitentiary his father went into the office of a lawyer down in Western Kentucky and said, "I want you to see what you can do to get my boy out of the penitentiary up at Eddyville, because I got a letter from him and he says he is plumb dissatisfied." (Laughter)

He showed a very strong disapproval of the 18th Amendment. I think I would almost be justified in saying that we will now hear from a gentleman who is almost the 18th Amendment in person, and I think it is very fortunate that we can have an address that presents the view which underlies that amendment and presents it in the complete way in which it will be presented, because no discussion on the subject would be anything like complete or well-balanced unless this point of view were presented and, of course, it is entitled to the most careful and respectful consideration.

Our next speaker has spent a large part of his life in work in connection with Prohibition. He is the General Counsel and the Legislative Superintendent for the Anti-Saloon League, and he can put before you, perhaps better than anybody else in the country, the underlying philosophy of that amendment, and I am glad we have him here, and I am glad we will have the opportunity to hear that point of view so ably expressed, and it is a great good fortune that we have him, and that I am able to present Mr. Wayne B. Wheeler, who will now address you. (Applause)

Mr. Wayne B. Wheeler

General Counsel & Legislative Superintendent, Anti-Saloon League

Mr. Chairman, members of the Club, both wet and dry: I think I express the sentiment of all the speakers on this occasion, regardless of their views on this question, when I say that your Club is performing a real service to your City and the country in maintaining a forum to secure an intelligent expression upon these social and economic questions of the day. You are hearing both sides of it tonight. The last speaker presented a rather dismal picture from the standpoint of the fellow that wanted a drink. In some way he felt that this thing had been engrafted upon the Constitution and that there wasn't much chance of ever getting it out, but still it was an outrage upon the American people.

Who are the American people under the Constitution of the United States? The constituted majority as defined in that constitution for making laws and making the organic law, and then backing it up after it is put into the Constitution and on the statute books of our country.

(Applause)

What is the next step in this fight? – and before I take up that, keep this in mind also, that we had just as long and as circuitous and as difficult a path to travel over to get this into the Constitution as you will have to get it out. (Laughter) We have succeeded in getting it in. It is your task to take it out, and we challenge you to use the same methods prescribed in the Constitution to take

it out, and then when you win, we will smile and take our medicine on that question and help you to enforce whatever provision you write into the Constitution of our country, as law-abiding citizens of this great nation. (Applause)

From the standpoint of the friends of this American policy of government adopted by the American people, there is going to be no backward step. There is going to be no side-stepping. There is going to be no wobbling step of the old soak of the former licensed liquor days, but there will be forward stepping, the united marching step of clear-brained, sober Americans, who know where they are going and who know what they want, that is the maintenance and enforcement of a law and part of the Constitution which prohibits the beverage liquor traffic. This will be a campaign defensive and offensive. The defensive part of it will be to defeat the defeatists' program which is to destroy the amendment by taking away the laws that are necessary to enforce it.

One part of the program that is presented to you by my opponent I agree with, that is, those who want to get rid of it go on out in a straightforward way and take it out, but when you propose a plan which suggests that you repeal the laws by which the Constitution is to be enforced, you are on dangerous ground no matter where you stand on the question, wet or dry. (Applause) In thus defeating the defeatists' program, we do want the facts told. Professor Fisher, one of the greatest of international experts on economics, gave you from a conservative standpoint some of the facts of Prohibition at its worse. We propose to keep on with this fight until we will have Prohibition at its best instead of at its worst, and then you will find still better results than those that he

presented to you here tonight. The insinuation was that the American people are not back of this policy of government. I say to you they were back of it when we got it and they are back of it today. There was 50 years of educational work and effort to get it. We tried every form of regulation and government control and these other vagaries that are presented here, and what was the result? Just one thing, if you will just think about now those fights, those of you who had a part in them, either wet or dry, and that was that if we were going to have liquor sold, the best way and the best place for its sale was in the saloon, because there you could control it; there you could regulate it; it was called the poor man's club and all that sort of thing. That was the result of 50 years of effort to solve this problem by regulation. What happened to it? Why, the saloon hasn't got a friend in the world, even in the wet camp, hardly. They sort of put it up as a hideous institution, and yet they present regulations which were discarded as fallacies, at failures, before we reached the proposition that the saloon was the best place in which liquor was to be sold.

The people made up their mind that they would try out, as between that system of trying to prune this thing, and removing the symptoms without taking away the cause, and they started out in the township, the village and on down through the small units until they drove it from 95% of the territory of the nation. Sixty eight percent of the population lived in that territory. We would have gone on in that way for a long while if our friends, the enemy, had played the game a little fairer, but they were unwilling to have that 95% remain dry as the majority had voted it, and so they put up in these five percent of the territory that was wet, an organized fight to break down the law in the 95% that was dry, through smuggling liquor in, and with their propaganda, and the people said, "If we have got to choose between having our laws by local self-government, we

have adopted them, defied by a group from the five percent territory, or else put a law in the organic law which drives out the liquor traffic even in the places where the people are not quite ready for it as a prohibitory policy of government, we are going to fight that out on that line and see whether the American people by the methods provided in the Constitution will make the nation legally all dry, or whether we will continue the policy of having this smuggling and this outlawry brought into our dry territory where the people want it dry” and you know the story.

The first vote in the 63rd Congress, we had a majority of the Congress but we did not have the two-thirds. Then came the 64th and the 65th, and we had gone back into the Congressional Districts and made it the issue, and they got more than two-thirds in the 65th Congress. Then they went back to the states and it took fewer than 200 members of one branch of the Assembly in 13 states, to have prevented this action, and the opposition did their level best to try and get it. But what was the result? In one branch it was five to one in the nation, in the Senate; in the other it was six to one in the nation for it, in the Assembly, and it was written in the organic law by that overwhelming majority of the people, and since then we have had eight elections on this question where the people could express themselves in the choice of Senators and Representatives to Congress as to whether or not they were for or against the policy. What happened? They presented their 2.75 beer proposition and all these others, and every time we come back to Washington with a Congress drier than it was before.

Where is this revolt of sentiment that my friend speaks of? Take the last election, if you will.

There were 394 Members of Congress who were re-nominated. How many of that number had

voting dry records down there and were standing up for it? 298. Then you take of the new ones, 31 new ones, and 25 of those came out openly for it, so that between 320 and 325 of the next Congress that will come there March 4, 1927 are for its maintenance and enforcement of the 18th Amendment.

Going back any on that? Go to the Senate. We elected 35 members to the Senate. How many did the wets get? Nine, and that counts in one that may not be seated. And so there is three-quarters of that body that has either voting dry records or have pronounced themselves on that side, and that was the issue on which they were elected, and, remember, that is the only way, the only legal way, that you can express yourself upon a change in the Constitution for the Federal laws.

Let us move in the method that is provided by law and see whether or not the American people are for or against it. You present your program, your 2.75. You admit you don't have any use for that. That is true for the wet organization. The head of the combined wet group said under oath before the Committee recently that beer and light wine, repeal of the Volstead Act, were but stepping stones to get rid of the whole thing, and we said, all right, but just turn it around the other way. Get rid of that part of the Constitution and then you will not have to nullify it by taking away the laws by which it has to be enforced," and we challenged our opponents good-naturedly to combat on that issue, and we will see whether or not the American people are ready for a backward step or a forward step.

You have laid before you a program of the Moderation League. Down at Washington and the places where there is a real fight on with reference to this amendment, nobody knows much

about this Moderation League. The only organization that steps up and fights is the Association against the Prohibition Amendment, and in their report just filed, they put in \$275,000 to elect a Congress that was going to express its sentiment, those numbers that have been referred to here tonight, and where did they get with it? They poured that money in a rat-hole, and we have more dry members than ever, and just as sure as they will present that program, the program which they presented tonight, just as sure as they will present that to the American people, south and west and the central part of this great nation, and much of the New England States, we will come back with a still larger majority in favor of the 18th Amendment, its maintenance and its enforcement. That has been the record right straight through. We are ready to fight this thing out General Grant style, if it takes all summer or a dozen summers yet to come.

Now, to confuse the issue some of our opponents have presented these so-called referenda in the attempt to change the Constitution or the Federal law. As I said to you that was never contemplated by the framers of the Constitution. It is entirely extra-legal or, as Senator Borah said, it is one species of constitutional anarchy. You cannot change the Constitution or the Federal laws that way. But in your State what was your proposal? Suppose you had submitted something that was legal and workable and enforceable? It would not have any effect upon us. Every Congressman looks to his district and the sentiment of it on this question. What did you propose up here in New York? That in the definition of intoxicating liquor you include only those liquors that are intoxicating in fact. I would like to have a consensus of opinion on what kind of liquor is intoxicating in fact from this group here tonight. I have no doubt but what some of you could drink four or five percent alcoholic liquor and show no visible signs of intoxication

at all. Some might seven or eight, some 10. Others would be far below that, and all through the history of legislation in this nation it has been found to be absolutely unworkable to put that kind of definition into a law that is to prohibit the beverage liquor traffic. We had to fight it out down in Congress. I presented to Congress, when this bill was presented for passage, just the laws of the States in that 95% territory that was dry, and they could not get any precedent for their side. They found that the average was the definition that was put into the so-called Volstead Act. If the average experience of this nation had been one or two percent, they would have written that in. They based it on the experience in the states and what was enforceable. But they were not satisfied. They came to New York, and got your ablest lawyers to present it to the Supreme Court, and we did our best on the other side, and here is what the Supreme Court of the United States said, and a man who had not been a radical or a prohibitionist along this line wrote that opinion of the Court:

“The legislation and decisions of the highest courts of nearly all the states established that it is deemed impossible to effectively enforce either prohibitory laws or laws regulating the sale of intoxicating liquor if liability to inclusion within the law is made to depend upon the issuable fact whether or not a particular liquor made or sold as a beverage is intoxicating.”

That is exactly what is the experience of the nation. That is what the courts held. That is what legislative bodies declared, and yet they say that that referendum up here should have weight with Congress. Let them present it down to Congress and see how many votes you will get for it,

because they have fought that out; the courts have fought it out; everybody of government officials that have to do with it have fought it out and are against it.

To bolster it up they say, “Because the courts up here said you could have a referendum on it therefore it must be all right.” Don’t you know that any State that provided for referendums on questions, or where the courts held that you can do it under your police power, that you may submit any question at all? You can submit in this state the question if you get enough votes on your petition, that you can have it presented to the people that every red-headed man or bald-headed man should be shot on January 1st, or the day after election, and no court would enjoin that referendum, but that would not make it open season for shooting strawberry blonds or ivory domes in the United States. They have got enough horse sense to know that when you put up an illegal proposal and even though it may be adopted by the people, that it will never have weight with legislative bodies or with the courts after such proposal is adopted.

Let me take the other side. I have been talking about defeating the defeatists’ program. We have a constructive program. That constructive program is to tell the truth about this question until this question is settled right. That gives to the other fellow just as much latitude to tell his side of it as we have ours, for if you will study the history of this country you will reach the conclusion that if you tell the truth long enough and honestly enough and tactfully enough, about any issue that the people will eventually rally to the side of right and settle that question right. (Applause)

Therefore, we are ready to go out in the forum and tell you what is our viewpoint of it and let the greatest jury that ever passed upon any question the American people, decide which is right.

Next, we are going to challenge the American people to stand loyally by the time-honored principles of majority rules. If the time ever comes when a minority can force its will upon a majority of those people where they have expressed themselves by legal and orderly methods in writing provisions into the Constitution or into the laws, from that minute on we will cease to be a nation of law-makers and become a nation of law-breakers. Therefore, we have got to, if we are going to stand by the fundamental principles of this country, stand by that one of majority rule.

It is said we are going to take local self-government, that that is a great matter. I have just explained to you that that is exactly what we tried to have, and our opponents were the aggressors on that. They did everything they could to break that down. If they had played the game and let us have local self-government in the 95% of the territory that was dry, some of them might be wetting their whistle tonight with a little more than one-half of one percent. But you cannot play that game one way only. You are either going to abide by the majority rule, whether it is for you or against you, or else you will have to admit that you are on dangerous ground so far as the principles of orderly government are concerned.

We are also going to take another step that is to get the additional legislation that is necessary to enforce the constitution. That means that we are going to ask to have every Federal Prohibition Agent put under Civil Service and take him out of politics as fast as we possibly can. (Applause)

We are going to try and have a separate Prohibition Bureau so that we can lay our hands upon the responsible head, and when he does a good job, back him up, instead of as it is now, divide it into two or three parts and it is a very difficult proposition to get effective administration.

There are bills down there. We are going to back up General Andrews in every fight that he makes in asking for laws that are necessary to enforce the Constitution of the United States, and that means we are going to carry the fight into every State where they have not got a state code. That means in New York and in Maryland, where they have no state code, and in those states that if they turn over certain parts of this to the states under that general plan that he had made, there will be no enforcement of that part of it. The Constitution of the United States is binding, as the Supreme Court said, on every State of the Union, on every individual officer, on every individual citizen, and we are going to make a fight to maintain that as best we possibly can.

We are going to make a mighty appeal for obedience to law. The large and overwhelming majority of the American people are obeying this law today. Right here in New York City you have millions who are obeying this law, and the manifest benefits of prohibition in New York City today is more in the standpoint of your people who are obeying the law, than those who are breaching it, and having it enforced against them. But there is a minority that will not obey and insist on defiance, and we must write into the hearts of the American people that law and its enforcement are the foundations of orderly government. Without that every guarantee of life, liberty and pursuit of happiness are insecure. Without them civilization goes back to chaos and to anarchy. Without them every honest official as he tries to uphold the law and protect your person

and property rights, find that he is hampered and hamstrung, and largely overcome. Thus we find that violation of law or any attempt to destroy a law that is necessary to enforce the Constitution, is the very leprosy of the social order. It distills its deadly poisons into the very arteries of jurisprudence and destroys all those efforts on the part of orderly government to make this a great and strong and safe form of government.

Just a word about the conflict; it is not going to be a short one, and it is not going to be a pillow fight. As my friend says, it is going to be war. But remember this, my friends, that as long as the opponents of Prohibition insist upon destroying it except by legal and orderly methods, you will find friends of this amendment mobilizing and increasing their majority every year. Every child born into a respectable home, every automobile bought, where heretofore the father spent his last nickel for drink, and every mother who goes to her home with a song in her heart today because the liquor traffic has been abolished; every far-seeing manufacturer who realizes that the prohibition of the liquor traffic has increased productivity and the wealth of our nation; everyone is going to augment that majority that stand for this American policy of government, prohibition of the beverage liquor traffic, and in that conflict the rules of the game, just a word on those.

They were written into the organic law over 100 years ago. There are just two ways that you can change, according to the rules of the game. That is to go to Congress, elect a Congress who will re-submit this question to the states, or if Congress is too slow, according to that theory, the Constitution provides that you can go to the state legislatures and get the majority of them, a two-third majority, to pass a resolution calling upon Congress to call a Federal constitutional convention and they will present that problem back to the states for ratification or for rejection.

Those are the rules of the game, and the American people expect both sides to stick by that rule. They don't expect us to stab in the back or to adopt methods that are not contemplated in that organic law. They expect us to use those methods that have the sanction of the people and the Constitution of the United States. Unconstitutional methods are pretty dangerous, no matter what question you bring up. Every share of stock you own, every bit of property that is in a title deed in your possession, has the Constitution as its foundation that makes it worthwhile. When you become a party to a movement that says, "We will take some other way, we will favor that method which has not had the sanction of orderly government."

Living that spirit, practicing that spirit, this country will continue to be the greatest, the best and the strongest nation in the world. (Applause)

MR. HINES: Gentlemen, one of these speeches seems to lead to another in a very orderly fashion. The last speaker has shown a pronounced discontent with the idea of these state referenda. We are not going to have an opportunity to listen to the gentleman who was the author of the referendum in this State which was voted on at the last election. This gentleman is on the firing line. He is a member of the Assembly of the State of New York from the 10th Assembly District, and he knows the problem as it presents itself to the state legislative body in this state, and we are very fortunate to be able to have him here, and I am glad to introduce the honorable Phelps Phelps, who will conclude the discussion. (Applause)

The Honorable Phelps Phelps

Assembly of the State of New York

Mr. Chairman, Ladies and Gentlemen: Unfortunately I have only 30 minutes in which to speak, and I have a great deal to say so that in order to get through with this speech I am afraid I will have to read it. Otherwise, I would have to stop in the middle of it and that would lose a great deal of the effect.

The subject I have been asked to discuss this evening is “Prohibition – the Next Sept?” Now, frankly, I don’t know exactly what this topic implies. Am I to play the role of the prophet and forecast what the next step will be? I am very much afraid I can’t do that. I am not the seventh son of a seventh son, I wasn’t born with a veil on, I can’t prophesy. But I know that in the recent battle at the polls the prohibitionists, the bone-drys, were driven from the field in the greatest defeat that ever a measure or a candidate got in this state.

We who are concerned with legislation in New York are no longer in a position to discuss the merits or the demerits of Prohibition in the abstract. The time for statistics on the subject of the good or the evil that this has worked in matters of juvenile delinquency, of banditry, of official corruption, of lawlessness, has in a way passed. We have received a mandate from the people at the polls. It is no longer a question to debate as to whether it is good or bad, when we of the legislature have a definite command from the voters as to what they want; for I hold this to be a fundamental principle, that the power of all legislation is derived from the people and their will is paramount; that we are not to force upon them legislation they do not desire. Whenever and wherever they can freely and do full express themselves, we must carry out the voter’s wishes.

My referendum bill received a plurality of 1,200,000 votes, a plurality unparalleled heretofore in the history of this state. The voters have driven the bone-drys from their entrenchments and have commanded a liberalization of the liquor laws. But, driven from their entrenchments, our bone-dry friends now stand off in the distance and chuckle, because they have left on the social and political field the barbed wire entanglements of the Volstead Act; and they see the great majority of New York, as they believe, held back by that maze of spiked intricacies.

The future will be the resultant, the practical resultant, of conflicting forces; and depends, not on abstract principles, but on the action and counter-action of the various organizations and forces in the field. Unfortunately the bone-drys are so well provisioned with funds, so trained in propaganda, and so well disciplined in organization that no one can foretell the actual outcome or to what extent those of us who wish to carry out the will of the people will manage to prove successful.

I cannot say to you what will be the next step. I can only state to you what, in my opinion, ought to be the next step to carry out the people's wishes. What, in my opinion, is the logical method of attacking the problem and of making good practically, the victory at the polls of this month? I don't know what the next step will be, but I do know what from my point of view it should be.

A man's or a party's next step, depends of course on which way he is facing, in what direction he is looking. To the man who is facing, in what direction he is looking. To the man who is facing forward, the next step of the man who is facing in the opposite direction is a step not forward but backward. I will speak of my idea of the next step forward.

That some change must be made with reference to the enforcement of the 18th Amendment is obvious to everyone, irrespective of his or her attitude toward the entire drink question. We have had seven years of the Prohibition Act, the Volstead Act. I ask you ladies and gentlemen who are not propagandists for the one side or the other, has the Volstead Act brought about total abstinence? Has it brought about even temperance? Has it brought any higher respect for law? Isn't it a fact that under it violation of law has become common, and that, because of the common violation of this law, disrespect for all law has obtained? Hasn't bribery and corruption of agents appointed to enforce this law, become an everyday sight? Furthermore haven't big rum fleets appeared; hasn't bootlegging become one of the most profitable occupations, criminal as it is? I needn't describe to you in detail the conditions that this act has bred. Any man with eyesight can see for himself and if what you see doesn't satisfy your curiosity, you need only get the records of the hearings before the various Senate and other legislative committees. Our law and our enforcement of the law have both become the laughing stock of the nations; and, so far as this one law is concerned, when speaking with other nationals, we are always on the defensive.

And the dislike of this law has been so great among the people of many, if not of all sections of the country that it has precipitated one of the gravest national conflicts, one of the gravest problems that ever confronted us as a people.

What then is to be done? What ought to be our attitude toward it? Two attitudes are possible, the attitude of the bone-dry and that of the restricted wet.

The dries, who pretty generally walk around with little tin halos around their heads and the loveliest wings just about to sprout from their shoulders, will tell you that they stand for the home and for law and for virtue, and that anyone that doesn't agree with them is an anarchist, a secessionist, a rebel, a law-breaker and a lot of other things too numerous to mention.

They will tell you that Prohibition is in the main successful and that the remedy for the present condition lies only in a more rigorous enforcement of the law as it now stands. If any change should be made in the law itself, they say, if anything, it should be made more severe.

The restricted wets, the advocates of sobriety, but not of Prohibition hold the opposite. They believe the act very largely oppressive, many of the enforcement officers are bribe seekers, and they want the liberalization of the present law. Unfortunately however they are quite unorganized and their counsels are largely chaotic.

I don't know what the plans of others may be, but I have a definite proposal to make as to the next step.

We don't want to see a fanatical minority lord it over an oppressed majority, and we don't want riotous debauchery. We should preserve control over the liquor traffic, but we should eliminate what is evil in the present law. What then is good and what is evil in the present law?

To answer this, I wish to examine the present law from my point of view; but, as I have indicated before it is a point of view of sobriety, but not of bone-dry prohibition.

In every law enacted there are two elements present. The element of conviction that the law is right and the element of force behind it that compels its execution. If the element of force is weak, if the law should have no teeth in it, as the phrase goes, it is a law made to be laughed at. If on the other hand there is great force and great penalty and rigorous enforcement, but if at the time there is no conviction in the people to sustain that law it will be regarded as tyranny and oppression and will provoke violation of rebellion. Such was the case with the Stamp Act, with The Tax on Tea. The early Colonists regarded these acts as acts of tyranny, just as many now regard the Volstead Act.

Voltaire declared that a spiritual evolution must precede a physical revolution. The 18th Amendment and the Volstead Act are in a way revolutionary. We have never had anything like these before. One of the evils in the situation we are discussing is that, right or wrong as you may regard the 18th Amendment and the Volstead Act, there has never been a real spiritual revolution preceding the legal revolution they represent. The country at large never had an opportunity, except very recently in a few of the states, to even express itself on this law. It was passed on by the legislatures, not by constitutional conventions; and the interested public was not given, what I would consider, proper opportunity to express its preference before adoption. That's how the phrase originated that this law as slipped over on the people when they were not looking.

So far as the wishes of the people are concerned, it can fairly be said that the great masses, certainly in New York State, were and are opposed to this law, all, except the bootleggers and the

drys. The common, ordinary, everyday voter never was convinced in any campaign of education of the need of this law, and, he never had the opportunity, except very recently, to express his opinion directly, personally, at the polls. The present law, despite all the drys may say, has not the approval of the man in the street.

So much on the subject of the popular feeling toward this law; the law, however, is there; it is on the statute books. It has enforcement provisions; it has teeth. Legal force is back of it. Our Federal agents and Federal attorneys and our courts and our navy are all necessarily behind it. Even if it is disliked, it is law. What are we going to do about it? Let us examine the law and see what can be done.

Article 1 of the 18th Amendment of the Constitutions forbids the manufacture, sale and transportation of intoxicating liquors for beverage purposes.

Article 2 of the same amendment recites that Congress and the several states shall have concurrent power to enforce this article by appropriate legislation. Under the authority conferred by Article 2 of the 18th Amendment of Congress, there was enacted this Volstead Act, which undertook to define for the whole country what constitutes “intoxicating” and it has declared that one half of one percent of alcohol makes a beverage intoxicating.

That Congress had the power to enforce the 18th Amendment with appropriate legislation and hence to define the word “intoxicating” any way it chooses, no one will question.

Article 2 of the amendment gives this right to Congress expressly. “Congress and the several states have concurrent power to enforce this article by appropriate legislation.”

What does concurrent power mean? Does it mean that both must, or both may, or that either may legislate, and that when such legislation is adopted; both acts must be parallel, or “concurrent?”

In the case of *Rhode Island vs. Palmer* (253 U.S. 350), all of this has been thrashed out completely, and the Supreme Court of the United States has held that “concurrent” means “separate and independent.” In other words, that the United States can legislate independently of the States and that the states can legislate independently of the Congress.

And some of the states have adopted legislation reinforcing the Federal laws on the subject embodied in the Volstead Act, and others, after adopting legislation, repealed it, so that the Federal Act is the only one left in force so far as these states are concerned. But each can legally legislate on this subject and define what makes a beverage “intoxicating.”

The trouble has generally arisen from the Federal Act, and particularly because of the definition that one-half of one percent is the standard of “intoxicating.” And that standard, which was originally an alcohol percentage adopted for taxation purposes, alone, is to my mind, purely and unwarrantedly arbitrary.

What is intoxicating? As a matter of fact, it is very hard to define it. What is intoxicating to one person may not be to another. What is intoxicating to a child isn't intoxicating to a man. What is

intoxicating to a woman is not necessarily intoxicating to a man. If a man were charged with intoxication, the question whether he was intoxicated or not, would not be settled by an expert measuring the percentage of alcohol in his beverage, but the question would be one of fact for a jury to determine.

Today, three quarters of one percent in alcohol in a beverage is, by Federal definition, “intoxicating,” and anyone selling it is liable under the law. Mind, the states have had no hand in fixing this standard. It is entirely Federal and entirely imposed on the states, and entirely arbitrary.

Now, my idea of the next step in this situation, a step that I believe will bring back respect for law and will nevertheless keep people temperate, and that will remedy the present deplorable situation with reference to the bootlegging of vile liquor, and will reduce its consumption and will reduce the corruption among the officials charged with the duty of enforcing the law, would be to allow each state in its own enforcement act to determine for itself what percentage of alcohol will constitute an intoxicating beverage. Let the people, or the legislature of each separate state determine what percentage is legal and what constitutes “intoxicating” in fact. If the people of the various states could decide for themselves, they would each be under the law they actually made. There would be observance, and respect for the law would return with observance. If they could have light wines and beer in New York State, as this state indicated it desired, it would soon taper down on the enormous quantities of hard liquor consumed.

Bootlegging would no longer be as profitable an industry. If it were legal to sell light wines and

beer, bribery and corruption of officials would largely cease; and the excise tax from it could help give an income to the State that might be used for welfare work, and for education purposes, or for pensioning super-annuated officials. The liquor Act, instead of being a liability, and an obnoxious burden, would thus become an asset.

But, on hearing this, the ultra-dry will have objections ready; and besides, regardless of their objections, certain questions naturally arise in the mind.

When Congress has concurring power with the states to enforce amendments to the Constitution with appropriate legislation, must it act on that power? The answer is given in the case of U.S. vs. Rees (92 U.S. 214) which applies this principle relative to an act of Congress anent the 15th Amendment. It says “that Congress need not do anything at all in execution of this power of enforcement is, of course, well settled.”

This principle would leave the States with the right to enforce the 18th Amendment by themselves, without Congressional enforcement, and without definition of what constitutes an intoxicating beverage made by an act like the Volstead Act.

Congress has no greater obligation to enforce this amendment than to enforce any other portion of the Constitution, the 14th Amendment, for example.

The 18th Amendment gives concurrent power to the states. Therefore the states have the power of carrying out the provisions of that amendment; and they have that power regardless of whether Congress exercises its right to legislate on the subject or not.

Can Congress amend the Volstead Act at pleasure, and delete its definition of “intoxicating?” Certainly. It is a well settled principle of constitutional law that no Congress can diminish the rights of a succeeding Congress. A definition that one Congress has put in, the next Congress may, if it pleases, take out. Further, the defining of what constitutes an intoxicating beverage by the States is constitutional; and, would permit our getting out of most of our difficulties with this law.

Each state could determine for itself just what it proposes to do in this question. If fundamentalist Tennessee wishes to be bone-dry and should choose to appoint inspectors to look down people’s throats to see whether they took a drink or not, let them go to it; and if New York wishes to have light wines and beer, let New York have these. The law in Tennessee will be respected by Tennesseans, and the law in New York will be respected by New Yorkers, and we won’t have New York governed by the mountaineers of Tennessee. (Applause)

However, at the thought of such a proposal, some time ago a very loquacious Senator in Washington threw up his hands in holy horror and spoke of the anarchy that would prevail if 48 states gave 48 interpretations to the meaning of the word “intoxicating.” Anyone proposing this he declared was guilty of treason, sedition, and, with a pompous and tearful rhetoric, told of the Constitution lying prostrate under our feet and of this doctrine as having been killed at the battle of the wilderness.

But let us see whether this doctrine is quite as horrible as it appears to our great Senator. The United States is an indestructible union of states. Are then the states destructible? How can you have an indestructible Union of States, if the states should cease to exist as states? And what does a state mean if it is to have sovereignty in nothing?

From time immemorial, the control of intoxicating liquors has been left to local communities. The right of local self-government in matters of this kind has never before been disputed. I am wondering if Old King George had attempted to dictate to the Colonies what percentage of alcohol they might drink, and what they must not, whether there would have been a single man in the Colonies staying as a Tory.

Did anarchy reign in the United States prior to the Volstead Act, when each state separately determined what intoxicating beverages were to be sold, and which were not to be sold? I think not. I think we were a pretty orderly country, perhaps more orderly than nowadays.

Forty-eight states with possibly 48 different interpretations of the word “intoxicating.” Yes, it is horrible to contemplate. One state might say 2-1/4% of alcohol and another 2-1/2. Is it not horrible and anarchical indeed? It may astonish the distinguished Senator to know that in all questions in which the states did not delegate their power to the Federal government, they today legislate separately, and often differently, and it can hardly be said that anarchy reigns in the United States. There is no anarchy when you pass from New York to New Jersey, and you conform to the law in New Jersey just as well as you conform to the law in New York. And the states seem to get along pretty well side by side. There is no reason why the bone-dry enthusiasts

couldn't all drink water in one state while in a neighboring state those who wish to, might enjoy light wines and beer with their meals.

And this is not an unusual condition. The Federal Law, the Constitution of the United States authorized Congress to adopt uniform bankruptcy laws. Note: The Constitution doesn't say just or generous laws, but it insists on uniformity. And Congress has adopted uniform bankruptcy laws. Now how does Congress conceive of this uniformity? All of the bankrupt's assets must in a general way be placed at the disposal of the receiver to pay off the bankrupt's creditors, except the exempt property.

Now what is exempt under the Bankruptcy Act that requires uniformity? I will now read from the Congressional Act itself.

“this Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws.” In other words Congress having authority to exempt the identical property in all of the 48 states has declared that the exemptions under the Federal Law are left for the State to define. If any of my hearers wish to find out more about this matter, let them read the case of Darling vs. Beery, or Harlin vs. The American Trust Company, where this doctrine is clearly explained by the Supreme Court.

Now, if the Federal Act of Bankruptcy can legalize a variety of retentions of property, by saying that the State Law has designated this as being exempt, why can't an amended Volstead Act

allow the use of beverages of varying alcoholic content by referring to the states the definition of “intoxicating?” is there something sacrosanct about the ultra-drys attempt to read into every state a Federal interpretation of the word “intoxicating?” Isn’t it an act of tyrannous fanaticism trying to drive everyone the way it wants all to go?

And really, it seems to me, it is about time that fanaticism were forced out of control. If the Volstead Act in its present form is right, why shouldn’t the holier than thou element attempt to legislate against too much eating, limiting the number of ounces of food, and the calories that each of us may have? The principle that none but the Federal Government may define for us what is intoxicating can equally be stretched to matters of food, if fanaticism is permitted to run riot and extend its oppressive hand to more things. What is over-eating? The Federal Government might with equal justice claim the right to decide for New York State the proper number of calories, just as it now decides the proper percentage of alcohol.

If this whole question is to be put on the way to a complete settlement, it must be, so far as I can see, by exclusively state interpretation of what is intoxicating; and this question must be settled once for all. It is a serious and ever graver menace to our Constitution and to respect for law and order.

Since the war the reaction has swung into the saddle in many countries. Dictatorships have arisen throughout the world, and dictators have been telling the people what they are permitted to do, and what is right for them to think, regardless of the wishes of those who are governed. Yet did

we not declare on July 4, 1776 that the government derived its just powers from consent of the governed?

To conclude, -- I don't know what the next step will be. I am not a prophet. But, I do know what I think the next step should be. And I say it should be this: Leave to the States the interpretation of the word "intoxicating" and eliminate from the Volstead Act the interpretation now give there. To do so it is unnecessary to repeal the 18th Amendment. It is legal; it is within the power of any Congress to amend the Volstead Act, and of the various legislatures to define the word for enforcement purposes.

The present condition of the law has made the hip-flask and drunkenness popular, particularly among the rising generation. I am opposed to that sort of things; that's why I want the law modified as I indicated. It has brought a crime wave all over the country, and disrespect for law; that's why I want the Volstead Act amended. It has brought into being a bootlegger class that fattens on crime, a class that has become rich and powerful, and supports the law as it now is on the statute books, that it may continue to grow ever richer and more powerful. That's why I want a modification of this law and I believe that with the state interpretation of the word "intoxicating" instead of interpretation by the Volstead Act, New York would probably have a return to light wines and beer, and this, to my mind, would make for great sobriety, greater decency, and greater respect for law. It will make the man who bootlegs liquor as remote and as extinct, as is now the man who sold negro slaves at the auction mart. (Applause)