PROHIBITION—A STUDY OF THE PROBLEM
AND THE REMEDY
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PART TWO—THE REMEDY

In the issue of this magazine for last month we ventured upon a
discussion of prohibition in sundry of its aspects as a problem
for solution, deducing such lessons as we might from our experi-
ences, past and present, with liquor-agitation and liquor-legisla-
tion, but the remedy we reserved for later treatment. Our study
of the subject led to the conclusion that the cause of temperance
was hindered and not helped by the attempt at an enforced absti-
nence and that so far from simplifying the governmental task cen-
tering about the manufacture and sale of liquor it had enormously
complicated the problem and had brought new evils in its wake
which were sorely afflicting the body social.

With the liquor habit making converts among women and young
people and carrying its infection into social life at mixed gather-
ings—with the private home reeking with odors once confined to
breweries and wineries—with the illegitimate liquor traffic numbering
by hundreds of thousands its adherents and retainers, and corrupt-
ing through its fabulous profits in all great centers the instrumental-
ities of law and order—with the populations of large cities par-
celled out for exploitation by gang leaders, grown rich in the illicit
liquor business, and enforcing their brigandage by the terrorism
of sabotage and assassination—with indictments laughed at by the
chief beneficiaries of the traffic, even when they happen to be re-
returned, and prosecutions ineffective against them despite the
army of enforcement agents and the oceans of money expended—
with tons of poisonous concoctions pouring into the veins of mil-
lions of men and women, spreading blindness, insanity, paralysis and death, as though they were curses flung about by some god gone mad—with all this, and much more that defies recital, we pronounced prohibition a dismal and ghastly failure, supplying a remedy worse than the disease for the evils it sought to cure.

"But," says the critical reader, "assuming the truth of what you say, and that the present method is impracticable, what system between the extremes of absolute prohibition and the open saloon can be adopted within the eighteenth amendment? This, indeed, is the rub. Few more difficult questions have been presented for the consideration of constitutional lawyers. With prohibition fixed in the constitution like an iron spike in a granite wall the area for legislation is tragically limited.

Let not the restive anti-prohibitionist lay the flatteringunction to his soul that repeal or modification of the eighteenth amendment is in sight. The difficulties in the way of any amendment to the constitution are most formidable. As is remarked by Professor McBain in his Prohibition, Legal and IllegaI, "the legislatures in the thirteen least populous states in the Union, comprising less than five per cent of the total population of the country, can prevent." The truth is, moreover, that the predominant sentiment in this country turns again and again to prohibition and after every temporary fluctuation the voting masses come back to that method. Our examination of the history of the movement in the United States, as recorded in an earlier paragraph, abundantly demonstrates the truth of this statement. Were the eighteenth amendment removed from the constitution, and the question thrown back to the states, history would soon repeat itself, one state after another adopting state-wide prohibition, with national prohibition again as the ultimate objective. The cycle is inevitable, in spite of the foredoomed failure of the method, until a rational and effective plan is adopted which shall demonstrate in practice the expediency of a middle course between the extremes of prohibition and the open bar and the wisdom of leaving purely to the influence of education the superiority of abstinence over temperance in the use of liquor, if that superiority is real and not fancied.

II.

Of the varied plans thus far offered for the solution of the problem within the limitations of the constitution as now existing a few
only merits the serious study of the constitutional lawyer. All others run a-foul of definite pronouncements from our highest court or are clearly pre-destined to condemnation by that tribunal.

We may, in the first place, as urge many sincere students of the subject, amend the Volstead act and place at an arbitrarily high figure the alcoholic content which shall give to beverages an intoxicating character insofar as concerns national enforcement, leaving the states by legislation of their own to lower this figure in accordance with the wishes of their inhabitants. The idea, whatever its value in practical working, is an interesting one. Partisans of the present order strenuously insist that so to amend the Volstead act would be to utter a palpable falsehood and that so shameless a misstatement plastered upon our statute-books could never be tolerated as constitutional. It can not be gainsaid, of course, that such a statute would be a mere subterfuge and it does seem that such a law could not pass the test of constitutionality. It would be no worse, however, than the present statute which solemnly asserts, in the face of common sense, that one-half of one per cent of alcoholic content gives an intoxicating character to commercial beverages. Indeed, of the two the last is the most flagrant untruth, since a high alcoholic content will not intoxicate in the moderate quantities imbibed by temperate people whereas an alcoholic content of one-half of one per cent could not possibly intoxicate in any quantity consumable!

Between the proponents of this plan, on the one hand, and partisan prohibitionists, on the other, the weight of reason is unquestionably on the side of the former. Under this plan the national government would not undertake the enforcement of the eighteenth amendment except as to heavy alcoholic liquors, leaving light wines and beers to be vended as freely as was done in the old days of the saloon in so far as concerns federal interference, but allowing to the states the privilege of regulating the sale, use and possession even of these milder beverages or of banning them altogether.

Assuming the constitutionality of such a law—and it would seem clearly constitutional if the Volstead act is constitutional—its working is obvious. A few states, undoubtedly, here and there, would outlaw light wines and beers but any citizen could obtain his supply of these beverages from easily accessible states where the contrary was true and the occasion for bootlegging these commodities would
be greatly reduced. On the other hand the federal government would find its burden immensely lightened, since it could concentrate on liquors of high alcoholic content, and with wines and beers easily obtainable few might care to incur the hazard of purchasing from outlaw agencies, in the case of the more powerful liquors, questionable as these would necessarily be on the score of purity. Under such a system, moreover, Congress would not hesitate to make the purchaser equally punishable with the seller, and with the enforcement agencies of the general government devoting their energies solely to the extirpation of the traffic in heavier beverages the illicit vender would have much harder sledding.

The persuasive objection to this plan from the standpoint of the absolute prohibitionist turns on the idea of the open bar even for the sale of light wines and beers. Anything suggesting the return of the saloon, on however limited a scale, is sure to stir a psychological reaction which condemns it at once from the viewpoint of the extremist. It is true that even in the states permitting the sale of light wines and beers consumption on the premises might be forbidden by law and even consumption in any public place, including hotels, trains and restaurants, but there is no assurance that such limitations would be prescribed, and there is a universal lack of confidence in state enforcement in contrast with federal enforcement of liquor regulations. The feeling, in reality is a deep-seated one among the prohibition masses, and it is not without justification, that once liquor vending places are licensed under state auspices, even in the case of light wines and beers, and under whatever restrictions otherwise, heavier liquors will be smuggled through with comparative ease and the old order of things thus reestablished against which so long and arduous a struggle was waged.

Quite apart from these aspects of the problem, involving the determined opposition of the prohibitionist faction, there is a practical consideration in connection with all merely state-wide methods of liquor regulation which cannot be lost sight of and which may procure for such plans the quiet but effective opposition of business interests unallied with the prohibition cause. This consideration revolves about the disadvantage a prohibition state suffers from the proximity of non-prohibition states. The existence of an open state next to a closed state will protect the machinery of enforcement in the latter against collapse, since a ready revenue exists for
supplying legitimately the liquor wants of those in the prohibition state who would otherwise make possible by their patronage the existence of illicit agencies of manufacture and distribution, but the citizens of states predominantly prohibitionist in character can easily picture the long cavalcades of automobiles rolling across the state line to non-prohibition centers, which would inevitably be combined with general shopping excursions to the detriment of the mercantile interests of the dry states. It was prohibition on a national scale which offset this objection to the prohibition program in the separate states and won to the support of the measure the business interests of doubtful states which saw a state-wide ban in the offering if the eighteenth amendment should fail of adoption.

Another objection to the plan of a federal enforcement act confined to liquors of high alcoholic content, with lighter beverages left to state regulation or interdiction, is the political turmoil which must at once result in the various states. The tumult in the national law-making body over such a drastic amendment of the Volstead act will be quite enough for the average citizen and congressman to contemplate. We can readily picture the wracking scenes and episodes in the drama to be enacted. It is an easy prophecy that by the time the warfare between the wets and drys over the modification of the Volstead act has ended in an acceptable amendment the whole country will be heartily weary of the overwhelming inundation of perfervid oratory. To meditate without aversion on the political storm that must immediately follow in every state over absolute prohibition or the type of regulation the particular state shall adopt is quite impossible. The gorge rises at it. To some, at least, sick unto death with super-heated politics, even the monstrous and abortive thing we have now would be preferable.

Attractive in the abstract as the idea may be, therefore, and powerful as might be its appeal, on the score of states' rights, to democratic feeling in the Southern states, precisely where prohibition sentiment is most strongly entrenched, the practical objections are insuperable. The like is true of the plan occasionally suggested for complete repeal of the national enforcement act without substitution, leaving enforcement wholly to the states—an expedient, indeed, to which prohibitionist partisans would never agree and which, if adopted would produce political chaos, each state becoming the arena of as bitter contests between the wets and drys as dis-
graced political history in the days of local option. The same mo-
tive, moreover, which moves business interests from a purely ma-
terial point of view to prefer national to state prohibition would
urge a powerful opposition to such a plan. State enforcement alone,
as viewed by the prohibitionist, means the equivalent of the open
saloon in wet states with absolute prohibition in others, bringing
in its train, on top of all other problems, the huge pilgrimages to
liquor-shrines across the borders which so greatly irk dry state
merchants.

If we reject, as we must, the repeal of the Volstead act, so as
to leave enforcement wholly to the states, and refuse its modifica-
tion so as to place at an arbitrarily high figure the alcoholic content
which shall subject a beverage to federal displeasure, even though
such figure be designed merely to protect the sale of light wines
and beers, the enemies of the present order of things will be driven
to a direct attack on the eighteenth amendment, or if this proves
unavailing, or is given up in advance as fruitless, as will probably
be the case in view of the extreme unlikelihood of a successful out-
come, they must turn reluctantly to an expedient which has always
been open but to which confirmed American sentiment is opposed
except as a last resort—namely, the institution and operation of
public dispensaries.

Notwithstanding the deep American repugnance to the idea of
the government in business, a consideration of the question in the
light of historic experience does lead to public control and sale,
with laws against consumption on the premises and possibly against
consumption in any public place, including even railroad trains, ho-
tels and restaurants, as the solution which will best meet the pec-
uliar difficulties of the problem and provide the most promising
middle ground between the prohibitionists and their antagonists.
It is to public control and sale that the evolution of liquor legisla-
tion always tends, as one method after another breaks down, and
once the American public is reconciled in the abstract to the thought
of the experiment any disturbance in the orderly progress of the
movement toward this objective will be chargeable to the advocates
of the present system.

Opposed to the open saloon, and to prohibition as its antidote,
the advocates of the middle course, who have realized all their
fears and seen their worst predictions signally fulfilled, point to
government control and sale as the ultimate event of these ten years and more of vexation and futility. They warn the unreasoning partisans of the present system that if the mockery of prohibition continues, as continue it must if unmodified, the revulsion of sentiment now definitely on its way, and easily attaining irresistible proportions, may sweep the whole "noble experiment" into the discard and restore with all its incidents the era of the saloon—something the moderate as distinguished from the extreme anti-prohibitionist desires greatly to avoid.

In the domain of public control and sale the plan which most readily suggests itself is the state dispensary system and this is now urged as reconciling state regulation with national prohibition under the Volstead act. It is earnestly contended by the advocates of the plan that the eighteenth amendment applies only to the manufacture and sale of alcoholic beverages by the citizen in the channels of commerce as distinguished from the manufacture and sale by the state itself, thus leaving the way open to a system of public dispensaries in the wet states. It would be difficult to make a convincing case against the validity of such a regulation under the federal constitution in its present form. Chance expressions might be found in the decisions of the courts seeming to imply the contrary, but no decision since the eighteenth amendment has ever directly involved the question and it is a truism of the law, familiar to all lawyers, that language in court decisions not strictly pertinent must be rejected.

The eighteenth amendment, which has precipitated such deluges of printed matter, is in fact a very simple utterance. The citizen is clearly forbidden but that a sovereign state has wrested from it by the language of the amendment the power of manufacture and sale which unquestionably existed before is quite another thing. The whole background of American history runs contrary to such an idea. The student of constitutional law is taught, as his first principle, that all power not vested in the federal government by the express language of the constitution, or by necessary implication from its terms, nor denied to the states, is left to the latter. Every tyro in the law knows this by heart. To annul a prerogative which at the foundation of the government each state withheld in the formulation of the national covenant would surely call for something like an express declaration. It would have been easy to
say that the interdiction of the manufacture and sale shall apply to the states themselves and the silence of the amendment is eloquent of a desire to avoid a pronouncement on the subject. If that silence were due to mere oversight the conclusion would be the same, but the conspicuous example of South Carolina, with its system of state dispensaries vividly in the memory of all prohibitionists, forbids the idea of inadvertence. It is a reasonable view that the domain of state manufacture and sale was purposely left untouched by the framers of the amendment, and should the subject ever come up before the Supreme Court we can not doubt that such will be its decision.

IV.

It is not alone, however, nor indeed chiefly, on the score of constitutionality that the opposition to a system of state dispensaries will turn. Partisans of the present system recognize in the state dispensary, once established and in operation, the death-knell of national prohibition and the practical restoration, according to their view, of the reign of the saloon. Not only the leaders but the rank and file of the prohibition forces are wholly without confidence in the capacity of any state, and less, if it were possible, in the capacity of any local constabulary to confine a state dispensary to its legitimate function. It is possibly true that prohibition sentiment of the less radical wing would accept the dispensary idea for the wet states, modifying the eighteenth amendment, should need be, to validate the plan, if adequate assurance could be given that such an institution would be kept within bounds. It is the belief, however, of all prohibitionists—and the belief indisputably rests in sound warrant—that no state wet enough to institute a dispensary will have either the wish or the power to restrict dispensaries to the sale of liquor in sealed packages with regulations against consumption on the premises or in any public place. Less than this, indeed, prohibitionists would refuse at this time to accept, since the basis of their quarrel is not merely the insidious influence of social drinking but the evil example of public drinking, and a dispensary law which permitted consumption of liquor on the premises where sold, or on railroad trains and in hotels and restaurants, would mean little less to them in their present state of feeling than the open saloon.

Quite aside, moreover, from the difficulty of keeping the state
dispensary under control the idea itself is objectionable, not only to prohibitionists but to sound thinking anti-prohibitionists as well, on the score of the political chaos which must result in all states when the issue is again and again presented to the voters either by the insistent wets or the insistent drys. It is perhaps the surcease from political hubbub upon the liquor question in the various states which has helped to check the outburst of public rage over the abuses of the present system, and but for that offset to the odium of prevailing conditions the discontent with the effort to legislate an appetite out of existence might have attained volcanic fury by this time. The state dispensary plan, once its constitutionality under the eighteenth amendment and its validity under the Volstead act become clear, would serve as the generating principle of political storms in every state where a sizeable wet sentiment can be found, and with the cyclonic nature of liquor elections rooted in the memory of millions of voters any recrudescence of ancient conditions will be fought with desperation, not only by prohibitionists but, in all likelihood, if anything better can possibly be devised, by a large proportion of the antis.

Not only, however, will the state dispensary be unacceptable upon the grounds we have mentioned but the proximity of wet and dry states will evoke opposition to any method for the former of public control and sale. Business is a very sensitive affair and with the purse strings so easily opened for shopping purposes in general by the stimulus of such excursions the mercantile interests of the prohibition states will recognize the menace to their material welfare from the endless lines of automobiles piercing the wet states from all dry sections. An eloquent challenge is sure to appear from the representatives of all states definitely committed to prohibition whenever the suggestion of a state dispensary for wet states comes up for discussion. Every argument serving to condemn the idea will be utilized by its opponents. The expense of policing the highways—the safety and despatch of traffic—the physical welfare of pedestrians with drunken drivers dashing about—even the threat to the amusement business in the dry states on holidays and church attendance on Sundays—all these grounds and others will be urged with fervor by voices from the prohibition states against any innovation which shall give to the neighboring states the lure of legalized liquor sales, if any power of Congress can prevent.
It is quite true that a system of state dispensaries would do much to relieve the difficulties now in the way of national enforcement. It would supply the safety valve necessary to protect the mechanism of federal regulation and redeem the condition of ineffectiveness and futility which attends at this time the whole prohibitory scheme. With dispensaries in the wet states available bootleggers, now badly overworked everywhere, might enjoy some abatement of the pressure on their time, and the army of enforcement agents, struggling in vain to sweep back the foaming tide of intoxicants, might mop their dripping brows and take an easy breath. It is no strain upon our credulity to suppose that where a dispensary can be reached without too much exertion the thirsty-afflicted devotees of the bottle and the beer-mug would willingly exchange the labor of a short walk or brief ride for the danger and uncertainty of a visit to their favorite bootlegger, and if the latter should offer to undersell the legitimate agencies the possibility of blindness, paralysis, madness or death from the cheaper potions might suggest the superior wisdom of the lawful source of supply, particularly with a prosecution possible as an added deterrent for the illicit purchase.

No such argument, however, can be prosecuted without interruption by the prohibitionists. Nothing, they urge, can prevent the lapse of a state dispensary into the equivalent of the old time saloon. State enforcement has always been, they insist, inadequate to control the traffic and local regulation in such cases is a thing to jeer and laugh at. If, say champions of the present system, state dispensaries are not within the eighteenth amendment and the Volstead act, and are purely an intra-state affair, the federal enforcement machinery will have no jurisdiction in states where the dispensaries are set up beyond seeing that the citizen, as distinguished from the state, does not engage in the traffic, and with state and federal courts splitting hairs in such cases as to state and federal spheres of activity, and with cases tossed from one to the other, the federal authorities will wash their hands of any effort to protect the dispensaries and leave the wet states which embark in such ventures to muddle through as best they can, just as the states now, even those predominantly dry, pass to the federal authorities the duty of enforcing the Volstead act and themselves go on to other tasks.
The alternative for the state dispensary system, if we are to adopt, as it seems we must, some form of public control and sale, is a national dispensary system. This idea is even more objectionable from the standpoint of orthodox American sentiment than the idea of a state institution of the kind, but no consideration of sentiment can be permitted to weigh against the pressing need for an early solution of the problem and if a national dispensary system is our speediest and surest redemption from the course of present conditions a long-suffering electorate will forget its disapproval of the principle for the sake of the good to come from the remedy.

For the extreme partisan of prohibition, with whom abstract sentiment counts for little where the fate of the movement is concerned, the idea of the government in the liquor business will give no pause if that expedient is necessary to prevent a return to the saloon. The course of the prohibition extremists, indeed, is not difficult to predict. Once the possibility of the state dispensary system dawns upon them and the fact is demonstrated that such a system can be adopted by the states in the face of the eighteenth amendment and without modification of the Volstead act, the clamor for a national dispensary system to the exclusion of experiments of the kind in the separate states will be general and insistent.

The arguments which are the most persuasive against the state manufacture and sale of intoxicants are ineffective against manufacture and sale by the federal government. Such a system operating throughout the country would meet the objections of the in-veterately dry states to any system of sale by or within the separate states on the score of the drift of business across the border to the wet centers. A national system would operate under regulations against consumption on the premises, so that no where could the danger exist of the national dispensary becoming an open bar and, free from dependence on local conditions, the laws on the subject would be more rigidly enforced than is ever possible through state courts and juries.

The sale of liquors by the national government in sealed packages, and with laws against consumption on the premises, and under reasonable regulations otherwise, would go far to destroy the business of the bootlegger, put an end to gang wars and racketeer-
ing, which derive their inspiration and sustenance from the illicit liquor traffic, remove from elections in populous centers the corrupting influence of the beer-baron and the rum-runner, and return to their normal channels the activities of our courts, now completely inundated with prosecutions growing out of violations of the federal enforcement act.

Seeing that Congress, under a national dispensary system, could not object to punishment for the illicit purchase as well as the illicit sale, with legalized avenues open to all citizens for obtaining liquors, under such restrictions only as the public interest requires, it is inconceivable that even the most bibulous would be moved to patronize the speakeasy, if such an institution could exist with federal dispensaries in operation. It is a fair guess, moreover, that as a part of any law established a system of government dispensaries the national legislature would freely concede to the advocates of complete abstinence a regulation against the consumption of liquors in any public place, including railroad trains and hotels and restaurants, thus confining to the home and the private club all indulgences in alcoholic beverages, both wine and beer and stronger drink, though the course of the experiment would probably demonstrate the safety of a relaxation in favor of light wines and beers with meals on railroad trains and restaurants, and possibly without meals, though for consumption on the premises in strictly regulated vending places.

With federal dispensaries throughout the land, merely sufficient in each locality to care for the actual demand, we would be sure to have a soberer nation than we can claim now. Experience has tragically demonstrated that where the demand for intoxicants exists the supply will be forthcoming, nor need the purveyors of the commodity in such case give much heed to quality and wholesomeness. A decade’s experiment has shown in fact that just because the law emphatically denies thousands demand the more vociferously, bidding defiance to the decrees of government in exact proportion as those decrees encroach on what they esteem their rights. With supplies obtainable through federal dispensaries under reasonable regulations that motive for lawbreaking would be gone.

A consummation devoutly to be wished, where present conditions are under consideration and to which we might fairly look forward as the result of a national dispensary system, is the lapse into oblivion of the frightful vogue which the flask has come to
enjoy among boys and girls and women, and of which the costly and elaborately-wrought specimens on exhibition in our jewelry establishments are mute but bitterly eloquent testimonials. The very scarcity of the unadulterated commodity has exalted what passes for the pure article to a position of primacy as a vehicle of good cheer at mixed social gatherings and with the deadly concoctions now passing from hand to hand in clandestine commerce supplanted by articles of pure manufacture easily obtainable at government dispensaries, the baneful challenge of present usages to the moral welfare and physical well being of boys and girls and women should swiftly disappear.

The most grateful of all advantages, perhaps, to come from a system of national dispensaries in substitution for the present plan, is the relief from tippling as a social duty—a species of enforced indulgence for which, ironically enough, the prohibition system is wholly to blame. To enter an office or residence as a guest, without the fear of being offered, through a mistaken hospitality, liquors of an unknown origin, or of any origin in the case of the total abstainer, would be balm to the sorely tried thousands who, in every section of this supposedly dry land, are constantly forced to accept or refuse that false token of cordiality, carrying by possibility always a hidden menace to mental and bodily health. Certainly no reason could exist for offering such indulgences to guests when the same commodity in its purest state could be readily obtained at government dispensaries.

That federal vending-places for the sale of liquor would completely abolish the present underground agencies for the distribution of criminal concoctions, so disastrous in their effects, may be safely asserted. The vile potions which pass for intoxicating beverages could find no purchasers in competition with the government-sold article. This would be true even in the absence of penalties but the laws against illicit sale would still exist. Any doubt, indeed, as to the drift of patronage in such a case between the pure article sold by the government and the doubtful product put out by the bootlegger is a reflection on the intelligence even of those foolish thousands in every community who now hazard health, sanity and vision in exchange for a potation at which the drivelingsot of the saloon days would have turned up his bulbous nose.

Apart from these salutary effects the solution of the liquor prob-
lem along the lines of a national dispensary would go far toward allaying the crime wave, mildly so-called, with which the country has struggled helplessly since the advent of prohibition. The evidence accumulates at an appalling rate that everywhere crime has come to rotate about the illicit liquor traffic, with a distinct interrelation between its various branches, and with mutual understandings and common agencies of protection. In the huge ramifications of the system, with its mountainous profits and wholesale debauchery of the police and prosecuting agencies, terrorism has become a fine art, and even where indictments against the leaders of the traffic can not be prevented trials are rendered nugatory by fear of assassination on the part of state witnesses. The present writer lays no claim to powers of divination but he ventures the statement that the transfer of the liquor business from the bootlegger to the national government would do more to destroy crime in its breeding-grounds than could be accomplished by the authorities if every grocery establishment were a court and half the citizens were armed officers of the law.

An objection to the idea of national dispensaries sure to be urged by many is the abhorrent notion of the federal government as a saloon-keeper. It is not a pleasant thought. None the less the same objection will apply to state dispensaries, and if, as we believe the state dispensary is constitutional and requires no change to its creation either in the eighteenth amendment or the Volstead act, the partisans of this view will have their choice between the state as a "barkeep," operating vending places in the states differing little from the old time saloon, and the national government as the dispenser of liquors in sealed packages with penalties against consumption on the premises and possibly against consumption in any public place. Should the extreme prohibitionist hesitate between such a choice his supposed convictions on the subject can be nothing more than blind prejudices. If we are correct in our assumption that the national dispensary would starve the bootlegger into extinction the present enormous cost of national enforcement would be reduced to a modest figure and the distribution of the commodity at even moderate prices would yield a handsome profit which might be devoted to temperance propaganda on a national scale, thus letting the traffic supply by educational methods the means of its own destruction.
It will be urged by earnest advocates of the present system that any hope of destroying the bootlegger through federal dispensaries is utterly vain, even were all the advantages realized which we expect, and they will point to the undeniable fact that in South Carolina, while the dispensary system prevailed, the secret traffic to some extent went on. The South Carolina dispensary system is not a true parallel. It was in reality forced on the state by Governor Tillman through sheer political might, and was without actual support in public sentiment. There was no penalty against an illicit purchase equally with a penalty against sale which, while wholly inadmissible under a system of absolute prohibition, would be practicable and logical under a dispensary system. Chiefly, however, and above all, the persuasive distinction between the South Carolina experiment and a system of federal dispensaries lies in the fact that the former rested for its enforcement upon local machinery and state courts, with constant susceptibility to local influence in contrast with a national dispensary system, wholly free from local influence and dependent entirely upon national agencies of enforcement.

Why, with national dispensaries close at hand, and the consumption of liquors in the place where purchased made a penal offense, as would probably be the case, any citizen would feel the urge to patronize the illicit vender, is hard to conceive, particularly with punishment in the hands of the federal authorities and the pressure upon enforcement agents sufficiently reduced to make possible prompt and proper prosecution of offenders. Let us assume, however, as doubtless is true, that even under these conditions places would occasionally be found where, in spite of the law, liquors would be sold and consumed on the premises. True it is, none the less, that such places will be relatively few and whatever commodities they dispense will be of the pure variety sold by the government, for nothing less need be accepted by patrons. Even, though, moreover, under a system of federal dispensaries, clubs should thrive here and there where liquors are served this will be infinitely better than the conditions that now obtain. Our problem, after all, is to leave the citizen as large a freedom as possible consistently with the general welfare and to institute conditions under which the evil of the drink habit can be isolated and dealt with by sane methods instead of being spread abroad through vicious channels, corroding as
it goes and eating away the supports of public order and private health and character.

Certain to be offered against the idea of a national dispensary is the danger of a lapse of the system into a huge political machine operated for the benefit of the administration in office. It was this, in fact, rather than any intrinsic demerits of the plan itself which brought about the overthrow of the state dispensary system in South Carolina and its substitution by a system of county dispensaries. The unseemly spectacle, moreover, of manufacturers of liquor vying with one another by methods none too savory for the liquor contracts of South Carolina is one no thinking man could desire repeated on a national scale. As regards these considerations, however, any objection to a federal dispensary system is, we are persuaded, largely fanciful. Liquors for federal dispensaries would be manufactured under government supervision or purchased abroad. The opportunity for corruption, moreover, should be no greater than exists now in the construction of federal buildings and the huge projects on which the national government is constantly engaged. The use of the dispensary system for political purposes as in South Carolina would be impossible in the wide diffusion of the system throughout the United States and would be held in check, besides, by civil service regulations. At the worst, however, the system would afford less opportunity for political spoils than does the present system of prohibition enforcement with its multitude of officers and agents for appointment and millions of money for expenditure.

It is probably true that no solution of the liquor problem along absolutely ideal lines is practicable. To get along well either with or without the traffic in some form is not possible in the present state of progress. Human nature in this domain is too much for even the astutest statesman and no plan, perhaps, will ever work in a wholly satisfactory manner. Whatever its shortcomings, in actual practice, however, a national dispensary system is sure to work immeasurably better than the plan we have now.

VI

Be all this as it may, our chief difficulty in this field is not with the comparative merits of federal and state dispensaries. It is wholly from another quarter the leading obstacle comes. Our problem springs from doubt of the constitutionality of a federal
dispensary system even in the absence of the eighteenth amendment. We have here a very different type of inquiry from that which confronted us in connection with the state dispensary idea. The states, as we have said, possess all power not delegated to the Congress of the United States and with only such powers vested in the national government as can be found within the four corners of the federal constitution the task before us assumes impressive proportions.

In so far as concerns the construction of the eighteenth amendment in this regard application of familiar principles of interpretation will lead to the conclusion that by the amendment no hamper was placed on the federal arm to create and operate liquor-dispensaries if such power existed before the eighteenth amendment was adopted. That such a power did exist, however, we are not prepared to assert. It is true that federal activities quite as foreign to what must have been the ideas of the fathers have been sustained under one clause or another of the constitution. It is certain, also, that in the march of progress room must be found within the constitution for various exertions of the central government undreamed of at this time. A hundred years from now, doubtless, reviewing the decisions of our Supreme Court, upholding as valid the multi-form activities of the national government in the inconceivably intricate civilization of that distant time, the idea of a federal dispensary system as a valid exercise of the federal power may seem simple enough, but just now the idea presents a baffling problem and one with which the student and practitioner of constitutional law wrestles in vain.

One prediction, however, in this aspect of the subject we may venture without hesitation to make. If no warrant can be found within the national covenant for a system of federal dispensaries, and the constitutionality of state dispensaries under the eighteenth amendment and the Volstead act is accepted, as we think is inevitable, the relentless prohibition partisans will be the first and most eager to champion, by way of compromise, a modification of the eighteenth amendment to legalize federal dispensaries and invalidate state dispensaries. With the eighteenth amendment ineffective to prohibit the latter, and the Volstead act consequently inapplicable, the uncompromising prohibitionist will realize that his long-fought-for and dearly-bought victory has turned to thin air in his hands. The exchange of the private saloon of the old day for the govern-
ment saloon in the wet states, operating under the guise of a state dispensary, will be poor pay for the heroic and devoted effort which brought to birth the eighteenth amendment and the Volstead act, and if a state dispensary is within the constitution at all it is within the constitution in any form and even though it exactly reproduce the atmosphere and environment of the old-time bar.

More and more, as this angle of the situation becomes clear, will the idea of a modification of the eighteenth amendment become attractive to the prohibitionist rendering impossible the state-owned dispensary, and as such an amendment can only be obtained at the price of a substantial concession to the anti-prohibitionists, and a federal dispensary provides the logical middle ground, that contingency swings distinctly into view. The extreme wets would doubtless prefer the wideopen state dispensary, and would be loath to give up the privilege of establishing such agencies if that privilege exists, but the country is still, certainly when counted by states, predominantly dry, so as to defeat, in all probability, either repeal or modification of the eighteenth amendment, and the extreme anti-prohibitionist would doubtless consider it a fair exchange to give up for all time the possibility of state dispensaries in order to make constitutional beyond question the establishment of federal agencies of the same kind.

An attitude of opposition, indeed, to any modification of the present system is no longer consistent with reason or good sense, and hardly consistent with sanity. The signs are too numerous and too ominous for such a course on the part even of the extreme prohibitionist. The wise champions of the cause have long since anticipated the time now upon us when a revulsion against the abuses of prohibition and its enforcement would compel a recession. Nor can the shift of responsibility from one department to another avail. The difficulty is not with the instrumentalities of enforcement but with an essential vice in the prohibitory idea. It is a matter of principle and not one of personnel, and no alteration in the machinery or technique of enforcement will solve the problem. Forlorn a hope seemingly as may be any attempt to repeal the eighteenth amendment outright, and extravagant as may be the waste of time and energy involved in such an effort, the undertaking is sure to be launched by a desperate electorate if no middle ground can be found. The accomplishment of such an end will require, of course, an up-
heaval against prohibition almost revolutionary in character, but the upheaval is not beyond possibility, and however slender the chance, to all appearance, even now, a wave of execration from all winds of the compass, in default of a moderate course on the part of the prohibitionists, may remove this excrescence on the federal constitution born in an hour of fear and travail.

The prohibitionists have taught the country the terrible power of an organized and determined minority and the lesson will not be lost upon the antis and the moderates. The extremists must abandon as the sheet-anchor of their hopes the program of law-compelled abstinence and the slogan of no compromise with liquor. The whole question, moreover, must be removed from the domain of religion, where it so easily becomes the subject of unreasoning fanaticism, and restored to its proper place as an economic problem to be dealt with by statesmen-like principles of legislation. The tenure of prohibition as a religious crusade is in reality at an end and the sentimentality and frothy declamation familiar to students of the movement represent a wholly obsolete note in the discussion. A flouting by the prohibitionists, finally, of all admonitions from the moderates means, we are sure, some day, some way, the return of the old-time saloon for a long and obstinate lease of life before the cycle of reform begins again.