



ADVANCE SHEET– FEBRUARY 19, 2021

President's Letter

In an earlier issue, we published one of the most entertaining commentaries on alcohol prohibition, H. H. Walker Lewis' account of the Battle of Franklin Farms, involving the heavy-handed federal response to the spoof of the home-made cider exception to national prohibition by attaching apples to a maple tree in downtown Baltimore with copious quantities of string, and then 'harvesting' them to produce exempt alcohol.

Because of the revival of controversy over the 'drug war', we here tender three somewhat more serious comments on alcohol prohibition. This period gained Maryland its designation as 'The Free State', which it has not always subsequently lived up to.

The first of our offerings is a speech by Maryland Senator William Cabell Bruce, interesting for its description of the dramatic expansion of the underworld during Prohibition. The second is Governor Franklin Roosevelt's key speech on Prohibition during the 1932 election campaign, a fine example of Roosevelt's style. The third is a talk in our own Library by its friend the Mencken scholar Marion Elizabeth Rodgers on "Mencken, Ritchie, and Prohibition."

If the coronavirus has not driven readers to drink, reflections on the contemporary decline of American political leadership may do so.

These texts and others are available in a publication "Prohibition in Maryland: A Collection of Documents" the inventory of which has been donated to the Bar Library; it is available for \$18.00 including postage by request to our address, 100 N. Calvert Street, 618 Mitchell Courthouse, Baltimore, Maryland 21202

George W. Liebmann



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An Amazing Place

Although I have great pride in an institution that I have worked for since 1985, sometimes even I forget how amazing this place is. I was doing a little background research for a friend of mine on the law of “water” when I came across an old case that referenced *A Treatise on the Law of Waters: Including Riparian Rights, and Public and Private Rights In Waters Tidal and Inland* (1883) by John M. Gould. I thought why not check the catalog, and sure enough, there it was. It turned out to have an extensive discussion of the very point I was looking into. How comprehensive are the Library’s collections? Included among its works on water is a 1905 treatise entitled *Roman Water Law, Translated From the Pandects Of Justinian* by Eugene Ware.

Yes, Westlaw has a vast amount of material in its databases, but not everything, and sometimes, what is not there can make a difference. You might like to call it “The Bar Library Difference.”

Joe Bennett

A Place To Save

Recently, a long time member of the Bar Library telephoned to talk about what we offered in the way of computerized legal research. He told me that in an effort to cut costs, he had discontinued his subscription to Lexis. The next day he came to the Library and I gave him a quick lesson in how to use Westlaw and showed him what databases were part of our plan. He had a bit of a hard time comprehending just how much was now available to him. I told him "good hunting," and for the next several hours, he went at it. Leaving, he said "I'll see you tomorrow," which in fact he did. Think about it and perhaps "I'll see you tomorrow."

Joe Bennett



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Education In A Pandemic: ***“Leading the Empowered University in a Time of Crisis”***

On Tuesday, March 9, 2021, at 6:00 p.m., Dr. Freeman A. Hrabowski, President of UMBC (University of Maryland, Baltimore County) will present “Education In A Pandemic.” The lecture will be presented by way of Zoom. We invite those that will be watching to participate by contributing their questions. Zoom is an interactive platform.

Dr. Freeman A. Hrabowski, President of UMBC (University of Maryland, Baltimore County) since 1992, is a consultant on science and math education to national agencies, universities, and school systems. He was named by President Obama to chair the President’s Advisory Commission on Educational Excellence for African Americans. He also chaired the National Academies’ committee that produced the report, *Expanding Underrepresented Minority Participation: America’s Science and Technology Talent at the Crossroads* (2011). His 2013 TED talk highlights the “[Four Pillars of College Success in Science](#).”

Named one of the 100 Most Influential People in the World by *TIME* (2012) and one of America’s Best Leaders by *U.S. News & World Report* (2008), he also received TIAA-CREF’s *Theodore M. Hesburgh Award for Leadership Excellence* (2011), the Carnegie Corporation’s *Academic Leadership Award* (2011), and the *Heinz Award* (2012) for contributions to improving the “Human Condition.” More recently, he received the American Council on Education’s *Lifetime Achievement Award* (2018), the University of California, Berkeley’s *Clark Kerr Award* (2019), and the *UCSF Medal* from the University of California San Francisco (2020). UMBC has been recognized as a model for inclusive excellence by such publications as *U.S. News*, which for more than 10 years has recognized UMBC as a national leader in academic innovation and undergraduate teaching. Dr. Hrabowski’s most recent book, [The Empowered University](#), written with two UMBC colleagues, examines how university communities support academic success by cultivating an empowering institutional culture.

If you would like to join us for what should be a fascinating evening, please e-mail me at jwbennett@barlib.org and I will forward the **Zoom Link** to you the week of the program. If

technology is not your cup of tea, do not let that stop you. Zoom is incredibly easy to use and we will send you the very simple instructions to use Zoom should you need them. Stay safe and we hope to see you with us on March 9.

Time: 6:00 p.m., Tuesday, March 9, 2021.

THE NATIONAL PROHIBITION LAW

HEARINGS before the SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE - SIXTY-NINTH CONGRESS

April 5 to 24, 1926

STATEMENT BY HON. WILLIAM CABELL BRUCE, A SENATOR IN THE CONGRESS OF THE UNITED STATES FROM THE STATE OF MARYLAND

Senator BRUCE. Begot by, the abuses of the old saloon, and hastened to maturity by the economic necessities and uncalculating enthusiasm of the World War, and by the lavish use of money and political threats by the Anti-Saloon League, national prohibition went into legal effect upward of six years ago, but it can be truly said that, except to a highly qualified extent, it has never gone into practical effect at all. The appetite for drink, which has been one of the primal impulses of the great mass of human beings ever since Jesus at Cana manifested forth His glory, to use the words of St. John, by converting the water in six water pots into wine, has, in its struggle with the vast repressive agencies set in motion by the eighteenth amendment and the Volstead Act, furnished another illustration of the truth, which neither moralist nor statesman should ever forget, even in his most fervid moments of disinterested or generous feeling, that man is a creature who can be regulated and bettered, but can not be made over. Once, during the agitation for the abolition of human slavery, Henry Brougham decried what he termed "the wild and guilty fantasy that man can hold property in man." As wild and guilty is the fantasy that even the power of the Federal Government can totally divest man of his warm garment of animal sensations, desires, and appetites. Ever since the eighteenth amendment and the Volstead Act became parts of the legislation of our land the human instinct of personal liberty, guided by a correct sense of the limits within which natural law can be controlled by municipal ordinances, has maintained an unbroken resistance to them; and nothing can be more unwarranted than the statement often heard that this resistance is limited to a single self-indulgent social class.

It is not kept up more stoutly by what the prohibitionists, vainly seek to excite social disaffection and jealousy, call the smart social set, than it is by the members of the American Federation of Labor. It is not limited to any social class or sect. It has brought about close working relations between the bootlegger and thousands of the most intelligent and virtuous members of American society who feel no more compunction about violating the Volstead Act than the Free Soiler did about violating the fugitive slave law, or the southern white did about nullifying ignorant negro, suffrage, the Federal Constitution in each instance to the contrary notwithstanding. And the ever mounting record of arrests for drunkenness in all of our American cities since the enactment of the Volstead Act indicates only too significantly that the humbler and less fortunate members of society have their illicit purveyors of drink too. The recent utterances of Jewish rabbis, Protestant bishops and ministers, and of Catholic prelates like Cardinals O'Connell and Hayes, demonstrate the existence of a growing feeling, even among the American clergy, that absolute prohibition is not the ally but the enemy of human morality.

General Lincoln C. Andrews, the head of the Prohibition Unit, said what can not be gainsaid when he declared last year that the bootleg industry is coextensive with our entire national territory.

From the extent to which prohibition monopolizes private conversation everywhere in the United States without or within doors from the amount of space that is given to its merits and demerits in the editorial, reportorial and news columns of our newspapers, and from the innumerable polls that are now being taken for the purpose of testing public opinion with respect to it, one might well imagine, at the present time, that the eighteenth amendment and the Volstead Act, instead of having been technically in force for more than six years, had never passed beyond the ordinary stages of popular agitation.

The explanation of this state of things is to be found, of course, in the fact that prohibition in the United States, under the provisions of that amendment and that act, has proved a disastrous, tragic failure, and aside from precipitating the end of the old saloon, which would have gone in time anyhow, with the steady increase of temperance that was under way when the eighteenth amendment was adopted, has had no effect, on the whole, except that of blighting human happiness, debasing human morals, and discrediting human laws. Once there was a time when it was commonly said that whether the States or their cities failed to enforce their penal laws or ordinances, or not, the Federal Government never failed to enforce its penal laws; and that was true, but it is true no longer, for the fact has been established by irrefutable proofs that during the last six years the Federal Government, effective as may be the ordinary course of its judicial procedure, is powerless to enforce a statute, or even a constitutional provision that attempts to make some thing criminal at all times, and places, and under all circumstances, that is not essentially criminal per se, and therefore has no true moral sanction back of it.

The vast majority of the people in the United States can use spirits, wine, or beer without the slightest injury either to themselves or to others; indeed, with nothing but a perfectly legitimate enhancement of the joy of agreeable and rational living, and to say that even as to drink must be totally abolished, no matter how carefully safeguarded by proper municipal regulations, is about as just and sensible as it would be to say that motor cars are no longer to be used for pleasure purposes because they are often made the instruments of lewdness, robbery, or murder; or that we are no longer to warm our hands before a cheerful fire in a fireplace because it might escape from its confinement and work untold havoc and ruin.

Like cancer, which, in its last stages, seems actually to thrive upon the knife, violations of the Volstead Act may almost be said to have thriven upon the enforcement of that act. During the first 12 months after it took effect it looked as if it might work. The general disposition of every respectable man to obey the law, and the time that necessarily had to elapse before the opponents of national prohibition could recover from the dejection of defeat, the arts of home distillation and fermentation could be acquired and the establishment of a vast trans- and cis-Atlantic organization for the illicit distribution of drink could be perfected, all conspired to produce that result. But in an incredibly short period an entire underworld for the manufacture, sale, and distribution of drink was called into being, and with the patronage of the inextinguishable human want that it was created to serve has baffled every effort to subdue it. This fact can be

convincingly illustrated by just a few figures:

Arrests for violations of the national prohibition act made by Federal prohibition officers since the effective date of that act have increased from 34,175 in 1921 to 62,747 in 1925. Convictions under the national prohibition act have increased from 17,962 in 1921 to 38,498 in 1925. Seizures of illicit stills, still worms, and fermenters have increased from 95,933 in 1921 to 172,537 in 1925. It may be added that 70 per cent of these illicit plants and agencies were seized in the conventionally dry States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. In his report for 1925, the Attorney General states that out of 8,039 civil cases begun in the district courts of the United States, 7,271, or 90.4 per cent, were brought under the Volstead act, and that of the 58,128 criminal cases begun in those courts, 50,743, or 87.2 per cent, were brought under that act.

What the burden of enforcing the Volstead Act, since its enactment, has been to the Federal district courts, may be inferred from certain letters, written by the judges of some of those courts, to Senator McKellar of Tennessee, during March of the present year, and published in the Congressional Record of March 13, 1926.

In one of these letters, the Hon. George W. McClintick, the Federal judge for the southern district of West Virginia, says that during his four years and a half of service, he had had before him about eight thousand persons charged with crime, of which about 80 per cent were for liquor violations.

In another letter, the Hon. C. M. Hicks, the Federal judge for the eastern district of Tennessee, states that about 90 per cent of the criminal cases that he had handled since his appointment in March, 1923, were prohibition cases.

In another letter, the Hon. Morris A. Soper, the Federal judge for the district of Maryland, states that in his district at least one-half the time of one judge could be continuously employed in the trial of liquor cases, and that a bill was then pending in Congress, authorizing the appointment of 10 additional district judges, one of whom would be appointed for the district of Maryland. The district of Maryland is justly entitled to this judge, for while only 409 persons were convicted of violations of the Volstead Act in Maryland in 1922, in the year ending June 30, 1925, the number was 1,065.

In another letter, the Hon. John B. Sanborn, the Federal judge for the district of Minnesota, says that in his opinion, if he had to try in his court all of the violators of the national prohibition act who were apprehended in the cities of Minneapolis, St. Paul, and Duluth, as well as in the country districts, they would have to go out of business as a civil court altogether and devote themselves entirely to that work.

On February 15, 1925, Judge John F. McGee, a Federal judge for the district of Minnesota, committed suicide, leaving a statement on his desk which read as follows:

The fact is that the United States district court has become a police court for the trial of whisky

and narcotic cases which the State courts should look after. These cases occupy 80 per cent of the court's time and are exciting and trying on the nerves, with the end not in sight. I started, in March, 1923, to rush that branch of litigation, and thought I would end it, but it has ended me.

Before the enactment of the Lever Act on August 10, 1917, which forbade the manufacture of whisky for beverage purposes, the entire number of licensed distilleries in the United States was 507; and during the fiscal year ended June 30, 1919, the last year when the production of beer for such purposes was permitted, the entire number of breweries in operation was 669. Under preprohibition conditions, there were practically no illicit plants except in certain secluded communities. During the fiscal year ending June 30, 1925 as we have seen, 172,537 illicit distilleries, stills, still worms, and fermenters were seized by the National Prohibition Unit, to say nothing of the vast amount of subsidiary property which was seized with them.

The same story of irrepressible law violation is disclosed by the record of arrests for drunkenness in the leading cities of the United States since the enactment of the Volstead Act. On the whole, the trend of these arrests has been steadily upward, with only such fluctuations as have been produced now and then by spasms of law enforcement, inspired by especially aggravated conditions. Arrests for drunkenness in Baltimore increased from 1785 in 1920 to 3258 in 1921, 4955 in 1922, 6235 in 1923, 6029 in 1924 and 5887 in 1925.

Every one of [32] cities show the same pronounced increase in arrests for drunkenness between 1921 and 1925. There is nothing local, there is nothing sectional, there is nothing regional about the phenomenon. That increase is manifest north, south, east, and west. In not a few of the 32 cities, north, south, east, and west, that I have tabulated, the number of arrests for drunkenness last year were even in excess of the number of arrests for drunkenness in 1916, before the enactment of the Lever Act, the first Federal prohibitory act.

The claim has been made that this record of arrests for drunkenness is misleading, because since the enactment of the Volstead Act police officers are quicker to arrest persons under the influence of liquor than they were before that time. This is certainly not so in Baltimore, the city with which I am most familiar, because the standing instructions of our police commissioner as to the degree of intoxication that justifies arrest are the same as those that obtained before the passage of the Volstead Act, and there is every reason, besides, to believe that Baltimore city policemen share the hostility to prohibition which is entertained by the great majority of the people of Baltimore. Even if different conditions exist in other cities, it should be borne in mind that, at the present time, drunkenness is not so visible to the policeman, however alert to arrest, as it was when drink addicts did not get drunk on bootleg liquor or home brew in the home, but on liquor at the corner saloon.

Even if arrests for drunkenness were not so numerous in our cities and towns generally in 1925 as they were in 1916, surely that fact is one which should not afford the prohibitionists any considerable degree of satisfaction. Puerile, indeed, not to say despicable, would be the power of the Federal Government, if in its war upon the human desire for drink it had exerted no contracting force whatever. It may be that the volume of liquor drunk in the United States at the

present time is not so great as it was before the enactment of the Volstead Act; if, for no other reason, because marketed liquor of all sorts comes much higher now than it did before that time; but the contrary view has been urged with not a little plausibility, to say the least. Nor am I prepared to say that if the people of the United States were to experience a fresh accession of fatuity, the Federal Government might not be using its Army and Navy in police work, and by spending a hundred or so millions of dollars, wipe out the bootlegger, as the inquisition wiped out the Protestant in Spain to the infinite material and moral loss of that country; but there is no reason to believe that the Federal Government would ever be willing to stretch its power to such length

Some time ago, Mr. Emory R. Buckner, the United States district attorney for the southern district of New York, expressed the opinion that prohibition might be enforced in the State of New York the Federal Government, with the expenditure of \$15,000,000 a year, and the aid of 1,500 enforcement agents; but from the catechism, to which he has just subjected himself, I find that he is now of the opinion that the Federal Government can not be induced to take the necessary steps to secure Federal enforcement of prohibition in the State of New York, and that the State of New York, itself, is apparently unwilling to undertake the task. Indeed a bill providing for State enforcement has just been defeated at Albany. Like a sensible man, therefore, he has reached the conclusion that under existing conditions, Congress should modify the Volstead Act so as to permit each State to define what shall be deemed nonintoxicating liquor.

One thing is certain, and that is that even were the bootleggers entirely exterminated that would simply stimulate to an unprecedented degree home distilling and wine making. The still and the fermenter would become as common in the home as the spinning wheel once was. Anyone who is not a hopeless dolt can, in a brief time, learn how to make palatable liquor; and it is no unknown thing that even inmates in our prisons to be discovered making intoxicating beverages with the simplest mechanical and vegetable means.

A few days ago General Andrews said that his program was: First, to dry up the alcohol diversion leaks; second, to control the supply of medicinal whisky; third, to check moonshine and reduce smuggling; and, fourth, to force those who insist on violating prohibition laws to depend on home stills for their supply.

I am afraid that this program will leave the general but little time for, refreshing rest or healthful recreation.

The withdrawals of denatured alcohol, which the bootlegger is so successful in renaturing, jumped-terms of ordinary progression do not suit the case from 22,388,824 wine gallons in 1921 to 81,808,273 in 1925. That this enormous increase in the use of industrial alcohol found its a largely into the channels of the bootleg industry is unquestionable. The amount that did so in 1925 is computed by Henry T. Rainey, the well-known dry Member of the House from Illinois, at 55,000,000 proof gallons, notwithstanding the efforts of the Federal Government to render it too poisonous and nauseous for beverage purposes.

Diversions of denatured alcohol have, of course, been swollen by the fraudulent diversion in one

way or another of pure grain alcohol, too, and sometimes such diversions have been accomplished by sheer robbery and violence.: as when a band of from 30 to 50 malefactors, none of whom have ever been brought to justice, recently took possession of a warehouse at Westminster, Md., bound its custodian, and carried away in trucks about 100 barrels of whisky.

The amount of medicinal whisky diverted in New York City alone in 1925 for beverage purposes, through the instrumentality of false medical prescriptions, has been estimated by Mr. Buckner at as high as 275,000 gallons.

Moonshine, instead of being made as it was before the enactment of the Volstead Act, in a few crude, sequestered localities, is now made, as the daily discoveries of the Federal and State prohibition forces evince, in swamps, in mountain fastnesses, in dense thickets, on rivers, in attics, in basements, In garages, in warehouses, in office buildings, even in caves and other underground retreats. In other words, moonshine is almost as ubiquitous as the radiance of the moon itself.

It is stated in the last report of Mrs. Mabel Walker Willebrandt Assistant Attorney General, that during the Federal fiscal year 1924-25, and for a "reasonable" period of time prior thereto, over 300 foreign vessels have been engaged from time to time in smuggling liquor into this country. Throughout the same time illicit over and agencies have also been transporting liquor in large quantities into it, across the Canadian and Mexican boundary lines. By the Federal Department of Commerce the business of smuggling liquor into this country is thought to have amounted, in 1924, to about \$40,000,000 in value; and so far as I know, there is no reason to believe that it amounted to any less sum in the year 1925. It is true that cargoes of great value are quite frequently taken from rum runners overhauled by the rum chasers of the Coast Guard. One valued at \$100,000 was captured at New York a few days ago. Another, valued at \$420,000, was captured in the same waters in January last, but incidents of this kind have, all along, been so common that there is little cause to think that the rum octopus will ever lack tentacles to hack. Indeed, every time it loses one at least two seems to spring up in its place.

I see it stated in the press that as soon as General Andrews has accomplished the objects above mentioned, he proposes to move on liquor making in the home. Indeed, he has just set his entering wedge for this purpose in the bill that he had introduced into the Senate last Friday by Senator Goff, of West Virginia. Of course, to be thoroughly consistent, he must not shrink even from the task of invading the sanctuary of the American home for the purpose of ascertaining whether a little home brew has become actually intoxicating or not; but certainly that is likely to prove the most tyrannical and inglorious of all the tasks that he will ever be called upon to perform. It is bad enough for the American taxpayer to have to pay the cost of maintaining a spy de luxe at the Mayflower Hotel, or to pay the salary of a sneak like the one in Maryland who recently wormed himself, by what were supposed to be honorable overtures of marriage into the confidence of a young woman for the purpose of inducing her to sell him a small amount of bootleg liquor.

As I see it, the end of American liberty would, indeed, be in sight if an organized system of espionage were to encompass the American home, which might not scruple even to solicit

servants to betray the confidence of their masters, or to afford one member of a family an opportunity to wreak some festering grudge upon another.

Ever since I heard that even the home might not be spared by the enginery of the inquisition which prohibition has established in this country, the words of Lord Chatham, which were so familiar to our people when they were winning the liberties that have now been so lamentably abridged, have been haunting my memory:

The poorest man may in his cottage bid defiance to all the force of the crown.

It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter; but the King of England can not enter.

It is sometimes said that the Volstead Act has not been successfully enforced because the Federal Government has not made a thoroughly sincere effort to enforce it. This statement is unwarranted. Never in the history of free institutions has any government more pertinaciously, sought to carry out a policy, obnoxious to a powerful popular sentiment, than has the Federal Government in its relations to the Volstead Act. If it has not had its way it has been only because of the vast amount of public hostility engendered by the artificial and impracticable nature of prohibition itself, and because of the extent to which the fidelity of many Federal prohibition and State police officials has succumbed to the corrupting guile of a secret and unlawful business conducted by daring and unscrupulous men, and patronized by reputable American citizens. Such an unnatural act is in itself an incessant incentive to faithless administration. General Andrews said last year that the bribery of Government officials is the chief obstacle in the way of the enforcement of the Volstead Act. Be that as it may, there can be no doubt that the higher officials of the Federal Government, and the many brave and honorable subordinates in the prohibition service, have done and that could be humanly done, under the circumstances, to make national prohibition a success. Congress has upheld it with a degree of persistency which has even drawn down upon its head the reproach, however unjust, of extreme subserviency to the Anti-Saloon League.

Beginning for the year 1921, with an appropriation to the Treasury Department for the enforcement of the national prohibition act of \$6,350,000, congressional appropriations to the same department, for the same purposes, have increased from year to year, until, for the year 1926, they have amounted, to date, to \$9,678,734.09, and, when to this amount are allocated the shares of the total amounts now appropriated for the general expenses of the Coast Guard and the Department of Justice, respectively, which are properly chargeable to the cost of enforcing the Volstead Act, there is good reason to believe that the current estimate that the enforcement of that act is costing the Federal Government at the present time some \$30,000,000 per annum, is not excessive.

Both, President Harding and President Coolidge may be said to have done all that they could in the exercise of their executive authority to secure popular obedience to the mandates of the act; the former even going so far as to call all the governors of the States together at Washington for the purpose of impressing upon them the importance of insisting upon its due observance;

and the second, not only doing the same thing later, but also convoking at Washington a similar gathering of some of the great industrial leaders of the country.

As for the Supreme Court, the legality of the Volstead Act has been shielded by it from attack with the full measure of dispassionate impartiality that to its infinite honor it has always brought to bear upon the discharge of its high judicial duty, and surely only a most carping spirit could find fault with the manner in which our Federal district judges have met the burdensome responsibilities imposed upon them by an unworkable law Which must, at times, have sorely shaken their confidence in the wisdom of the legislative branch of the Government.

The disastrous and scandalous results which have followed the vain effort to enforce the Volstead Act may be briefly summarized. It has diverted into the pockets of foreign and domestic lawbreakers a large part of the immense tax revenue of \$443,839,544.98 that the Federal Government was receiving from distilled spirits and fermented liquors in 1918, and that could be most profitably employed today toward the payment of our national debt and the reduction of taxation. Among the domestic lawbreakers are reasonably supposed to be not a few millionaires. Indeed, some of them have thriven to such an extent that their incomes have even become objects of cupidity to the Federal income tax department. That act has also led to the expenditure in Canada, Mexico, Cuba, the Bahamas, the Bermudas, and Europe of millions of dollars, which, but for it, might have circulated in the channels of trade and commerce in the United States.

It is believed by Gilson Gardner, the well-known newspaper writer, who has made a special study of Canadian liquor conditions, that of the total annual gross receipts of the Quebec Liquor Commission, 40 per cent, or the sum of \$16,000,000, comes out of the purses of American visitors. It is thought that as many as 200,000 American tourists visit Montreal and Quebec each season, and that a large, if not the greater part of these migrants are drawn away from the United States by the liberal liquor laws of Canada. Compute also what they spend in Canada on other things than liquor and the magnitude of our pecuniary loss can be at least measurably calculated. The Volstead Act has placed human happiness in more than one vital particular under the irritating and harassing domination of a sour, corrosive and narrow-minded Puritanism, which does not hesitate to avow its enmity even to such innocent recreations as smoking and dancing. It has for the first time brought the church deeply into politics, and helped to give point to the malignant observation of John Randolph of Roanoke, that no communities are so badly governed as those that are governed by women, except those that are governed by priests. It has established a settled commerce between the worthier and the unworthiest members of the community. It has created an underworld almost as thoroughly organized to the respectable world above it. It is responsible for the unprecedented phenomenon of thousands and thousands of reputable men and women, including ministers of the law itself, living in habitual disregard of Constitution and law. It has tended to bring all laws, including itself, into more or less disrespect. It works the grossest discrimination between the wealthy individual who has a supply of preprohibition liquor or does not lack the money with which to buy from the bootlegger at bootleg prices, and the humbler individual who has no such supply, and can not afford such prices, but it is forbidden even to make a small amount of wine or beer under his roof for his own use. In many instances, it has deprived the poor drunkard of the monitor, who could formerly admonish, rebuke, or even threaten him with a straight face, but can do so no longer. It has transferred distilling and brewing

operations from the distillery and brewery to the home, and under the very eyes of young children.

When the Volstead Act went into effect one of the vine growers of California killed himself because the prospects for his business seemed so dark. His prophetic outlook was poor. Since that time, the vine areas of California have been very much enlarged; and a ton of California grapes commands a price many times as great as it did then. Last year, before the 24th day of October, 60,449 carloads of grapes were shipped eastward from that State, the bulk of which the California grape grower reported were intended to be converted into "fruit juice." I say nothing of the many other sources within and without the limits of the United States from which grapes were shipped to points in the United States for the same purpose; nor do I say anything of the vast amount of corn, sugar, and other materials that are used in home brewing.

A year or so ago, I went down into the Italian quarter of one of our great cities on a warm, sultry, summer night, when the doors and windows were open, and at one point, the atmosphere was so strongly impregnated with the odor of wine in the making that I turned to my companion and said that a prohibition agent would not need any search warrant but his nose in that locality.

The Volstead Act has converted the Federal Government, with its denaturing outfit of poisons and filth, into a more monstrous Caesar Borgia than any that medieval Italy ever knew. In other ways also, it has filled the bowels of the people with deadly concoctions. The Metropolitan Insurance Co., which has 17,000,000 industrial policies holders, writes me that between 1917 and 1920, the year that the Volstead Act went into effect, there was a decided downward trend in deaths among its policyholders from alcoholism, but that since 1920 there has been an upward trend; the figure for 1925 (2.9 deaths per 100,000 policyholders) being nearly five times the figure for 1920 (0.6). In a report rendered last year by the State Hospital Commission of the State of New York it was stated that alcoholic insanity had trebled in that State during the five years of national prohibition.

The Volstead Act has diminished the use of mild fermented liquors and stimulated the use of ardent spirits. The proportion of the latter consumed by American visitors to Canada is said to be altogether out of keeping with the amount consumed by Canadians. It has displaced the temperate, refreshing glass of beer or wine with the fiery pocket flask. The champions of prohibition "are obliged to admit that drinking among women is rapidly increasing," Bishop Thomas Nicholson, Chicago, president of the Anti-Saloon League, was reported in the press as declaring at the thirtieth annual convention of the league at Washington in January, 1924. Who ever saw women freely drinking cocktails before the advent of national prohibition? It has transformed the love of adventure and excitement which, within lawful bounds, is one of the most charming characteristics of youth in both sexes into a pit of destruction. After going over the face of a large part of the United States, Ernest W. Mandeville, a writer in the Outlook, says, "Women and young boys and girls of social classes that never took a drink before prohibition are now indulging in liquors which are a menace both to their morals and the health." To the same effect is the testimony of Police Commissioner Richard E. Enright, of New York, and the Washington City police department. "Inability of the prohibition law to enforce prohibition is causing an increase in the number of young boys and girls who become intoxicated," declared

Judge H. C. Spicer of the juvenile court at Akron, Ohio, a short time ago when two boys, aged 15 and 16 years, respectively, were arraigned before him. "During the past two years," he added "there have been more intoxicated children brought into court than ever before."

"The Volstead Act has settled like a blight upon the entire joyous side of human existence," I had occasion to say quite recently, "and its acrid and intolerant spirit, at times, by a perfectly natural process of transmigration, reappears in the shrouded activities of the bigoted Ku Klux Klan." It has bred a spirit of hypocrisy worthy of the saintly sinners who, we are told by Butler in his inimitable Hudibras, "Compounded for sins they were inclined to by damning those that had no mind to." It has fostered deceit, perfidy, espionage, and tyranny, in some of its meanest and most hateful aspects. It has lowered the prestige of the Federal Government. It has even led more than one sober American citizen who gave his blood or treasure freely to our national cause, during the World War to ask whether our forefathers did not shed their blood in the cause of American liberty at Bunker Hill and Camden in vain. It has done more than anything else has ever been done to destroy the nice balance between State sovereignty and the National sovereignty which the framers of the Federal Constitution wisely and beneficently devised. Its infatuated devotees have not even stopped short of petitioning the President to use the military arm of the Federal Government for the purpose of promoting its visionary objects, and more than one peaceful and reputable citizen, like the late Mr. Holt of Raleigh, N. C., have been shot down in cold blood by it's agents.

Worst of all is the extent to which the Federal service has been defiled by corruption, hatched by it, In his recent review in the New York Times of the means by which national prohibition was achieved, Mr. Wayne B. Wheeler, the general counsel of the Anti-Saloon League, tells us that he and his fellow prohibitionists early adopted the rule of making it safe for a candidate to be a dry, and that in prosecuting this rule, their expenses at one time amounted to about \$2,500,000 a year; a sum well calculated, it must be admitted, to impart a sense of safety to the breast of a legislative candidate when he decided to espouse the prohibition cause. A valuable addition to this policy of "safety first" was the provisions of the Volstead Act which craftily bestowed upon the farmer the exceptional privilege of setting up ferments in fruit juices without regard to the wholly artificial standard of one-half of 1 percent which the act imposed upon the city beer drinker. Another valuable addition was the bait to legislative support held out in the clause of the Volstead Act which excepted from the Federal classified service, for the benefit of congressional place-hunters, all the field positions in the prohibition enforcement bureau.

The result of this exception has been pithily stated by that eminent Citizen, William Dudley Foulke, the former member of the United States Civil Service Commission, and once, at any rate, a prohibitionist. "They secured," he said "the passage of the law with the clause in it, and thereby made all these places the spoils of Congressmen, many of whom unscrupulously secured the appointment of scoundrels who accepted bribes, dishonored the service, and made the enforcement bureau what President Harding himself called it, 'a national scandal.'" These words were written in 1923. Since that time so many prohibition agents, including even some prohibition directors, and so many policemen and other officers, intrusted with the duty of enforcing prohibition, have soiled their hands with bribes, or been guilty of other gross forms of misconduct in connection with prohibition work that if all of them were known, nothing less than

what Byron calls "the Recording Angel's black bureau" could undertake to list them all.

The corrupt prohibition agent or policeman is just as much a part of the bootleg industry as the bootlegger himself. Last year it took two Pullman cars to transfer to Atlanta the convicted policemen and prohibition agents corralled in a single round-up in Ohio. In May, 1925, a special grand jury in Morris County, N. J., was reported in the press as returning at one time 28 indictments against county officers and others for violations of the Volstead Act. About the same time, the Rev. Marna S. Poulson, superintendent of the New Jersey Anti -Saloon League, was reported in the New York Times as saying, in an address at a prohibition rally at Atlantic City, "I don't know of anyone who can make a dollar go further than policemen and dry agents. By frugality, after a year in the service, they acquire automobiles and diamonds."

Since the organization of the prohibition service to February 1, 1926, 875 persons have been separated from the Prohibition Unit mostly for official faithlessness or downright rascality. Nor does the total that I have given include delinquents not dismissed but only allowed to resign. Neither has the Coast Guard, that nursing mother of brave and devoted men, military as its discipline is, by any means escaped the contamination of prohibition. Since the duty was assigned to it of preventing the smuggling of liquor from the sea into the United States, 7 temporary warrant officers, 11 permanent enlisted men, and 25 temporary enlisted men have been convicted of yielding, in one form or another, to the seductions of money or liquor in connection with prohibition work. I am unable to say how many members of the force have been arrested but not convicted. On December 10, 1925, a United Press dispatch reported that the entire crews of two Coast Guard patrol boats which had been assigned to patrol duty off the coast of Florida had been court-martialed for conniving with bootleggers. On March 8, 1926, a dispatch to the New York Times from Providence, R. I., announced that Capt. Eli Sprague, who had been for 12 years the commander of the New Shoreham (Block Island) Coast Guard station, and had shared in the rescue of more than 500 persons, had been held for trial on two secret conspiracy indictments. On or about February 18, 1926, the Washington Daily News reported that Boatswain's Mate Joseph Libby, who had walked barefoot through ice and snow to obtain succor for his comrades whom he had left unconscious from extreme cold on patrol boat 126, had been dishonorably discharged from the Coast Guard for bootlegging.

In view of what I have said, it is not surprising that Dr. Horace Taft, head master of the Taft School at Watertown and brother of Chief Justice Taft, should have said a few days ago at a law-enforcement meeting at Yale, "The United States is threatened with the rotting of her moral foundations and of her political and social structure as a direct result of prohibition."

The Manufacturer's Record, of Baltimore, has given, with the aid of the general prohibition propaganda, wide currency to the statement that in 1917 Judge E. H. Gary, of the United States Steel Corporation, Frank A. Vanderlip, Thomas A. Edison, and a thousand other leading men of affairs signed a memorial expressing the opinion that the time had come for the Federal Government to take steps looking to prohibition; that in 1922 the Record addressed a letter to each of the memorialists, asking him whether he still favored prohibition; that only 7 per cent of the replies to these letters declared in favor of wine and beer, and that in 1925 similar letters were sent by the Record to the same persons, and that the replies to these letters were overwhelmingly

in favor of prohibition. In other words, the Dutch had captured and were still in possession of Holland. These statements, have been analyzed by Mr. E. C. Horst, a prominent citizen of the State of California, and I have recently received from him a letter as follows:

The memorial is said to number 1,000. The memorial is short of 1,000 by 432. The memorial is signed by 568.

Of these 568 who signed the memorial there were only 216 who voted in the final referendum of the Manufacturers' Record, and of those 216 only 88 were manufacturers or business men. The remaining 122 were professional men not engaged in manufacturing or trading. The Manufacturers' Record of 1922 published replies from 438 people, while the Manufacturers' Record of 1925 published replies from only 215; that is to say, that 223 of the 438 people that favored prohibition in 1922 did not reply to the editor of the Manufacturers' Record when he asked them for dry indorsements in 1925.

To such proportions does the most pretentious bulletin ever circulated by prohibition propagandists in support of the claim that the vast majority of the employers of the United States are in favor of prohibition shrivel when exposed to the ray of truth. Nay, more, moved by the wish to probe the conditions surrounding the claim of the Manufacturers' Record to the very bottom, the Daily Commercial News, of San Francisco, obtained signed statements from all the 844 advertisers whose names appeared in the issue of the Record in which only 7 per cent of the first replies received by the Record were said to have favored wine and beer. The result of the probe is published in the issue of the News for Wednesday, February 17, 1926, in these words:

These 844 advertisers are scattered throughout the United States. One fourth of the total number are in the Southern States, of whom 48 per cent responded, and of these, 60 to 61 per cent replied over their signatures that they were in favor of legalizing light wine and 2-3/4 per cent beer; and 63 to 65 per cent of the votes state that most of their employees are in favor of legalizing beer and light wine. In the East, Central, and Middle Atlantic States the percentages in favor of legalizing light wine and beer are still higher.

It is confidently asserted that the extraordinary prosperity of the United States at the present time, as reflected in abundant employment, increased savings bank deposits, and the purchase of motor cars is referable to prohibition. At best, as I had occasion a short time ago to say, that kind of argument is founded upon such vague premises and fortified by such uncertain trains of reasoning as to be practically worthless. It is hardly worth my while to deny that the recent economic condition of the United States is not due to prohibition when there is no such thing as prohibition, or only such prohibition as unceasingly from year to year manifests itself in expanding criminal dockets and mounting arrests for drunkenness.

Prohibition does not exist in Canada outside of some of its maritime Provinces and Ontario, which, however, does not lack 4.4 per cent beer. Yet the economic welfare of Canada during the last few years, as evidenced in building and other, material activities, is so amazing that at times the Canadian dollar has commanded a premium over our dollar.

How is the general state of things that I have pictured to be corrected? I answer by frankly recognizing the fact that the human appetite for drink is just as natural as the human appetite for food or reproduction; that it can be regulated but not eradicated, except perhaps at a cost in terms of money and tyranny that modern civilization will not long endure, by amending the Volstead Act so as to allow the use of 2.75 per cent beer; and by amending the eighteenth amendment to the Federal Constitution in such a manner as to authorize the Federal Government to take over the entire management and control of the liquor traffic, so far as State local option shall permit it to be carried on at all.

This brings me to the consideration of what is known as the Quebec plan of Government liquor control, created by the alcoholic liquor act passed by the Quebec Legislature in February, 1921. This act provides for the appointment of five commissioners, known as the Quebec Liquor Commission, an official body which conducts the liquor trade in the name and for the benefit of the Quebec government. All the profits accruing from the trade fall into the consolidated revenues of the Province. The commission is given the monopoly of it, to the exclusion of all private interests in the Province, and spirits for beverage purposes can be imported and retailed only through its organization. For this purpose the commission has established to date 90 stores, 40 of which are in the city of Montreal, and 10 in the city of Quebec, leaving 40 for the other cities of the Province. Spirits can be bought in these stores only between 9 o'clock in the morning and 6 o'clock in the evening on the first five week days and between 9 o'clock in the morning and 1 o'clock in the afternoon on Saturdays. Only one bottle may be purchased at a time by any one customer; and the liquor is delivered in sealed bottles, and must be taken away to be drunk at home. There is no place in the Province of Quebec where spirits can legally be bought by the glass and drunk on the spot.

Regulations as to wine and beer are much more lenient. First, as to wines. They are sold without limitation as to quantity in every store of the commission where spirits can be had. Furthermore, a few stores have been established exclusively for the sale of wines. Thirdly, a number of hotels and restaurants are licensed to sell wine to their guests at meals. Beer may be brewed in the Province, or shipped in under license from the commission. Brewers are allowed to sell to grocery stores, hotels, restaurants, taverns, and clubs, licensed by the commission, for the retail of beer.

The purpose of, these arrangements to discourage the purchase of spirits and to encourage the purchase of wine and beer instead is manifest.

In addition to the 90 stores operated by the commission for the retail sale of wine and spirits, there are in the Province of Quebec 489 hotels and 59 restaurants licensed to serve wine and beer to their patrons at meals, 573 taverns licensed to retail beer to be drunk on the premises, and 1,238 grocery stores licensed to sell beer by the bottle to customers who are required to take it away.

The right of local option is jealously preserved Any municipality may by the action of the majority of its voters express its wish to remain or become dry. In that event, the commission can not grant a license within its bounds, but any person living in a dry district can buy direct from

the commission one bottle of spirits at a time and any quantity of wine.

The greater part of the Province in area and about half of it in population is dry by virtue of local option, and during the four years that the Quebec alcoholic liquor act has been in force the respective importance of dry and wet territories and populations has not been materially modified.

The total sales of the commission during the four years of its operation have exceeded \$72,000,000, of which amount some \$25,800,000 has been paid to the Canadian Federal Government in taxes. During the same period the net revenue received by the Quebec liquor government from different sources, including sales, permits or licenses, and seizures has been around \$19,800,000; out of which sum nearly \$17,500,000 has been handed over to the, Quebec Government. Besides the commission has built up out of its revenue a working capital and surpluses amounting in the aggregate to \$2,350,000. These particulars have been derived by me from a paper by Arthur St. Pierre in the Independent of October 10, 1925.

Even more satisfactory than the financial results have been the moral results of the system. One of its effects has been to diminish the consumption of spirits by promoting the consumption of wine, and thereby to help to usher in the social conditions which Jefferson had in mind when he said:

No nation is drunken where wine is cheap; and none sober where the dearness of wine substitutes ardent spirits as the common beverage. It is, in truth, the only antidote to the bane of whisky. * *

* Its extended use will carry health and comfort to a much enlarged circle. Everyone in easy circumstances (as the bulk of our citizens are) will prefer it to the poison to which they are now driven by their Government.

In 1924-25 the sales of wine by the commission exceeded its sales of spirits by 23,814 bottles; while in 1923-24, they were less by 864,960 bottles.

Another effect has been to bring about a steady decline in drunkenness. The commission was organized on May 1, 1921. In 1920 the monthly average, for arrests for drunkenness in Montreal had exceeded 600; in 1921, after the organization of the commission, it was a little less than 550; in 1922 it dropped to 354; in 1923 to less than 300, and in 1924 to 243. According to a recent study made by Mr. William P. Eno, of Washington City, in 1923, such arrests per 100,000 of population in dry Boston were eight times what they were in wet Montreal.

Of course, the Quebec liquor plan can not be adopted by statute in the United States because of the limitations created by the eighteenth amendment, but it could be naturalized in this country by an amendment to that amendment, and such an amendment is the one proposed in the bill introduced by me into the Senate, which is now before you.

As subsequently altered by me, it reads as follows:

Subject to present prohibitory provisions in the constitution of any State, and to laws heretofore

or hereafter enacted in pursuance thereof, and to all existing local option laws in any State, so long as said provisions or laws shall respectively remain in force, the Congress shall have the exclusive power, with such enforcement aid as may be lent it by any State and be accepted by it, to regulate but not to prohibit or unreasonably restrict the manufacture, sale' transportation, importation, or exportation of intoxicating liquors, including the power to authorize any Federal agency that it may designate for the purpose, with the aid of such private business agencies as it may be authorized by the Congress to employ, exclusively to undertake and conduct, manage, and control the manufacture, sale, and distribution of such liquors; but, with the approval of a majority of the voters in any county, parish, or incorporated city or town in any State upon which this article shall at the time be operative, at a special election held for the purpose, the legislature of such State shall have the Power to prohibit the manufacture, sale, or distribution of intoxicating liquors within the limits of such county, parish, or incorporated city or town.

The Congress shall be empowered to enforce this article by appropriate legislation.

The character of this amendment is almost too plain to require explanation. It confers upon Congress the power to enact a plan of liquor control which, like the Quebec plan, would be a combination of exclusive Government management and local option. This power, however, is expressly made subject to present prohibitory provisions in State constitutions, and to State local option laws wherever they now exist, and to any local option laws that the States may pass in the future. Such laws could conceivably, by local initiative throughout the United States, be given an expansion that , with existing systems of state-wide prohibition in the different States would make prohibition, backed by a genuine popular support, as completely coextensive, with the entire territory of the United States as it is now supposed to be, but so far as the liquor traffic would not be swayed by State action, it would be controlled by the national authority under such administrative restrictions and safeguards that the old right to ship liquor from wet territory to dry territory, which was one of the chief abuses of the past, could be cut down to any limits that suited the discretion of Congress.

The amendment recognizes the imperishable truth that communities are never so obedient to the laws as when they harmonize with their own special historic backgrounds and social customs, usages, and habits. In other words, it provides for the right of local self-government which is the cornerstone of all true liberty. It conserves whatever is good in existing prohibitory conditions. It would bar out the old saloon. It does not surrender national control over the liquor traffic in local communities, except to the extent that local communities signify at the polls their desire that it should be so surrendered, and it never surrenders national control for the purpose of enabling any local community to say that it will have any system of license except what Congress shall prescribe.

In other words, it has in mind as administration which would cling to all the workable results of the long agitation for national prohibition, and yet adjust itself with easy flexibility to all the local diversities of thought and feeling, prejudice, and predilection, which necessarily distinguish such a vast domain as that of the United States.

FRANKLIN D. ROOSEVELT
CAMPAIGN ADDRESS ON PROHIBITION IN SEA GIRT, NEW JERSEY
AUGUST 27, 1932

My friends:

Once upon a time an orator who was describing the scenery of his State remarked that in the North it was "mountaineous" and that in the South it was "moisterious."

That classic description reminds me of the Republican national ticket this year — "high and dry" at one end and at the other end "increasing moisture."

But before I come to further elucidation on that point let me make another clear.

However we may differ as to method, we all agree that temperance is one of the cardinal virtues. In dealing with the great social problems in my own State, such as the care of the wards of the States, and in combating crime, I have had to consider most earnestly this question of temperance. It is bound up with crime, with insanity and, only too often, with poverty. It is increasingly apparent that the intemperate use of intoxicants has no place in this new mechanized civilization of ours. In our industry, in our recreation, on our highways, a drunken man is more than an objectionable companion, he is a peril to the rest of us. The hand that controls the machinery of our factories, that holds the steering wheel of our automobiles, and the brains that guide the course of finance and industry, should alike be free from the effects of over-indulgence in alcohol.

But the methods adopted since the World War with the purpose of achieving a greater temperance by the forcing of Prohibition have been accompanied in most parts of the country by complete and tragic failure. I need not point out to you that general encouragement of lawlessness has resulted; that corruption, hypocrisy, crime and disorder have emerged, and that instead of restricting, we have extended the spread of intemperance. This failure has come for this very good reason: we have depended too largely upon the power of governmental action instead of recognizing that the authority of the home and that of the churches in these matters is the fundamental force on which we must build. The recent recognition of this fact by the present Administration is an amazing piece of hindsight. There are others who have had foresight. A friend showed me recently an unpublished letter of Henry Clay, written a hundred years ago. In this letter Clay said that the movement for temperance "has done great good and will continue to do more" but "it will destroy itself whenever it resorts to coercion or mixes in the politics of the country."

Another statesman, given to the Nation by this State of New Jersey, pointed out this necessary course when Federal Prohibition first became a great issue. President Wilson foresaw the economic and social results of such an attempt. It was not necessary for him to live through the disastrous experience in order to come to the conclusion now confessed by our present

President. In statesmanship an ounce of foresight is better than a pound of hindsight.

The experience of nearly one hundred and fifty years under the Constitution has shown us that the proper means of regulation is through the States, with control by the Federal Government limited to that which is necessary to protect the States in the exercise of their legitimate powers. This I submit is the principle embodied in our Democratic platform; and I state further that it is not the principle stated in the Republican platform or in the speeches of acceptance of the two candidates of the Republican Party.

This time of depression has caused us to see even more plainly than before not only the political and moral consequences of our action but its economic results as well.

We threw on the table as spoils to be gambled for by the enemies of society the revenue that our Government had theretofore received, and the underworld acquired unparalleled resources thereby. The multiplication of enforcement agencies created resentment and a cynical and complacent attitude toward lax enforcement resulting from connivance between such agencies and the law breakers. The general disregard for and defiance of such law of nationwide application bred disrespect for other law. The attempt to impose the practice of virtue by mandate of the fundamental law produced an attitude of intolerance to other forms of restraint and a denial even of the basis of authority. The violation of fundamental principles set in motion a chain of consequences that no one not politically blind could fail to see; and all the time a steady flow of profits, resulting from the exactions of a newly created industry, was running into the pockets of racketeers. The only business of the country that was not helping to support the Government was in a real sense being supported by the Government. This was the business that was the direct product of the 18th Amendment and the Volstead Law — a business which is lucrative, vicious and corrupting in its influence on the enforcement agencies of Government.

Unquestionably our tax burden would not be so heavy nor the forms that it takes so objectionable if some reasonable proportion of the uncounted millions now paid to those whose business has been reared upon this stupendous blunder could be made available for the expenses of Government.

On this subject the two parties offer the voters a genuine choice this year. On the one hand a definite method of relief in the true American tradition, with the States authorized to carry out their part of the responsibility, and the Nation doing what it is practically and constitutionally able to do; on the other side, evasion and indirection.

I should be something less than candid — in fact I should be dishonest — if I did not in this campaign continue to speak very plainly of these evasions, insincerities and deceptions. As I have repeatedly pointed out. Republican leaders are attempting to fight this battle with words. And in fighting with words we may use them either as a flaming sword, frankly, honestly and with courage, to press home the cause of truth, or we may use them as shields, to turn aside, evade and obstruct the attack of an adversary. It is in this latter sense that the Republicans have been fighting a battle of words. Now a shield is a bigger thing than a sword and so when they would use words as a defense, they must use more of them. Witness the Republican platform —

long, indirect, ambiguous, insincere, false, compared with the concise sincerity of our own platform. And this is especially true of what they say about Prohibition. We first have a long, rambling party pronouncement in the Republican platform. And then we have long, rambling explanations of its meaning. Words upon words. Evasions upon evasions. Insincerity upon insincerity. A dense cloud of words. We rush into the cloud to find whether there is meaning and substance at the bottom of it all, and we find nothing. When we emerge from the cloud, we see another in the distance and we rush over to that. And again we find nothing. And so we rush from cloud to cloud and find at the bottom of each, nothing but dust, meaningless, worthless dust, at the bottom of a cloud of words.

One of the stories that we learned in our youth was that of the famous Oracle of Delphi. In ancient Greece, it is told, there was a place where volcanic gas came forth from a crevice in the earth. Over this crevice the pagans built a temple, and directly above the fumes arising from the earth, they set the throne of the Oracle. When the Oracle was partially stupefied by the poisons in the gas, she uttered strange and incoherent words. The high priests of the temple were supposed to tell the people the meaning of these incoherent words. The people never suspected that the priests were not possessed of a real understanding of these words and that they interpreted them to suit their own convenience. But great issues were decided by this method. Pagan kings came to the Oracle and on its incoherent mumblings the fate of Nations was sometimes staked.

In June, the Republican Oracle sat in Chicago. There was a fume of heated oratory; clouds of Prohibition proposals were emitted; the Resolutions Committee and the Convention itself succumbed to the stupefying influence. It uttered words in the party platform — words and more words, till meaning was lost and reason slumbered. And then when the Convention ended and the people asked the high priests of the party what it all meant, the answers were so diverse that one was tempted to suspect the worst — that it meant nothing at all. The Secretary of State explained in the choicest phrases of Republican diplomacy; Senator Borah spoke out in his forthright fashion and said it sounded wet to him; President Butler said the words were dry.

I suspect that those who wrote that plank thought that it would sound dry to the drys and wet to the wets. But to the consternation of the high priests it sounded dry to the wets and wet to the drys. This was very serious indeed. Something had to be done about it.

Well, something was done about it. The Democratic Party fairly and squarely met the issue. It adopted, by an overwhelming vote, a plank so plain and clear and honest that no one could doubt its meaning and the candidates accepted this statement one hundred percent.

And then public opinion, moved by a true American admiration for brave and honest statement, expressed itself in no uncertain terms. It liked the Democratic platform. It liked people who spoke their minds. It liked courage and candor. This must have been disturbing to the high priests of the Republican Party, but, as always, they hesitated and temporized. And then in the six weeks following the Democratic Convention, a vast air of expectancy surrounded the White House. Rumors came forth that the high priests were to speak. People were to be told at last the meaning of what the June Oracle had said.

There were difficulties in the way, because the high priests had often spoken of this subject before. In 1928 the Republican candidate for the Presidency said: "I do not favor the repeal of the Eighteenth Amendment," and, amplifying his meaning at that time, he added that it was "a great social and economic experiment noble in motive and far-reaching in purpose."

He brought about the creation of the Commission on Law Enforcement and Obedience composed of "an able group of distinguished citizens of character and independence of thought, representative of different sections of the country." When, after eighteen months of sincere and painstaking work, this Commission reported its findings to him, he submitted the report to the Congress commending all of the minor findings of the Commission but not approving of the Commission's proposed revision of the Eighteenth Amendment.

He condemned the report with faint praise, thus: "It should stimulate the clarification of the public mind and the advancement of public thought." It did stimulate and clarify the public mind to the extent that it showed it what it had long suspected was true, that national Prohibition had not been and could not be enforced. But it apparently did not stimulate and clarify the Presidential mind because the White House, so far as Prohibition was concerned, fell into a deep silence. As the Republican Convention approached, according to the newspapers of the time, appeal after appeal was made to him and innumerable drafts of a Prohibition plank were submitted to him. Out of it all came the incoherent utterance of the Chicago Oracle to which I have alluded.

At last, on the eleventh day of August, the President spoke to the people. To anyone who will read the Prohibition plank in the Republican platform and the remarks of the President on this question in his acceptance speech, the difficulty under which the President labors will become obvious and the reason for his use of meaningless words will become clear. It is the difficulty that always attends sacrificing principles for votes, and attempting to conceal that fact by the use of pussy-cat words. That statement can be no better substantiated than by the President's own statement that "I have always sympathized with the high purpose of the Eighteenth Amendment." Does that spell out a prohibitionist attempting to retain the support of the drys?

But the President has at last learned what the facts have shown these many years—that laws opposed by majority sentiments "create resentment which undermines enforcement and in the end produces degeneration and crime."

This seems to mean State Home Rule. But apparently the President does not really believe in State Home Rule, if by the use of force there can be effective Federal control. He is willing to believe in the principle of State control only when the Federal Government cannot get away with the destruction of State control.

His statement proceeds deliberately to misrepresent the position of the Democratic Party. He says: "Our opponents pledge the members of their party to destroy every vestige of constitutional and effective Federal control of the traffic."

I have the right to assume that the President read the Democratic platform and on that assumption I charge that this statement was made to mislead the people of this country and I assert that a mere reading of the plain, unequivocal provisions of the Democratic platform will sustain that charge. So that there can be no possible misunderstanding, let me read the provisions of the Democratic platform on this point. It begins:

“We advocate the repeal of the Eighteenth Amendment. To effect such repeal we demand that the Congress immediately propose a Constitutional Amendment to truly representative conventions in the States called to act solely on that proposal.”

So much for repeal. Now what does it tell the States to do:

“We urge the enactment of such measures by the several States as will actually promote temperance, effectively prevent the return of the saloon and bring the liquor traffic into the open under complete supervision and control by the States.”

It then clearly states what the President either accidentally overlooked or deliberately misrepresented:

“We demand that the Federal Government effectively exercise its power to enable the States to protect themselves against importation of intoxicating liquors in violation of their laws.” It then goes on to speak of the Volstead Law:

“Pending repeal, we favor immediate modification of the Volstead Act to legalize the manufacture and sale of beer and other beverages of such alcoholic content as is permissible under the Constitution and to provide therefrom a proper and needed revenue.”

Thus the Democratic platform expressly and unequivocally opposes the return of the saloon and with equal emphasis it demands that there be Federal control of the liquor traffic to protect dry States. Only on the theory of seeking to return to power by the mere use of words can such statements of the President of these United States be explained.

But, meanwhile, another high priest has been heard from. In the period following August eleventh, the anti-repealists of the Republican Party raised their voices in lamentation, like Jeremiah of old.

The Republican candidate for Vice-President heard this wailing. He hastened to avow his devotion to the Republican platform, but he found in the words of the Oracle full justification for the belief that the Eighteenth Amendment should not be repealed. And so, in the true spirit of those who in ancient times controlled the Oracle for their own ends, provision is made for all possible contingencies. It is said that an ancient King when he consulted the Oracle as to the probability of his success in a war that he was about to undertake, was told that if he went to war a great army would be destroyed. But he did not realize that the Oracle had not made it clear that it might be his own army that would be destroyed. My friends, the high priests have failed to inquire of the Oracle the answer to the question that the King of old forgot. A great army is to be

destroyed. But they do not realize which army it is to be.

In New York State in 1930 there was a party which tried to ride two horses at the same time. The Republican Party had one foot, its candidate for Governor, on the wet horse, and the other foot, its candidate for Lieutenant Governor, on the dry horse. The voters of New York State saw that it was a circus stunt. Honest wets and honest dries — Democratic, Republican and Independent — were disgusted. They threw the ticket into the discard.

This year the Republican national leaders have tried the same circus stunt. The answer of the voters throughout the Nation will be precisely the same.

In the last analysis, my friends, the Prohibition issue comes down to a question of faith and confidence in leadership and in the words of leaders.

However people may differ as to the principle of Prohibition, national or State, they all will agree that a temporizing and insincere policy is disastrous not only to the cause of Prohibition, but to that of temperance as well. The present leadership stands convicted of attempting to evade and confuse this issue. The honest dry will, I know, honor more the honest wet than the shifty dry; and the anti-prohibitionist prefers, I know, the four-square dry to the uncertain wet. All will join in condemning a fearful and timid practice of evasion.

Here, as before, I emphasize that the deep question in this campaign is one of confidence in leadership — in leaders. The measure of the truth of what they say is what they have said; the measure of what they will do is what they have done.

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MENCKEN, RITCHIE AND PROHIBITION

Address given before the Library Company of the Baltimore Bar, February 8, 2011

by Marion Elizabeth Rodgers

Thank you for inviting me to be here this evening, in this beautiful and historic Courthouse. Mencken wrote about this building in 1899, when he was just starting out as a young reporter.

During those days, Mencken worked directly across the street, at the Baltimore Herald, a structure that held its own during the Great Baltimore Fire of 1904, and which Mencken said may have helped save this Courthouse from the flames. As a very young reporter, Mencken roamed the halls of this building, and, as one judge recalled, “pestered me with unanswerable questions.”

So, it gives me great pleasure to be here in this building with all of you tonight. I note that, after this talk, you will also be having a wine reception. On such occasions of happy conviviality, I am reminded of one of Mencken’s favorite doctrines, that “the whole world would be better if the human race was kept gently stewed” – which now brings me to the topic of this evening.

Throughout its history, Maryland has always taken pride in being an independent state. But at no other time was Maryland’s independence better emphasized than during Prohibition. No one fought harder against Prohibition than H. L. Mencken, the colorful author and legendary journalist for the Baltimore *Sunpapers*, and Governor Albert Ritchie, Maryland’s popular governor. Their stand against it made front page news.

Mencken saw Prohibition as a violation of a man’s civil rights. In his arguments against it, Mencken cited the Bill of Rights. During the thirteen years that Prohibition remained in force, Mencken devoted at least 42 newspaper columns in the Baltimore *Sunpapers* to the subject; he wrote about it in his magazines, *The Smart Set* and *The*

American Mercury. Prohibition is mentioned throughout his books, notably in his six volume collection of *Prejudices*.

Governor Albert Ritchie took issue with Prohibition on legal grounds. Ritchie had been a lawyer, then served as Attorney General of Maryland. As Governor, he had improved the school system, balanced the budget and reduced taxes. His stand against the Ku Klux Klan made him popular among immigrants and African-Americans. Ritchie's stand against Prohibition was potentially a politically disastrous step. But it was one of the most dramatic things he had ever done. It raised him overnight from being a local celebrity to a national figure, and almost made him a nominee for President of the United States.

The story of how Mencken and Ritchie together turned the tide against Prohibition is what I will be speaking to all of you tonight.

You will be able to see the full story of Prohibition when Ken Burns comes out with his new documentary on the subject. There is a lot of Mencken in it. Because you should know that for Mencken, Prohibition was a ghastly torture. As Mencken described himself, "I am ombibulous. I drink every known alcoholic drink, and I enjoy them all."

Prohibition, said Mencken, was responsible for ruining classical Maryland dinners. As he put it, you just couldn't eat wild duck without having the proper wines or sherries. Served with water, he said, those meals were "as preposterous as beer without foam."

Another thing. He could hardly relax whenever he took a date to a restaurant – not only because liquor had become so expensive – but because of federal agents. His date was constantly in a state of nerves, thinking that at any moment, there was going to be a raid. As Mencken said, "The first effect of Prohibition will be to raise up impediments to marriage. Absolutely sober men will be harder to snare."

As for dining out at other people's homes – even this was no longer charming. You had to always be worried about the liquor supply of your host. Mencken said, "If drinks are served, one hesitates to gullet them freely." Then again, if drinks were not served, "one wishes one's host were in hell."

Many of the bottles in Mencken's own cellar were bought from his bootlegger in New York, who regularly made his grand entrance into Mencken's New York office and was greeted "like a visiting ambassador."

Bootleggers, wrote Mencken, were now taking on the dignity of well-to-do businessmen. The young men of Harvard, who formerly became stockbrokers, were now casting their eyes at the profession. "If I had a son," said Mencken, "I'd be tempted to let him try his gifts. A life of learning has got me nowhere."

Later, Mencken could be seen walking the streets of New York, toward the train headed for Baltimore, lugging a heavy suitcase of liquor, his body leaning to the side, looking like a boat in full sail, keeling against the wind.

This had its risks, as Mencken well knew. Bags could be searched on trains, people seized. A man might risk losing precious bottles of Scotch – and pay up to \$500 on bail. All because, as Mencken said, "a vast horde of Prohibition spies" had been set loose upon the community – "spies whose livelihood consisted of making themselves a nuisance to their fellow citizens." "I make it a point," said Mencken, "to get up a bottle of 1902 Beaujolais every time I hear that another such slimy fellow has been murdered."

Back in Baltimore, Mencken hid his own bottles of booze in a small room, located in the basement of his home at Hollins Street. You can still see that room today – decked out with rows and rows of shelves.

He built in 1919, right before the onset of Prohibition. On the door he hung up a sign that read:

THIS VAULT IS PROTECTED
BY A DEVICE RELEASING CHLORINE GAS
UNDER 200 POUNDS PRESSURE.
ENTER IT AT YOUR OWN RISK.

In 1919, Mencken advised his readers to do the same. “See to your locks and chain bolts, and get a smallpox sign to hang on the door. Hire a confirmed diabetic to mount guard. Fill every third bottle with nitroglycerine, that heaven may swiftly welcome any righteous scoundrel who horns in.” As Mencken wrote to Sinclair Lewis, he had enough bottles to keep him stewed for fifteen years.

Now, one should keep in mind, when Ritchie had been first elected governor in 1919, he had never mentioned Prohibition or the matter of states rights. During those years Ritchie’s focus was on statistics, as he devoted himself to balancing the state budget.

Meanwhile, a new era had dawned for the Baltimore *Sunpapers*. Mencken had rejoined the staff. He, along with the publisher, hammered out a memorandum about the new direction the paper would go. One section of their memo dealt with “American Ideas” – in it they said how federal bureaucracies had interfered with the common rights of man. They also decided the editorial page would be less cautious from now on.

On January 16, 1920, when Prohibition officially began, Mencken, along with the rest of the staff, decided that every day they would have at least one editorial denouncing the new law. This was unique for that time. Most newspapers had abandoned the fight, thinking opposing Prohibition was a lost cause.

But not the *Sun*, especially the *Evening Sun*, which kept up a drumbeat against Prohibition. So did Mencken. His regular Monday column for the *Evening Sun* achieved national fame, making him, as one critic said, “one of the most volcanic newspapermen this country has ever known.” Thanks to Mencken, and the new editorial policy, during

the 1920s the *Sunpapers* had the reputation and cachet that the *Washington Post* acquired after Watergate. It was one of the first newspapers that the President read each morning. It was the out of town newspaper New Yorkers bought each day.

By this time, Ritchie had become a regular visitor to the Baltimore *Sun* offices. Mencken, along with his colleagues, spoke with Ritchie about the extent to which the federal government was destroying the concept of liberty. As one editor recalled, "Ritchie began to seize on these ideas."

Now something really wonderful happened.

Shortly after this, Ritchie attended the Governor's Conference in Washington, D.C. President Harding demanded that, when it came to Prohibition, all the states must enforce the law. All the governors sat silent. Except for Ritchie.

To the surprise of everyone in the room, Ritchie rose from his chair, and directly addressed the President. Prohibition, he said, was a drastic federal infringement on Maryland's state and personal rights. Liquor control was a matter for each state. It had to be settled by the will of its own people.

For this, Ritchie was accused of being un-American, an anarchist, and a traitor. But it brought Ritchie cheers in Maryland.

Behind the scenes, Ritchie used pressure to make Maryland the first state not to give in to the Anti-Saloon League. As a result, Maryland did not have a state enforcement act. Mencken celebrated the governor in his newspaper column, calling Ritchie "the first independent statesman that Maryland had seen since the Civil War," an opinion which, Governor Ritchie said, had truly pleased his mother.

From now on, of the thousands of speeches Ritchie gave, almost 85% of them concentrated on States' Rights. One of Ritchie's most famous speeches was one he gave

at the Jefferson Day banquet at the National Democratic Club. It attracted national attention and was reproduced in the *Congressional Record*.

Now you should know that Ritchie had already begun sharing his speeches with Mencken and other editors of the Baltimore *Sunpapers*. One of the sentences of his most famous speech, describing the “incompetent, extravagant control radiating from Washington” sounds almost Menckenesque, especially the use of the word “radiating.” Though we have no proof that Mencken helped Ritchie write his speeches, he certainly promoted them. “The fame of Maryland has got about the country,” he said. “Governor Ritchie’s speeches, at first sneered at and unattended, have gradually made their way into [various] newspapers. [As I travel across the country] I am asked about him almost as often as I am asked to have a drink.”

Privately, Mencken wrote in his memoirs that much of Ritchie’s success over Prohibition was thanks to the Baltimore *Sunpapers*, which had supplied Ritchie with his ideas.

Well, it is true that the Ritchie’s use of the term, the Maryland Free State, still proudly used to this day, was actually the invention of the editor Hamilton Owens, at the Baltimore *Sunpapers*.

At the height of the debate over Prohibition, a Republican congressman had denounced Maryland as a traitor to the union because it had refused to pass a State Enforcement Act. Owens wrote a mock-serious reply called “The Maryland Free State.” Owens later decided not to print it, but the phrase, “Maryland Free State” was used in other editorials. Mencken took up the phrase. So did Governor Ritchie, who repeated it in all of his speeches in his reelection campaign as governor, and won by an overwhelming majority – the first Maryland governor up until that time to return to a second term. Other newspapers and politicians also picked up the phrase, until the Maryland Free State became common usage.

But it is not true, as Mencken said, that all of Ritchie's ideas came from the *Sun*. States' Rights had always been a key factor in Ritchie's life. In fact, until he died, Ritchie had in his possession a speech defending States' Rights that his father had delivered to the University of Virginia Law School in 1856. Ritchie had underlined key passages.

When it came to Constitutional development, Ritchie thought the United States fell into three periods. In the first period, lasting until the Civil War, Ritchie thought the nation had leaned too far to States' Rights. The second, from the Civil War to World War I, was a balanced period. Now, said Ritchie, the growth of federal bureaus and commissions had been a burden on the taxpayer. It threatened to destroy individual rights.

As Ritchie confessed to a reporter during this time, he concentrated on states' rights not only because he believed in them; he thought Prohibition was an issue that could unite Democrats and Republicans alike. As Ritchie well knew, polls showed a majority of voters were for Prohibition's repeal.

With the support of the *Sunpapers* and the people of Maryland, Ritchie continued to defy the federal government, so much so that in Baltimore, the years 1920 through 1933 had a character all of its own. Maryland was now one of the wettest states in the Union.

According to *Sun* reporter R. P. Harriss, Governor Ritchie had announced that places selling alcoholic beverages would not be bothered by state troopers – though they would have to pay state tax. But because speakeasies didn't legally exist, they were declared to be cigar stores. Each speakeasy had a front room, with a glass counter, filled with cheap cigars. There would be a door with a window. When you knocked on the door, all you had to say was, "Joe sent me."

U. S. 1 was full of speakeasies. There were also many between Calvert Street and Broadway. None of them apparently served good wine. Many did provide soda to accompany any whiskey or gin you might have in your hip flask.

Baltimore 42-mile shoreline along the Chesapeake Bay was a perfect port for bootleggers, making it convenient for smuggling Cuban and Canadian liquor. Whiskey in Baltimore was plentiful. It came from illegal distillers in Western Maryland.

Even so, hard liquor was expensive for the average working stiff. There were ways to get around it. They say that if you had a friendly doctor, you could tell him you were feeling really run down. He would give you a prescription for some whiskey, which the druggist would fill out. If you look back at the ledgers of the old pharmacies, you will see that almost everybody during those days was apparently suffering from the same infirmity. But since you had to pay \$2 for the prescription, and another \$2 for the whiskey, well, the average person could not indulge in this remedy too often. You only did it if you were getting tired of bathtub gin. And since only the affluent could afford to drink hard liquor without risking blindness or death, most people stuck to beer.

Mencken began making his own, with the best German ingredients he could obtain, including dried yeast from the Lowenbrau brewery in Munich. On Sunday afternoons in West Baltimore, the German neighborhood where Mencken lived, you could smell malt and hops in the air as neighbors began brewing their beer. Each Sunday, Mencken would shoo his mother from the kitchen and begin cooking away. His very first attempt was bottled too soon, with the result that every single bottle he put out into the garden to cool suddenly exploded like a burst of gunfire, greatly alarming his neighbors.

Mencken and his friends shared their beer-making recipes. They were precise about what type of spring water they used, how much corn sugar to put in. Mencken's careful notes about his beer making still exist. In one entry he describes "a curious flocculent growth" – in other words, *a fungus* – growing on top of his ale. The guinea pigs for Mencken's experiments were his musical friends from the Saturday Night Club,

who often met at Mencken's house to play music, eat crabs – and drink his beer. Sometimes they got sick to their stomachs and other times they got cheerfully boiled. But they drank it all the same.

Ah, life in Maryland was good in those days! As Mencken said, it was a place of sound and comfortable living. And all of this was thanks to Governor Ritchie. Alone among larger cities, Baltimore had little organized crime. Instead, it was quiet and orderly. The police went about their own business. The courts were not jammed with liquor cases. Federal agents were left to enforce Federal enactments on their own. And since the Feds found that they had no police protection in Baltimore, raids gradually became more infrequent.

Maryland, wrote Mencken, was one of the few states in which in the state's courts, the constitutional guarantees of the citizen were jealousy guarded. According to the *Sun*, Marylanders had achieved an ethnic unity. "The people of the Free State asked only to be let alone."

Mencken believed Ritchie's stand against Prohibition had been an influential contribution to the general political thought in the country. It had also encouraged none other than Governor Roosevelt of New York, who, by 1931, was beginning to toy with the idea of running for President.

During this period Mencken and Ritchie began meeting more regularly. They would sit up late, sometimes until 1:30 or 3:30 in the morning, eating pretzels and drinking, discussing Ritchie's possible presidential campaign for 1932. At that time, no one was sure that Roosevelt had the nomination in hand. Mencken advised Ritchie that the way seemed clear.

To help Ritchie out, Mencken renewed his praise for him in the *Sunpapers*. "He has done as much as any man to make Prohibition disreputable, and he has done so sincerely," wrote Mencken. "It is a grand chance. He would make an excellent

President....He is so intelligent as to make a sort of miracle in American public life.” Mencken later said that if Ritchie had been elected President in 1932, the nation’s problems would have been tackled with more common sense.

The 1932 Democratic convention proved to be a turning point for Ritchie. More than one hundred thousand people greeted him when he arrived in Chicago – so many that Ritchie lost one of his shoes in the crush. Fans showered him with confetti. Delegates carried signs: “WIN WITH RITCHIE.” In the hall, people cheered his name. Roosevelt’s manager, James Farley, was so impressed that he offered Ritchie the place of Vice-President on the Roosevelt ticket. Ritchie refused.

Instead, he concentrated on his big speech against Prohibition. As Mencken advised, this was the issue on which he would win. The ovation lasted forty minutes. Although Ritchie’s successful anti-Prohibition plank probably helped grease the way for Repeal, after a lot of politicking in the back rooms, as you know the nomination went to Roosevelt. After the general election, Mencken thought Ritchie might win a spot in Roosevelt’s cabinet. Roosevelt never even considered it.

Disappointed, Ritchie later admitted how unwise he had been to reject the role of Vice President. He had been given a golden opportunity. His role in national affairs would not come again.

Meanwhile, in Maryland, the Depression grew worse. Ritchie complained to Mencken that the Federal government was handing out so much money, and so many states were accepting, that he could not see how Maryland could keep resisting federal aid and still be able to balance the state budget – though God knows, Maryland was practically the only state which had done so.

Although Mencken and Ritchie considered themselves lifelong Democrats, as the 1930s wore on, so did their dislike for the New Deal. To the end of their lives, they both believed balanced budgets and frugality were the way to solve economic problems.

As Social Darwinists, both Mencken and Ritchie believed the way to solve the economy was not to interfere. They continued to subscribe to the Jeffersonian idea that the best government was the one that governed least. Neither man ever questioned the harmful effects of too little government intervention. Mencken and Ritchie were of the generation that had lived through the Depression of 1892 and 1893. No one at that time believed that the unemployment was the responsibility of the government.

But their resistance to Roosevelt came at a cost. During the Depression, the popularity of both men suffered. When Ritchie ran for his fifth term as governor, Mencken publicly supported him, for which Ritchie was grateful. "If all the world falls from you," Ritchie wrote to Mencken, "I will still be with you."

After Ritchie's defeat, he returned to practicing law, but not for long; he died a year later. He was mourned in the editorial pages of newspapers across the country. "If Maryland today is seen as a place of freedom and tolerance," they said, it was because of Ritchie's fight against Prohibition, and his championing of what many now regarded as "the lost cause" of States' Rights.

As for Prohibition?

Well, it officially came to an end while Ritchie was still governor, on December 5, 1933. The legalization of beer came even sooner, almost immediately after Roosevelt was inaugurated. The "return to sanity" was set for midnight, April 7, 1933.

In gratitude, a local brewer sent Governor Ritchie several cases of beer, tied in bright ribbons. It arrived in Annapolis by motorcade. Ritchie did not join in the festivities. He remained in the Statehouse, working late.

In Baltimore, the manager of the Rennert Hotel invited Mencken to have the honor of being served the very first glass of legal beer. Across the country, H. L.

Mencken was being hailed as the reporter who had worked hardest to bring about Prohibition's end.

That evening, the Rennert was packed. In the crowd was a young student from Johns Hopkins. He told me he went just because he wanted to see history being made. As the clock struck twelve, the bartender handed the very first glass of beer over to Mencken.

"Here it goes!" said Mencken.

Everyone leaned forward, waiting to hear the verdict. Mencken tilted back his head, and drank it in one gulp.

"Not bad at all," he said. "Fill it again."

Not one arrest for drunkenness was made that night. For those who were there, no New Year's Eve celebration ever equaled that glorious evening. The photograph of Mencken drinking the first legal beer in the Maryland Free State was sent to millions around the world.

It was, as Mencken said, "an epochal event in the onward march of humanity. It is perhaps the first time in history that any of the essential liberties of man has been gained without the wholesale emission of blood."

Marion Elizabeth Rodgers is the author of Mencken: The American Iconoclast (Oxford, 2005, 2007). (c) Copyright 2011 Marion E. Rodgers

LEGAL
SPECTATOR
&
MORE

Jacob A. Stein

WORDS AND MUSIC

... there is a certain number of artists who have a distinct faculty of their own by which they convey to us a peculiar quality of pleasure which we cannot get elsewhere; and these, too, have their place in general culture.

Walter Pater

Movie magazines of the 1930's carried back-page advertisements offering a fifteen-dollar correspondence course on writing "hit popular songs." I don't recall the exact statement in the ad of the money to be earned, but it was well beyond the dreams of avarice and substantial enough to lift the possessor of the secrets right off a Depression breadline. The ads caught my eye because I wanted to write hits. The fact that I couldn't play a musical instrument did not discourage me. I aspired to be a lyricist like Lorenz Hart or Ira Gershwin or even Cole Porter. I had played over and over my 78 rpm Brunswick of Ethel Merman belting out "You're the Top." I wrote two verses in the Cole Porter style. Friends told

me I had talent. Despite this, I had sense enough not to send the money. But I never doubted that there were secrets and that those who were in the know were turning out the hits.

Now some sixty years later I have learned there are no secrets. I learned this by reading the biographies of Irving Berlin, George Gershwin, Vernon Duke, and other songwriters. I learned it again by reading William McBrien's heavyweight biography of Cole Porter. McBrien tells us everything there is to tell about Cole Porter. But no secrets of what it is that makes a hit.

The author of *Tin Pan Alley*, Isaac Goldberg, put it this way:

It is relatively simple to explain a hit after it has been made. For the man who can unerringly pick one before the fact a desk stands ready in every publisher's office, with a salary double that of the national president. Is it the words? Is it the tune? Is it the mood? Does the public prefer sad sentiment to happy? Theories have been advanced by every important figure in the business, but the answer remains as much in doubt as ever. Popular taste is at the mercy of whim.

After-the-fact stories about how song hits came into being are unreliable. James T. Maher, in his bouncy introduction to Alec Wilder's *American Popular Song—1900–1950*, says that the history of popular hit songs “has been largely history-by-anecdote. Tales—true, false, altered, benign, malicious, witty, and dull—cling to popular songs like precious gems to a medieval reliquary.”

One of these stories reported that Irving Berlin stole his best melodies from the shoe-shine boy in front of the Brill Building where many songwriters kept small offices. The story goes that the shoe-shine boy hummed to himself while putting the final buff on

the Berlin wing tips. Irving Berlin picked up the shoe-shine boy's hum and kept humming it on the elevator and then into an office where a musical stenographer stood by to convert the morning's hum into songs such as "Blue Skies" and "A Pretty Girl Is Like a Melody."

This story found its way into print. Billy Rose, a part-time lyricist ("Me and My Shadow," "Don't Bring Lulu") and a big-time Broadway producer, published under his name a New York/Broadway newspaper column in the 1940's. The column was ghosted by a talented writer. The ghost put a twist on the widespread suspicion that Billy Rose could write nothing but a promissory note. The ghost used the Billy Rose column to retell the Irving Berlin story. He then added that Irving Berlin compensated the shoe-shine boy by paying for an education at Princeton. Now the boy is writing the Billy Rose columns.

What does a biographer do when he discovers he cannot get at what it is that explains the mind of the writer of popular song hits? What does he do when he learns that the songwriter, himself, had no confidence in his own ability to predict whether a song he wrote would be a hit or a flop? What he does is explore in great detail the songwriter's personal life. What turns up is generally unfavorable. Joan Peyser's biography of George Gershwin portrays Gershwin as a rather nasty young man with a disorderly personal life who fathered an illegitimate child. Laurence Bergreen's biography of Irving Berlin portrays Berlin as selfish, insecure, and envious of other songwriters.

McBrien wants to be good to Cole Porter. He is discreet in his revealing that the inspiration for Cole Porter's love-song lyrics follows the line of Marcel Proust's heartbreak relationship with Albertine. The cast of characters McBrien brings in who made up

Cole Porter's circle includes people Proust would have found of interest—for any number of reasons. The names I scooped out at random from the McBrien index have the ring of those in attendance at a Guermantes salon. There is Princess Helen of Roumania, King George II of Greece, the Duc de Tallyrand, the Princess de Polignac, the Duke of Alba, King Alfonso XIII of Spain, Princess Mdivani and, of course, the Duke and Duchess of Windsor.

Cole Porter and his circle reveled in conspicuous consumption. They believed with religious conviction that common decency required them to possess inherited wealth.

How did the boy born on a farm in Peru, Indiana, in 1891 (or as he sometimes said, 1892 or 1893) grow up and connect with such a high-society crowd? The answer is ready cash and a talent to amuse.

That talent accompanied him from Worcester Academy, to Yale and to Harvard Law School. Along the way he picked up a respectable musical education. He dropped out of Harvard Law School and proceeded *moderato* by small steps to his real port of call, the Broadway musical.

But first World War I. Exactly what he did Over There remains the subject of controversy. He told stories of volunteering as a combat ambulance driver. Some said he got lost on the way to the front, took a wrong turn and wound up on the Champs Elysee in a uniform that startled by its originality those in the regular military.

After the war he played the playboy who wanted to prove that his *saloniste* entertainments, his party songs and lyrics, were up to the Tin Pan Alley requirements—big sheet-music sales. He proved that in 1919. His song, "Old Fashioned Garden," sold very well.

In addition to his songwriting success, in 1919 he had another success. He married Linda Thomas. She was an incontestable beauty, underwritten by millions by way of a divorce settlement. She liked jewelry, especially diamonds as big as the Ritz. Linda's money, Cole's family money, and the royalties that were to roll in put their marriage on a sound financial basis. There was money for travel in oriental splendor to London, Paris, Cairo, and Venice. There were penthouses and villas and white-gloved servants. There was room service, butlers, enablers, and chauffeurs. Mr. McBrien includes photographs of the playful crowd out to prove the theory of the leisure class. The distinguishing characteristic that sets Cole Porter off from his friends was his instinct for workmanship. When he got an offer to write a show he jumped ship, even if it was a yacht. He imprisoned himself in the Waldorf Towers, all pent up in his penthouse, working away on the words and music.

By the time Cole Porter came along, American popular music had undergone many changes. George M. Cohan uncoupled it from bathetic ballads and European operetta. Cohan tricked out his songs with New York slang and catchy titles. This, plus the ragtime craze of the 1900's, assisted by Irving Berlin's "Alexander's Ragtime Band," converted popular music into a highly profitable industry that exported its product worldwide. Its center was New York City where the songwriters, the music publishers, the song-sheet printers, and the song pluggers huddled together rhyming June with Moon under a cloud of cigar smoke. The songs followed a simple musical formula and everything had to be over in three minutes, record time.

Irving Berlin sensed each change in the public's mood. He wrote the best ballads and the best rags. He could do the sophisticated songs that became the 1920's/1930's style, such as "Top

Hat, White Tie and Tails.” As the 1920’s ended, George Gershwin pulled neck and neck with Irving Berlin. Then Cole Porter gained on them both and won the race.

Why did he win? His knowledge of upper-class superficiality was the real turtle soup. Irving Berlin’s and the Gershwins’ was only the mock. The ironic language of the upper classes was Cole Porter’s mother tongue. The Berlin/Gershwin lyrics reflected the give-away accent of New York’s Lower East Side. Cole Porter put into his lyrics the right brand names. He knew them well enough to knock them off. He knew why “Miss Otis Regrets She’s Unable to Lunch Today.”

By the year 1937, when Cole Porter was 46 years old, the gods themselves grew envious of this man who had it all—the money, the talent, the friends. The gods, thus challenged, struck with a vengeance. Cole Porter was thrown from a horse and suffered serious and permanent leg injuries. He never recovered. He was rarely without pain for the rest of his life. He never again walked without help—a cane, a crutch, a helping hand. And finally the wheelchair.

Despite it all, he continued to write the words and music that conveyed the anguish, not of an injured man, but of the lives of the people who had it all, including the condiment of *weltshmerz*.

McBrien falls into the trap of imposing a heavy analysis on the Cole Porter lyrics. This is a vain endeavor. The lyrics without the music are only light verse that, as light verse, does not get under the skin. It is the words plus the music that do it. Cole Porter’s pal, Noel Coward, caught it when he had one of his characters say “Strange how potent cheap music is.”

There are two book-long studies of popular song lyrics. The books are *Poets of Tin Pan Alley* by Philip Furia and *Word Crazy* by Thomas S. Hischak. In both books Cole Porter’s lyrics are scanned,

annotated, and sourced. In neither book can the author give the kick that comes when the lyric dances cheek to cheek with the melody. It is the difference between the lightning bug and the lightning flash. It is the voodoo that Cole Porter does so well.

There is a songwriter's math comparing lyric to melody:

Good lyric + bad tune = no sale

Bad lyric + good tune = good sales

Cole Porter lyric + Cole Porter tune = great sales

Frank Fay, a vaudeville comedian, used the bad lyric-good tune equation to demonstrate how a good tune saves a bad lyric. He used the 1930's popular song, "My Old Flame." He sang the opening line. *My old flame I can't even remember her name.* He satirized the inanity of it. He wound up his monologue by singing, with great emotion, a song of his own called "I Shall Never Forget What's Her Name."

For those who wish to know each detail of Cole Porter's life, McBrien's book is the place to go. Each show and movie is described and each song given its time, place, and circumstances. For those who wish to make believe they have a butler, a porter, and an upstairs maid and can dance like Astaire and Rogers and who want to cure a slightly broken heart by demonizing that old devil called love, I have a prescription. I prescribe an hour with the Cole Porter songs recited by his favorites Ethel Merman and Fred Astaire. When asked why he liked Ethel Merman, Cole Porter said she was the missing link between Lilly Pons and Mae West. As for Fred Astaire, Cole Porter wrote the songs Fred would write if Fred could songwrite as he tap-danced.

My Cole Porter favorites are: "You're the Top," "Just One of Those Things" (written overnight), "Let's Be Buddies," "Anything

Goes," "My Heart Belongs to Daddy," and we'll end with "Make It Another Old Fashioned, Please."

Yes, despite the fact that the times Cole Porter's songs bring back never existed, we shall mark it off as Just One of Those Things. It is the unsubstantial pageant faded, leaving only the songs behind.

Mr. McBrien deals gently with Cole Porter's sad last years. They were days and nights of crowds without company, and dissipation without pleasure. He died in Santa Monica, California, on October 15, 1964.

The American Scholar

Jacob Stein took part in the Bar Library Lecture Series on January 21, 2009 with a presentation on "Perjury, False Statements & Obstruction of Justice." Generous with his time, Mr. Stein was generous in other ways as well as indicated by the language in the preface to the third volume of *Legal Spectator* from which the following was taken. Mr. Stein wrote "This book is not copyrighted. Its contents may be reproduced without the express permission of, but with acknowledgement to, the author. Take what you want and as much as you want." The works featured in the *Legal Spectator*, originally appeared in the *Washington Lawyer*, the *American Scholar*, the *Times Literary Supplement*, the *Wilson Quarterly*, and the ABA Litigation Section's publication. I want to thank Bar Library Board of Director Henry R. Lord for his time and efforts in reviewing the writings of Mr. Stein for inclusion in the *Advance Sheet*.