HISTORY OF THE LEGISLATION

AND

DEVELOPMENT OF THE FEDERAL LIQUOR POLICY

1862 - 1876

By

Robert Tibbs Maxey

May 1909.
SOURCES: - Leading sources -

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Accession for this investigation- Status of temperance---Page 2.
State legislation. Tax Bill - Bill Pictures -

SOURCE OF THE POLICY-------------------

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Proposed measure and a liquor policy proposed -
Attempt to state opinions in regard to liquor
policy - Question of hardship on distillers - Taxing
to prohibit - Various opinions - Taxing for
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sense - Question of licensing retail of liquor -
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cussed - Taxing rectifiers - discussion - Theories -
"Tax Bill" in Senate - Question of higher tax -
Sherman's policy and plan - Debate on motion
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Wilson's prohibition speech - Fessenden's reply -
Wilson and How debate. Prohibition speech by
Pomeroy - Opposition - Wilson again - Result.

The Special Revenue Committee - President of
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The Federal Policy of practical advantage to the liquor interests - Organized liquor power - Mistake of the government - Commissioner's admission - Entanglement of the government - Legal status - Who was right in congressional debits.
any one who would accept it. The cholera broke out that year
a monetary subscription was offered by the Secretary of the Navy to
money within any camp, fort or garrison of the United States.
agreed to the introduction of the American Temperance Society in 1829, which took place in the settlement of a day the Fourth
the first annual report of the
the New York Temperance Association that day from strong drink. The New York Temperance Society in 1829, or the American Society for the Promotion of
the body. This was followed by the organization in
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neither into the effects of moral strategy
The result was a rapid rise in public sentiment
消毒 of the public temperance sentiment and the status of the
Before beginning the investigation proper it is well to know
seriously desired the overthrow of the liquor traffic.
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INTRODUCTION
and it was discovered that those who drank were the first to succumb. The American Congressional Temperance Society was formed in Congress in 1833, with Secretary of War, Lewis Cass as President. The first National temperance convention was held that year in Philadelphia and it sounded the note of tee-totalism. The following year, 1834, Congress passed a law prohibiting the sale of ardent spirits to Indians. It was also this year that the "Kentucky Legislative Temperance Society, with the Governor as its President, voted to abstain from spirits and wine.

Then again, before undertaking to investigate Federal action in regard to the liquor problem, it is well to know the attitude and action of the states in regard to it. Maine had taken the lead by enacting a state prohibitory law in 1851. Following the Maine example came the Territory of Minnesota in 1852 and the state of Rhode Island; then came Vermont in 1853; Connecticut in 1854 and Michigan in 1855. In the same year the New York Legislature passed a similar law, but it was vetoed by the Governor. The same state passed another law in 1855, but it was declared unconstitutional by the Supreme Court. New Hampshire, Wisconsin and Nebraska Territory passed prohibitory laws in 1855, while Illinois and Ohio abolished high license laws. In that same year Iowa passed a prohibitory statute. In Pennsylvania the Lower House passed a prohibitory law, but it was rejected by the Senate. A tie vote defeated a similar law in New Jersey, Indiana, Delaware, Maryland and Texas were on the verge of State prohibition when the Presidential election of 1858 arrested the prohibition tide and began to draw the attention of the people to the cloud of secession on account of the slave trade in the South.

I. SOURCE OF THE POLICY.

It is not the purpose of the writer to give, under this heading, a detailed account of each act and amendment embodying the opinions as to the policy set forth in the debate on the tax bill in the thirty-seventh Congress. Such a task requires too much space. It is rather the intention to state merely the opinions and judgments of the different representatives, senators and revenue commissioners. Under the subject of legislation we shall see what opinions and judgements in regard to policy were finally adopted. We shall now see from whence the policy came.

In the midst of heated and impassioned controversy over the slave question, even the most conservative and wise statesmen on either side allowed prejudice to supersede principle in many instances, and this allowed misunderstandings to mis-direct their minds and methods. Under such circumstances, the inevitable result was war and blood-shed, ostensibly over the slave question, but practically and immediately over dis-union.

The obstinacy and tenacity of the Southern soliery soon alarmed the National Government and evidenced a great need of funds to prosecute the war to a successful close and the preservation of the union. The thirty-seventh Congress, confronted with this sore need, sought to provide funds through the creation of an Internal Revenue department. This department was organized with a Commissioner acting under the United States Treasurer as head of the department, and with assistants, deputies, assessors and clerks. The country was divided into Internal Revenue districts under the direction of district officers. Congress was unanimous in the one purpose of providing war funds and in the plan of securing a part of this fund through Internal Revenue. But the articles of taxation and a just proportion and rate constituted the perplexing problem.

The President convened a special session of the thirty-seventh Congress, July 4, 1861. This session lasted about a month. A tariff law was passed and approved August 5, 1861, but no system of internal taxation was agreed upon on account of lack of information as to the extent of the various articles embraced in it. Accordingly a sub-committee of the committee of Ways and
Meares was appointed to report a comprehensive measure and present it at the regular session.

It was not until March 3, 1862, that Thaddeus Stevens of Pennsylvania, chairman of the committee of Ways and Means, reported the Tax Bill which afterwards became a law — the Bill of which inaugurated the internal revenue system. The details of this Bill will appear later in this discussion. While the tax Bill comprehended almost every article of consumption, a larger portion of the discussion of it pertained to the taxing of liquors, and which portion embraces the object of this investigation.

Before entering upon the discussion of the policy introduced by the Bill above mentioned, it might be interesting to know something of the personnel of the committee of Ways and Means, which was entrusted with the responsibility of preparing the Bill, and after preparing it certainly felt called upon to back it up and foster it through. Mr. Thaddeus Stevens was a statesman of his time and a recognized leader of the Republican party, distinguished as an opponent of slavery, was for some time a member of the Legislature of his State, for many years a member of Congress, was most active against Pres. Johnson in the impeachment trial, and stringent in his proceedings against the States after the war; and upon his own testimony, was a liquor manufacturer and dealer. Mr. Justin S. Morrill of Vermont, another member of the committee, and the one who opened the debate and set forth the main features of the Bill, was a member of Congress for many years; author of the Morrill tariff in 1861; afterwards chairman of the committee of Ways and Means; later U.S. Senator. He served in Congress longer than any of his colleagues. Another most prominent man on that committee was Mr. Erastus Corning of New York. He was a wealthy merchant; member of Congress in 1857-63 and 1865-67; a leading railroad

2. II Session 37th Congress. p 1040
4. II Session 37th Congress. p 1040
5. II Session 37th Congress. pp 1194, 495, 496, 497.
capitalist; one of the regents of the University of New York and greatly interested in education.

On Wednesday, March 12, 1862, when the tax bill came up for discussion, Mr. Morrill, a member of the sub-committee, opened the debate by a speech in which he set forth the general features of the bill, calling attention to the fact that the measure, while imposing a duty upon almost every article of necessity and business industry, also imposed heavy duties upon spirit and malt liquors. Upon the subject of liquor, Mr. Morrill laid down as a fundamental principle that, "a tax dependent upon the habits and vices of men is the most reliable of taxes, since it takes centuries to change or eradicate one or the other". In substantiation of this statement he cited England as an example, saying, she taxed liquors enormously and had her drunkarism still; that the Chinese would brave death rather than give up their favorite stimulant, but he admitted that, after all, the bill was only an experiment. He held that the duties on liquors would be about one hundred per cent on raw whisky, fifty per cent on rum, twenty-five per cent on ale and beer, and even this was far below the point at which some prominent distillers thought it might be carried, and yet largely below the point indicated by those engaged in the business. "For once", said he, "men who are supposed to have large stocks on hand and those who would destroy the traffic regardless of revenue, agree in the propriety of an exorbitant tax". He was of the opinion that so long as consumption kept equal pace with production, the consumer must pay the increased price, and that consumption would not be seriously checked, but if it could be, "such a result would bring upon us no national disgrace". "Whisky and rum", said he, "with the duty added, will still leave it possible for any man or brute to get drunk in our land on cheaper terms than any other that I know of. Persons who like good liquors are patriotic on the subject of taxation and never quarrel about the price of the article; and those who swallow that which is said to be sure to kill at forty rods, will have it at any hazard of life or purse". Ale and beer were regarded by him less unhealthy than spirits; hence the relative difference in the tax.

2. II Session 37th Congress. pp 1194, 1195, 1196.
A few excerpts from the discussion which followed, both in the House and Senate, indicate the opinion, judgement, prejudice and attitudes of the various representatives and senators, which, combined and harmonized in the law enacted, form the precedent in policy established by that act of Congress—a precedent which afterward proved the basis of all future action in regard to the Federal regulation of the liquor traffic. All parties and forces in Congress, having consented to the policy set forth in Mr. Morrill's speech as to the advisability of taxing spirits for internal revenue purposes, at once proceeded to work out a system of regulating the manufacture and sale in such a way as would insure for the government, the collection of all taxes levied and, at the same time, foster the liquor business in order to secure the greatest possible revenue. While the temperance forces never agreed to the fostering policy, nevertheless, when they agreed to taxing liquor, they submitted to a policy which was destined to force them to submit to the inevitable outcome, which meant the fostering of an evil simply as a source of revenue that a tax on liquor high enough to destroy it. The first discussion calling for prolonged debate was on the interpretation of the term "capacity of the still." Some contended that capacity meant the size of the still; others that it meant the number of gallons produced per day; while others thought that if both the amount of liquor in the possession of a distiller and the capacity were taxed, it would impose a hardship on the distiller.

Mr. Dunlap of Kentucky objected to the tax on capacity because it would prove a hardship on the small manufacturer and operate to his exclusion from the business. Mr. Woodruff of Connecticut pleaded for justice to the small farmers who manufactured cider, brandy, since, in this small way, they were distillers; this tax, he urged, would prohibit them. While he considered the liquor business a very proper object to tax, it should be laid so as to do justice to those engaged in the business and also secure the greatest amount of revenue for the government. Mr. Dunlap thought the distillers were entitled to the preference in the matter, and while Mr. Cresfield would be glad to see in Congress to put a stop to the liquor traffic and

1. II Session 37th Congress p 1135;
2. II Session 37th Congress p 1303;
3. II Session 37th Congress p 1305.
of Maryland was pleading for the preservation of the distillers of apples and peaches. Mr. Wordsworth of Kentucky interrupted to assure him of the popularity of that business in his state. Mr. Cressfield insisted that if this class were driven out of business by a tax, it would ʺinjure a great many people without doing much good to the governmentʺ. ʺThey are willingʺ, said he, ʺto pay all the taxes necessary to support the government, but I will not be guaranteed for their good feeling, if you destroy their apple and peach brandy for domestic useʺ. The discussion at this point, called forth many expressions from several members in praise of brandy. Mr. Mallory asserting that all of them shared in the good taste of apple and peach brandy, while Thaddeus Stevens assured them that no one could complain of this kind of a drink, but if he did, let him take another drink and complain. He consumed much time telling how men acted who drank at the saloon he owned. This prolonged discussion of the good taste for liquor and the praise of it, caused much laughter from the friends of liquor among the members.

Mr. Rice of Maine favored a tax on liquor high enough to destroy the traffic and prohibit its manufacture. He would not discriminate partially against any citizen engaged in an honest and respectable business, but would, to the fullest extent, impose excise duty on liquor, let it fall where it might and injure what it might; ʺIf men are driven out of this businessʺ, he said, it will be all the better for the country. If Congress would only put down, either by direct or indirect means, these distillers that pour out fire and death and hell all over the land, I think it would be doing a good actʺ. Referring to a statement which some gentleman had made with regard to spirits being used for burning fluids, Mr. Rice said, that indeed they were burning fluids – burning up the souls and bodies of men throughout the length and breadth of the country. Hence he advocated going to the very verge in excise duty on liquor, holding that if any duty was to be collected at all, they should take all they could get – to the extent of grinding the liquor manufacture to powder, concluding with the declaration that if anything at all could be done in Congress to put a stop to the liquor traffic and
to distillation, peace and happiness would be brought to every walk of life where misery and distress then stalked.

Naturally enough such a radical speech as Mr. Rice made would call forth different views from other members. Mr. Hooper expressed as his opinion, that high tax would not prohibit, but that if he thought it would he would be in favor of it. On the other hand he thought it would merely be legislating money into the pockets of the liquor speculators rather than be benefiting the Treasury of the Government. But Mr. Babbitt of Pennsylvania favored increasing the tax on liquor, giving as his reason; "We are now establishing a system of revenue that is to last for all time. We ought to do so in view of that long future." He concurred with the opening speech of Mr. Morrill in regard to a tax on the habits and vices of men being the most reliable of all taxes and the most cheerfully and readily paid. The idea of taxing liquor on hand was advanced by Mr. Olin of New York who agreed with Mr. Rice that if a tax could be fixed which would annihilate the trade, so far as beverage was concerned, such would be a greater benefit to the country than all the victories which would be won in the following six months.

Mr. Morrill of Vermont, evidently becoming somewhat irritated because of the extreme views being presented by the different members, declared that it was difficult to get gentlemen to reflect and vote intelligently on such a question. "If", said he, "it be moved that this article of liquor be taxed, immediately AB or CD would arise and electrify the House with novel temperance speeches." This statement brought laughter. Continuing, he said, that if some one charged that the traffic ought to be put down because some men used it to excess as a beverage, then it was difficult to get gentlemen to fix their minds in order to vote even as they desired. The end desired by Mr. Rice met his favor, if it could be done. Hence he favored a higher tax on beverage liquor, thus making a distinction in favor of liquor which did not enter into the demoralization of a people, but was one of the aids to industry. He was of the opinion that not one-half the spirits manufactured in the country were used

1. II Session 37th Congress p 1309
2. II Session 37th Congress. p 1309
as a beverage, \textit{or liquor}. This remark also brought laughter from the floor.

The remarks of Mr. Morrill by no means ended the discussion, but rather called forth more expressions of opinion from the different members. Mr. Blake of Ohio favored high tax on liquors because he thought that when a man took a drink his heart would be moved with patriotic emotion thinking that he had paid one cent in behalf of the stars and stripes of the country. Gentlemen, he asserted, would often take a patriotic drink under those circumstances, and that there was not a man who would take a drink without consoling himself with the reflection that on every drink he took, he was paying one cent to put down the "accursed rebellion" which then raged throughout the country. We are not told whether Mr. Blake was seriously in earnest or frivolous in his remarks, but the record shows that the liquor element in Congress laughed heartily. One would think that a statesman would not seek to amuse when talking on a subject of such moment. However, such has ever been the method used in attempts to answer the so-called prohibition fanatics such as Mr. Rice. We must at least give Mr. Rice credit for being seriously in earnest, and, being so, his position should have been opposed in the same manner with such arguments as are unanswerable, and this was what Mr. Shelley-barger of Ohio evidently attempted to do. He said that he had nothing to say upon the propriety of legislation upon the moral reformation of the country, but it was his understanding that a tax on liquor of manufacture would not stop the manufacture of it and it was also his understanding that the bill proposed was not intended for that purpose, but rather to produce revenue. He did not understand that the bill was seriously considered as a measure of reform, but of finance, hence it would be wise to fix a light tax the first year and then gradually increase it in order to catch liquor on hand and not operate as a bonus to those in possession of large quantities. In support of high tax on spirits Mr. Rabbitt expressed the opinion that the producer would not be harmed by the increased price on the article for the consumer would pay that and not complain. Men complain, he said, of high prices on almost everything — the bread they eat, the butcher's meat, the fuel they use and even the corinelines and bonnets of their wives and daughters, but mortal ear never heard a man say that he

\begin{itemize}
\item \textit{I.} \textit{II Session 36th Congress.} p 1310.
\item \textit{II.} \textit{II Session 37th Congress.} p 1310.
\end{itemize}
paid too much for liquor". This remark also brought laughter from the liquor sympathizers. Then, as if aiming further to amuse his sympathizers, he added, "we never complain of that, we pay it cheerfully and gladly." Mr. John Brown brought deep curiosity in his convictions.

Another prolonged discussion followed the proposition to tax beer, some speaking in regard to the rate of tax, and others consuming much time in frivolous remarks as to whether or not beer was intoxicating. That beer would not intoxicate, Mr. Steele of New York gave as evidence, that some man had told him that he had drunk nine gallons in one day and was not intoxicated; while Mr. Blair of Missouri asserted, as proof, that he had drunk large quantities and had never felt its effects, and he further remarked, "I believe that beer did more to elect Abraham Lincoln than any other drink." Mr. Johnson of Pennsylvania interrupted with the observation, "however willing we may be to make the bill conduce to the morals of the community, we must consider it here solely as a measure of revenue." To which, Mr. S. C. Fessenden of Maine replied, that he favored such a high tax on beer as would prohibit it. Beer, ale and porter, in his judgement, were doing more damage in the East than whisky and brandy.

Continuing, he said, "our young men take their first lesson in intemperance on the strong beer, lager beer and porter which they get. They progress then to whisky and finally graduate such a graduation as it is, on brandy." It was his conviction that men in that part of the country would have more money to purchase the necessities from which a larger revenue would be derived, if they were deprived of the use of intoxicating liquors, and he was quite sure an high tax would prohibit the manufacture of the article. To this extreme view Mr. Pendleton replied by favoring a tax of one cent per gallon on beer, giving as his reason that he considered beer so healthful and refreshing, saying, "I may be considered a specimen of the result of lager beer". This light remark brought the usual laughter and seemed to stir him up to say that he would urge the singing of the praises of beer by all good and generous men, for it was so effective in bringing out the good impulses of men. The latter remark of course called forth renewed laughter and prompted Thaddeus Stevens to arise and close the debate on the question with even more frivolous or silly

1. II Session 37th Congress p 1311
2. II Session 37th Congress, p 1312.
remarks. The writer is willing to admit that Mr. Stevens was a great statesman on many important issues, but no explanation can excuse a man in his position, whatever his private convictions, for thus answering an opponent who is manifesting deep sincerity in his convictions. Without taking sides, one must at least insist that such remarks in no sense comprise argument, although coming from men of high positions in the affairs of the nation. Said Mr. Stevens, "it would appear from the debate that the influence of the whisky sections had not yet left the committee and it would seem too, contrary to the general theory, that lager beer was rather intoxicating", to which his sympathizers responded with a laugh. However, he considered it his duty to speak, as he knew something on the subject of beer, "since", said he, "I own a beer establishment myself". And the laughter continued. Continuing, he said, that three-fourths of his constituents in one ward where he lived were beer drinkers, and, said he, "there is no better class of people; none more industrious nor more honest". He explained how beer was made in his establishment, and while he was doing so his sympathizers engaged in another hearty laugh. He further remarked, "but I must say that its effect (beer) is sometimes eccentric and amusing. The tavern which sells it, and which I also own, is next to my house, and I must say that I have many a night looked out and have seen the honest men who go there to drink beer, stumble up against the fence. Once they knocked it down". Here again the liquor sympathizers interrupted with a laugh. Mr. Stevens concluded by saying, "I should therefore designate the effect of beer, not as intoxicating, but rather exhilarating". He went on to describe in detail the drinking in his tavern.

In the discussion on the question of licensing retail liquor dealers, Mr. Morrill of Maine considered that a move in the right direction except that it did not go far enough. Referring to the discussion on beer, he said, "yesterday, when the selling of liquor was agitated it seemed to move the House as though some peculiar domestic institution had been assailed. Every member seemed to have a still of his own or to have a constituent that had a still, who would be absolutely ruined if the trade were interfered with". Mr. Morrill assured the House that there were no distilleries in Maine nor ever would be, except by necessity, to make "whiskey, rum, and lager beer". As usual, Mr. Morrill of Maine interrupted
and for that reason he did not participate in the discussion the previous day. He declared that if the tax were made so high as to prohibit the traffic, no greater service could be rendered the country, and that he would make it so high that no dealer in liquors could be found in the land. Said he, "if you would do that, and the war rage on, your country would suffer less by the war than it has and does by the use of intoxicating liquors". The allotted time having expired, the hammer fell, but Mr. Morrill made a minor motion apparently for the purpose of resuming his speech and continued by assuring the House that the matter was not trivial and that of all articles on the list there was scarcely one but what was an article of necessity for the good of society, except liquor, and no gentleman would contend that this was a necessity, nor would he be injured if every shop which retailed liquor were sold. This was more than Mr. Morrill of Vermont could stand, for while he spelled his name the same, his views on this subject were extremely opposite to that of Mr. Morrill of Maine. As if to thrust either of Mr. Morrill of Maine of the prohibition view, he said that the Committee had striven with all their power to entirely exclude the discussion of the Maine law, but that the gentleman had managed to get in two speeches on it. Mr. Bingham interrupted by moving that the license fee be made $500,000, and insisted that he was in earnest, hoping by that to prohibit the sale of liquor. It was difficult however for Mr. Bingham to impress the members with his seriousness, and yet, looking back over the experiences of the government with the liquor traffic since that time, we are forced to conclude that his motion was more wise as a means of prohibition, than the views of his prohibition colleagues who favored a lower tax in the hope of prohibiting. Thaddeus Stevens again arising to close the debate upon the question, took occasion once more to ridicule the prohibition members by saying that his thirty friends had better "dry up" on that subject. He insisted that the law proposed was not one to prohibit the sale of liquor nor one to correct the morals of the country. "We never should attempt that in Congress". The object of that bill was to raise revenue, but if the gentleman would introduce a bill he would go with him in an attempt to prohibit the sale of all liquors, "excepting, perhaps, Old Bourbon which has become a necessity to my constituents, and lager beer". As usual, this light remark brought laughter. Mr. Morrill of Maine interrupted
him by saying, "the gentlemen is in favor of the Maine law, but against its enforcement". Mr. Green of New Hampshire advanced a theory

Upon introducing the section on the licensing of breweries, Mr. Stevens said that his constituents were "a beer drinking, excellent, healthy community", which remark merited the laughter it occasioned. Hence, he was not in favor of a high tax for it would make the price of beer too high for his constituents and he did not want to take away their medicine; besides by voting for a higher tax, he feared his constituents would take away from that House "a very excellent member". This also amused the laughing element. In that support of Stevens's position, Mr. Johnson of Pennsylvania read an extract from a report of the Sanitary Commission appointed by the would President and Secretary of War which stated that in certain regiments lager beer had been freely used and that there was evidence before the committee tending to show that the use of beer (at least during the summer) was beneficial, and that disorders of the bowels were less frequent in companies regularly supplied with it in moderation than in other companies of the same regiment. Mr. Johnson recommended this to members who seemed "bilious on the subject of beer".

Next came the question of taxing rectifiers which occasioned Mr. Shellebarger to say, "while I think it not wise in us to become moral reformers in matters like this, yet every gentleman will agree that it would be much better for us if its use were prohibited, meaning, of course, intoxicating liquors. In response to this, Mr. Phelps of California expressed sorrow that the committee had come to act the part of a temperance society instead of carrying out the plan and purpose of the bill by favoring high taxation. He deprecated laying a tax upon a branch of business effecting to destroy that business from the country and he opposed taxing spirits on hand indiscriminately, while refusing to do the same with reference to all other articles. He said there had been many learned discussions both in the House and the Senate that session to the effect that it was not right to confiscate the property of rebels, but that this was a proposition, "most effectively confiscating the property of our friends". The most wise and politic thing to do, in his judgement, was to strike out the whole tax on rectifiers, because he considered "it impolitic and unwise to
carry out this theory of taxing liquors with a view to suppressing that kind of business. Mr. Edwards of New Hampshire advanced a theory by which he thought an exception might be made according to which it would be all right to tax rectified spirits. It was upon the same principle that some states prohibited the traffic entirely, viz: on the ground that the traffic is injurious to the community. Altho he would not advocate Congress passing moral reform laws, yet he thought it proper because Congress would be justified in making use of a source of taxation which afforded a large revenue, and, at the same time, doing no injustice to any class in the community. However, whatever tax was levied would be paid by the consumer, and if any were injured it would be he, and if he paid none of it by using none, it would undoubtedly be better for him. The question was decided in favor of taxing rectifiers.

When the tax bill came before the Senate it was introduced by Mr. W. P. Fessenden of Maine, chairman of the Committee on Finance. The first discussion of any consequence on the liquor phase of it was occasioned by an amendment offered by Mr. Sumner of Massachusetts proposing to raise the tax on spirits from 50.20, as recommended by the committee, to 50.25. The increase was opposed by Mr. Fessenden who assured the Senate that the committee had investigated the matter thoroughly and had concluded that 50.20 would bring the most revenue; that on account of the sudden change in business, it was thought not to be too strong, besides he did not anticipate that the advance in price would decrease the amount of drinking, hence, those who were fond of it would not stop on account of the small increase. John Sherman of Ohio opposed the increase on the grounds that 50.15 per gallon was one hundred per cent, and even 50.15 would stop distillation for six months, because since the previous July, it had been known that whisky would be taxed and all distilleries had been running at their full capacity on the supposition that liquor on hand would not be taxed. In his opinion 50.15 was all it could bear just then, but later it could bear more. However, liquor would bear more tax than any other article since it would be used, tax, or no tax, yet there was danger of carrying the tax of thousands of people in this country, who are dealing out

1. II Session 37th Congress. pp 1427.
2. II Session 37th Congress. p 1437.
3. II Session 37th Congress. p 2264.
4. II Session 37th Congress. p 2283.

1. II Session 37th Congress. pp 2832, 2833.
it too far. He advocated a gradual increase in tax, beginning, say, with $0.05 per gallon and after a few months raise it a little; later raise it again and eventually, it would bear $0.20 per gallon, but $0.20 at once would stop the manufacture until demand would justify it. If the tax were first fixed at $0.20, by the time the bill went into effect, there would be so much on hand that the revenue would be stopped for six months. He proposed settling the matter at once by taxing the liquor on hand. A failure to do this, in his judgement, would act as a bonus to speculators and distillers to manufacture enormous quantities before the tax went into effect and, thus, in effect, suspend the operation of the revenue law. According to his thinking, both that on hand and the manufacture should be taxed together, and however high the tax went eventually, unless that on hand were taxed, Congress would be defeating their own measure. Taxing the amount on hand, in Mr. McDougal's judgement, would be interfering with commerce and legislating against trade.

A prolonged and intense discussion followed a motion by Senator Wilson of Massachusetts (later Vice-President of United States) to strike out the paragraph licensing the retail of intoxicating liquor for a fee of $20.00. Senator Pease inquired, "why?" In reply Wilson said that in his judgement no man should have a license from the Federal Government to sell intoxicating liquors. "I look upon the liquor trade as grossly immoral", said Mr. Wilson, "causing more evil than anything in the country, and I think the government ought not to derive a revenue from the retail of intoxicating liquors. I think if this section remains in the bill, it will have a most demoralizing influence upon the country, for it will lift into a kind of respectability the retail traffic in liquors". It was his conviction that a man who had paid the fee to the Federal government, would feel that he was acting under the authority of the government, and hence regulations, either state or municipal, would be regarded as merely temporary arrangements which must yield to the Federal authority. "Sir", said he, "I hope the Congress of the United States is not to put upon the statute books of the country a law by which the tens of thousands of people in this country, who are dealing out ardent spirits to the destruction of the health and life of hundreds of thousands and the morals of the nation, are to be raised to a

1. 2d Session 37th Congress, pp 2333, 2394.
§16.

respectable position by paying the government $20.00 for a license to do so". He raised the question of whether it were intended to enter states where the sale of liquor was prohibited and to license the sale in spite of the state law. If so, such a thing would be most demoralizing in its influence for the dealer would know that he was acting in violation of the laws of the state with the authority and approval of the Federal government. Then again, in states which did not grant licenses, by paying the Federal government $20.00, a person could have a license to sell rum "to poison the people and make wives and children beggars". "I would as soon", he continued, "this government license gambling and houses of ill-fame; it would be just as creditable to this Congress and all this merely for the sake of putting a few thousand dollars into the treasury". That it was the purpose to put money into the treasury he could not altogether agree. He would admit that it was the primary object, but even that must be done in such a manner as not to interfere with business interests and, "above all, that it shall not tend to demoralize this people and dishonor the nation". Such had been the case and was then, he said, and every Senator knew that our army of five or six hundred thousand men in the field had been demoralized by the use of rum. In proof of this fact, he quoted from a most accomplished officer in Kentucky, that "more men in the army of the United States are slaughtered by whisky than by the balls of the enemy". Thousands had lost their lives by rum since the war began, said Mr. Wilson, and "Sir", "this nation, suffering as it is, by the sale of ardent spirits, the Congress of the United States proposes to give its sanction to the traffic. I would as soon give my sanction to the traffic in the slave trade as I would to the sale of liquors."

The champion opponent to the Wilson amendment and advocate of license was Mr. Fessenden, who in reply used the same kind of methods as that employed by Stevens and others in the House, viz; light and slighting remarks about the advocates of prohibition and temperance. However, he did make one point which Wilson was not able to answer satisfactorily - that of inconsistency. Fessenden began by saying that Wilson had been in Washington, away from his earlier exploits on temperance; and that he did not know but there was some danger of Wilson's reply was

1. II Session 37th Congress. p 2377.
2. II Session 37th Congress. p 2376.
his losing cast at home in that particular; but that this speech had saved him. This remark caused a laugh and furnished more amusement for the liquor sympathizers. But in a more serious vein he proceeded to inquire how Mr. Wilson could favor a tax on the manufacture of liquor and yet oppose a license to sell it. Mr. Wilson tried to explain that his favoring a tax was in the hope of prohibiting the manufacture of liquor. The ground of Fessenden's contention was that retailing liquor was an occupation along with other trades and occupations, hence "the United States, looking at it as a fact that this business, as a business is carried on, and looking upon the luxuries and vices of men as the most proper source of revenue in the world, just lays their hands upon it and says, 'if you will do these things you shall pay for it', we lay a tax upon it." He placed retailing on the same basis as distilling and insisted that to strike out both would do away with forty-five millions of revenue, and he wondered if Mr. Wilson's patriotism went as far as that. Said he, "if we are to be so exceedingly squeamish as to say we will not take a tax for something we consider wrong, and yet which is acknowledged by a majority of the states of the Union, we are just throwing aside the principle upon which taxes have been laid heretofore; and that is taxing the luxuries and vices of the community as the most proper subjects of taxation". Closing his speech as he began, he claimed an impartial position on the liquor issue, saying he had been considered on both sides in Maine - for and against the Maine law - and his conviction was that an heavy tax on the worst vice in the community would do the most good.

Another phase of the license issue was debated between Messrs. Howe and Wilson of Wisconsin; Howe asserting that he did not understand that it was the intention of the committee to organize a new business or set up a new traffic, hence Mr. Wilson was mistaken about a license fee lending respectability to the traffic. But if such was the case, surely no other business needed it more, and if the government could actually make it respectable and $20.00 a head out of it, it would be worth while to do so, to which remark there was laughter. But, he added, if the whole fraternity could be washed and the government make money out of it, such would be a good operation. The money side of the question seemed to predominate in the minds of many, and hence it was difficult to find an unbiased mind. Wilson's reply was

1. II Session 37th Congress. p 2377.2. II Session 37th Congress. p 2372.
that it was not in the power of the United States to make liquor selling respectable, but it could give countenance to it; that this license system was just what rum-sellers and their friends would welcome; that if they had held a national convention and requested legislation, this would have been their request; that this had been what they had struggled for for twenty-five years - "to adopt and get a license system"; - that they had contended for it; fought for it; carried it to the polls, legislative assemblies and everywhere and many of the states had rejected it, but now the Congress of the United States was about to establish it. "Such an act", said he, "would shingle the nation over with licenses to sell liquor". Referring to his own position at home, he said, "I have studied this temperance question in all its phases and I have practiced total abstainance for thirty years, and I know something of what I speak". The license, in his opinion, would be a certificate of character and the dealer would so regard it and would proudly shake it in the face of an outraged moral sentiment. To license liquor selling where it was prohibited by states would give power to the liquor element to contest and put down state laws, if not repeal them altogether. But Mr. Howe insisted that Wilson was mistaken in regard to a license conferring a right to sell liquor. Upon the contrary it was simply saying to the liquor sellers that if he would do this kind of business, he must pay the government a fine or tax. This Mr. Wilson would not admit, but simply said that he neither favored the government sanctioning slavery nor rum-selling.

Another strong advocate of no-license was Senator Pomeroy of Kansas. He had been of the opinion for several years that the public good did not demand the retail of liquors nor such a license as here proposed. He spoke at some length arguing against granting a license because, first, it interfered with the regulation of the states, then it conflicted with two or three other acts of Congress and gave sanction to a traffic entirely immoral; besides this, under the proposed provision, the most abandoned character could get a license by paying $20.00 and, in his opinion, it would open the floodgate of intemperance. Such a speech was calculated to stir up the opposition to another and intense discussion, for not only did he back up his own position, but
he also emphasized the points made by Wilson. And this is what happen-
ed. Upon entering the discussion, Mr. Foster took occasion to commend
the exemplary character of Senator Wilson (an unusual thing in the dis-
cussion of the tax bill) saying, that he had always regarded Mr. Wilson
as authority on temperance matters, and since coming to know him better,
he held him in still higher esteem because he knew him to carry out
practically in his daily life the principles which he advocated, strict-
ly and absolutely. But he could not agree with Mr. Wilson as to the
effects upon intemperance which this license would have. He did not
think that it would be promoted by striking out the clause, but, on
the other hand, the strict conditions of granting license in locali-
ties added to this fee of $20.00 would diminish the number of liquor
sellers. He preferred to call it a tax rather than a license because,
said he, "it was a tax on those engaged in the business". "The idea
of a license", he continued, "is the granting of authority in spite
of any interruption".

Still another opinion was expressed by Mr. Dixon of Connecti-
out which was to the effect that this was not a license but rather an
additional penalty. He did not doubt but that it would cut up by the
roots the very worst and largest portion of the retail of spirituous
liquors. The small shops were miserable poisonous liquors were sold,
would not pay the tax, because many could not afford it and could not
advance the money. Nor did he consider that when he voted for the
bill he would be voting for a license law. "I license nothing, I tax
the man who sells in spite of the state law, and if the state permits
him to sell, it is not my fault; I would tax him still".

Mr. Wilson expressed gratitude to find that Senators advocated
the bill as an instrument in favor of temperance. If it was to pass,
he hoped the other Senators were right, but he could not so see it.
He felt that if he had the power to tax the liquor manufacture until
it was prohibited, he would be a public benefactor. Mr. Harris of
New York agreed with Mr. Wilson that the measure would be offensive
to a large class of citizens, but he anticipated that a man would go
to a government officer and say, "I want a license to sell liquor".
The officer would say, "you may have it; give me your $20.00 and I will
give you your license". Mr. Hale of New Hampshire called attention to
the fact that this was an experiment and that statistics offered no

1: 11 Session 37th Congress p 2398
2: 11 Session 37th Congress, p 2398
precedent, but that he was against striking out the clause granting license. Mr. Saulsbury of Delaware saw no reason why the distiller, manufacturer and seller of liquors should not be taxed, but his objection was that he did not believe the Federal government had the right to grant a license. To which Mr. Pomeroy replied, that if it were not licensed, why proscribe the form? The license clause prevailed and Mr. Wilson’s motion was lost.

The result of the prolonged debate on the new policy was the passage of the bill by the House of Representatives adopting the policy of taxing liquor and licensing its sale by a vote of one hundred and fifty-five yeas to fourteen nays. Thus the policy, of which England furnished a precedent, was adopted by Congress and named a principle, viz; the taxing of the habits and vices of men for revenue to carry on the government. However, Congress did not stop with taxing it, but went a step further and called evil good by granting license to retail intoxicants. From this basis we can easily trace all future complication, in fact, compromise of the government with the liquor traffic and its attendant evils.

Spirits were taxed ten dollars, and beer one dollar per barrel. There was a license fee, wholesale dealers in liquors were required to pay twenty-five dollars for each license, and retail dealers, ten dollars. A license fee of twenty-five dollars was placed upon license for each five hundred barrels produced or “taxing thereof” in that case compelled to pay fifty dollars license, or in case the company could not obtain the new license they would allow license on the products, for which the act of 1834 provided. In this manner the tax was increased, and it was the same amount as other duties. The creation of a tax on liquor was fixed at fifty dollars, out of present less than fifty dollars, or if it were fifty dollars it would be twenty-five dollars. This tax was paid by the States, paid by the States, paid by the States.

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1. 37th Congress, 2nd Session, pp. 2399, 2410.
2. 37th Congress, 2nd Session, p. 182.
Federal Legislation

II.

1. In the spring of 1918, the House of Representatives introduced the law under the name of the 21st Amendment, which was introduced March 3, 1920, in the House of Representatives. The bill passed the House on April 8, 1921, and the Senate on May 6, 1921, and was signed by the President on July 16, 1922. The law took effect on 1930, following the ratification by three-fourths of the states. The amendment to the Constitution, which nullified the 18th Amendment, was proposed on February 18, 1930, and ratified on August 5, 1932.

2. The new law of Federal Liquor Regulation was approved March 2, 1933, the date when all stocks of existing liquor were to be destroyed, the time when such tax should be paid. The license fee of $5,000 was fixed at $500, but the production fees per barrel were to pay a license of $100, if the license was paid on or before April 1, 1933. All distilleries were required to pay a $500 license fee, with a $10,000 fee for each hundred barrels produced or produced or on any of the last 100 barrels of the last month. If the distillery was closed, the license fee was paid upon the date of the transfer. Each distillery was required to pay a $500 license fee, with a $10,000 fee for each hundred barrels produced or produced or on any of the last 100 barrels of the last month.
twenty-five dollars. The wholesale dealer was defined as "one whose sales should exceed twenty-five thousand dollars annually" and there was to be no duty on beer manufacturer prior to September 1, 1862. Duty on beer and ale, until April 1, 1864, was to be sixty cents per barrel instead of one dollar as in the first act. Persons who held licenses and removed their place of business, were permitted, by this act, to carry on business as before, but were required to make new entry and register their place of business. A heavy penalty was placed upon any distiller for failure to comply.

Much time and attention was given the liquor question in an Act approved March 7, 1864. In this bill the tax on spirits was raised to sixty cents per gallon and fixed a penalty upon those having liquor for sale in fraud of the revenue. By this act, distilled spirits, upon which an excise duty had been imposed, might be exported without payment of duty, under certain provisions. An additional duty of forty cents per proof gallon upon spirits imported previous to July 1864 was imposed.

A bill comprehensive of the liquor traffic was approved June 30, 1864. It practically covered the whole range of the liquor question. Strict requirements were placed upon applicants for manufacturing privileges and heavy penalties upon failure to comply. The tax on spirits was raised to one dollar and fifty cents per gallon, after the first of July 1864 and prior to February 1865; after that it was to be two dollars per gallon. Strict regulations were placed upon distillers, requiring them to report three times each month. All spirits were subject to gauging and inspection by the Government officer and it was strictly forbidden that there should be any obstruction to said inspection. No spirits should be removed or withdrawn without payment of duty. All entries and reports were verified by oath. Similar restrictions were placed on brewers. Wholesale liquor dealers were required to pay one hundred dollars for each license and one dollar for each additional one hundred thousand dollar sale. Retail dealers were required to pay twenty-five dollars for each license. They were not permitted to sell spirits, wines or liquors to be drunk on the premises. Brewers were required to pay a license fee of fifty dollars, and rectifiers twenty-five dollars. A tax of fifty cents per gallon was placed upon wines made of grapes. Missed quantities from bond without payment of the excise tax on same or on spirits.

1. U.S. Statutes at Large pp 713-731, Internal Revenue laws
2. U.S. Statutes at Large pp 14-18, Internal Revenue laws pp 103-111
On July 12, 1866, a bill was approved which repealed the Act of June 30, 1864. By this act licenses granted wholesale and retail liquor dealers were called special taxes instead of licenses. The terms distiller and rectifier were defined and the evidence thereof specified. Heavy penalties were fixed upon all who engaged in the manufacture of liquors on failure to comply with any provisions of the law. They were required to give due notice of their intention to engage in the manufacture of liquor and to give bond, and were prohibited from distilling or manufacturing liquors in any buildings or on any premises not approved, accepted and endorsed by the Government officer. Each manufacturer was to provide warehouses according to government specifications and these should be kept under lock and key held by the government officer. An inspector was to be appointed for each distillery, whose duty was to look after that one business, and he was forbidden, under penalty, to engage in any other business. An heavy penalty was placed upon any distiller for refusing to admit an inspector. Tampering with locks, using substances not specified, making false records and using false weights were strictly prohibited. A tax of six dollars per dozen was placed upon imitation wines. Distillers were to give all assistance for inspecting their premises. When the owner wished to sell his spirits, he was to notify the collector to gauge and prove them. Spirits condemned by the Government officers were to be seized and sold. Similar restrictions were placed upon brewers. The date for the law to take effect was September 1866. A heavy fine was to be placed upon any one guilty of giving or offering a bribe to a revenue officer with intent to influence his action on anything before him or to cause him to commit any fraud upon the revenue.

A joint resolution was approved Feb. 13, 1867, removing the tax from alcohol used for burning fluids, provided however, the spirits from which it was made had paid the tax. Following this resolution, there were several minor bills which are of such small importance that they are here grouped in one paragraph.

The second one was a joint resolution approved Feb. 13, 1867, authorizing the Secretary of the Treasury to grant permits to curators of incorporate institutions to withdraw alcohol in specified quantities from bond without payment of the revenue tax on same or on spirits.
from which the alcohol had been distilled for the sole and exclusive purpose of preserving specimen of anatomy, etc., belonging to the institution, under certain bond to observe the conditions and penalty for failure to comply. By an act approved March 2, 1867, imprisonment was added to the penalties already fixed upon liquor manufacturers for violation of liquor laws. This bill placed a tax of four dollars per gallon on brandy made of grapes and a tax of two dollars per gallon upon spirits. The Secretary of the Treasury was required to furnish meters to distillers. The laws regarding the operation of stills were made more stringent. Concerning withdrawing of spirits from warehouses, a brief statute became a law on January 11, 1868. This act forbade the withdrawal of distilled spirits for any purpose of transportation without the tax first being paid. The following month, February 3, 1868, another brief joint resolution was approved, requiring the appointment of a Commission to work in conjunction with the existing Commission of the Academy of Science for the purpose of examining meters and contrivances for testing them, in order to discover a better means of testing spirits and stills.

The next liquor law of any consequence was approved July 20, 1868, changing the tax on spirits to fifty cents per gallon, defining proof spirits and specified gauging instruments and materials, giving rules for inspection, taxing brandy the same as other distilled spirits, compelling owners of stills to pay for meters and connections and authorizing the Commissioner to change locks, apparatus and seals. This act defined distilled spirits, specifying what made. Operators of stills and rectifiers were compelled to register and to give notice in writing of their intention to engage in the business, and if they intended to change their place of business they were required to re-register, give notice, give bond, and repeat notice and bond annually, giving accurate description of the plant intended for operation when applying for bond. Assessors were instructed to make surveys of distilleries and their capacity, but they were prohibited from assessing taxes upon distillers until they had given bond, and distillers were prohibited from operating with six-hundred feet of the premises used for rectifying or other distilling. Persons were

1. U.S. Statutes at Large pp 261-265; Internal Revenue Laws, p 311.
3. Internal Revenue Laws, pp 327.
prohibited from rectifying and distilling at the same time. Distillers were also prohibited from using boilers for distilling purposes where liquors were sold or to operate a still within six-hundred feet of where any other business was carried on. Each distillery aggregating the fermentation of twenty barrels of grain every twenty-four hours, was taxed two dollars per day. Manufacturers of stills were required to notify assessors before removal of still to the purchaser. The Commissioner of Internal Revenue was authorized to employ detectives for the purpose of detecting fraud. Upon every department of the business the laws were more stringent.

A bill amending Act of July 20, 1868, was approved April 10, 1869. This bill specified conditions upon which a person might lease land and erect a distillery and it also fixed the rate of capacity of a still during twenty-four hours; the rate of tax on bonded spirits at one cent per proof gallon; defined rectifying, retail and wholesale liquor dealing and fixed the license tax on retailers at $25.00 and that of wholesale dealers at $100.00. Distillers and brewers were compelled to take out a license for wholesaling, for selling their own production and at their place of manufacture. Distillers of brandy from grapes, peaches and apples exclusively, producing less than one hundred and fifty barrels annually were taxed $50.00 in addition to the $4.00 per barrel of forty gallons.

A tax of twenty-five cents per gallon on wines was fixed by an act approved July 14, 1870, providing such wine imported in casks were valued at forty cents per gallon; that valued at over forty cents and less than one dollar was to be taxed at sixty cents per gallon while that valued at over a dollar was to be taxed one dollar per gallon, and in addition thereto 25% ad valorem. Wines in bottles not exceeding a quart, or less than one pint, were taxed at three cents for each bottle. Champagnes and other sparkling wines in bottles, were taxed six dollars per dozen bottles. If a bottle contained one-half pint or less, a tax of one dollar and fifty cents per dozen bottles was the rate fixed and bottles containing more than one quart, a tax of six dollars per dozen bottles, and at the rate of two dollars per gallon on the quantity in excess of one quart per bottle. Any liquor containing more than two per cent of alcohol.

1. U.S. Statutes at Large pp 125-168; Internal Revenue Laws pp 327, 328.
2. Internal Revenue Laws pp 393-394.
under the name of wine, were to be forfeited to the United States, while brandy and other distilled spirits were taxed two dollars per gallon, and cordials, bitters and other such beverages, two dollars per gallon.

Beginning with a joint resolution approved March 3, 1871, amending the act of July 20, 1868, another series of minor liquor laws were enacted. This bill related to fermented liquors, making an exception in the case of vinegar. Provision was made in an act approved March 27, 1872, whereby taxes might be canceled or refunded in case of fire or destruction of liquor without fraud, provided the liquor was in the hands of officials and the cancel of the warehouse canceled. Following this short measure there came one approved June 6, 1872, making certain amendments and minor changes in the bill of July 20, 1868 and defining wholesale liquor dealers as those selling in larger quantities than five gallons at one time and taxing them fifty dollars. Retail dealers were defined as those selling in smaller quantities and they were taxed twenty dollars, while brewers were taxed one dollar per barrel of thirty-two gallons each, and distillers were taxed seventy cents per gallon on spirits. Four days later, on June 10, 1872, an act was approved entitled, "For Relief in Certain Indian Tribes". It prohibited forever the sale of intoxicating liquors in all patent lands. On Feb. 21, 1873, a bill became a law which authorized the Secretary of the Treasury to grant permits to Presidents and Curators of Universities and Scientific institutions. They were granted the privilege of withdrawing, without paying tax, alcohol which had been distilled for the sole purpose of preserving specimens or for use in chemical laboratories. Such Presidents and Curators were required to give bond to the amount of twice the tax and, on failing to comply with the conditions they were subject to penalty, also the tax. The next month, March 3, 1873, an act was approved which added to the law passed June 6, 1868, a provision for canceling of bonds given on exports as soon as satisfactory evidence was presented that the goods were landed at their destination or was lost at sea, etc.

On the same day, March 3, 1873, an amendment to the act of June 6, 1868

2. Internal Revenue Law p 392
3. Internal Revenue Law p 393
5. U. S. Statutes at Large pp 391-393.
6. Internal Revenue Laws pp 419, 419.
7. Internal Revenue Laws pp 419.
was approved. This added a section defining the fractional parts of a barrel of fermented liquors. The following year, Feb. 2, 1875, the last act of this period was approved. This act fixed a tax on wines imported in cases of one dollar and sixty cents per dozen bottles, and in quantities not more than one quart, five cents per pint or fraction thereof. The tax on spirits was fixed at ninety cents per gallon, where it remained until the Spanish-American war.

Thus we have traced statutory enactments from the beginning of the present system of internal revenue until the policy of the government had become fixed. The tax rate varied during these years and the law was changed and modified with two evident intents. One to restrict and prohibit frauds, and the other to advance the liquor business for more revenue. It is strangely inconsistent to argue that national prohibition is impossible and impracticable after the Federal government has prohibited the manufacture and sale of intoxicants in a part of the country (the Territories) and even prohibits the manufacture and sale anywhere except it be in compliance with the tax law — in other words, except when the government shares the profits.

1. Internal Revenue Laws p 420.
III.

COMPLICATIONS.

Looking now into the workings of the policy, let us first note the evasions of the revenue under the subject of frauds. Fraud in the payment of revenue was the first and natural outcome when the new policy was tried. The system of inspecting, assessing and collecting the revenue was imperfect and the duty had raised the price of liquor, which offered a great temptation to evade the tax and thus suddenly become rich by the rise in price. "If we are to attach any weight to the evidence produced", says the Revenue commission, "the conclusion is inevitable, that since the imposition of an excise tax on distilled spirits, the perpetration of fraud on the part of the manufacturers has been the rule, and honesty the exception". From this time on we can clearly see whose opinions, of those expressed in the debate on the tax bill, were really practical. Not only did this increased price lead manufacturers to avoid the tax, but it also opened the way for speculators who had been buying liquor in anticipation of the tax.

The Commissioner of Internal Revenue, Joseph B. Lewis, in his first report, November 3, 1863, gave such space to eulogies of the new Internal Revenue law and its framers; but, evidently feeling that the revenue from liquor was not what had been expected, he recommended an increased tax on distilled spirits. He thought that a tax too high would not do so well in this country as in England for "it would be widely evaded and would act as a direct premium on frauds". He recommended a raise in tax on whisky from twenty to sixty cents per gallon and on beer from one dollar to one dollar and fifty cents per barrel. In his second report of December 1, 1864, he gave as his opinion a reason why the revenue tax had not realized more of a yield, was because of fraudulent evasions on the part of tax payers. He assured Congress that the real need was additional means of securing the collections of the tax on the whole product of the distillers and thus protect the revenue against illicit distillation to which high duties afforded so strong a temptation. He suggested the use of a meter to aid the Government officer in ascertaining the quantity of liquor passing over the still, so that the distiller could neither control nor vary the...

1. No. 5, p. 38
2. See previous discussion in Congress under "Source of Policy".
3. Finance Report, p. 64.
the certain result. Commissioner William Orton, having succeeded Joseph H. Lewis, in his report of Nov. 1, 1865, called attention to the large number of frauds perpetrated and said that so long as avarice and falsity were a part of humanity, revenue laws, however thoroughly administered, would be avoided. Commissioner E. A. Rollins, who succeeded Mr. Orton, made his first report November 30, 1866, and discussed frauds at length. He said, "there is probably no tax imposed by the law which is so largely evaded by those subject to its provisions as the tax upon distilled spirits. Nor is there any formal evasion of which so large a loss inures to the government." He described frauds perpetrated by illicit small stills in garrets and obscure places, and also the temptation by owners of large distilleries to buy off the Commissioner to report fraudulently. He suggested that $10,000, adroitly and wickedly expended might hide the manufacture of one thousand barrels of wine which would yield $100,000, for the public revenue, and that if an inspector had forgotten his duty in a single instance, he was at the mercy of his purchaser for all subsequent transactions, thus becoming his common protector and ready witness against the Government. He said it required that the Government appoint men of tried integrity, that the still be kept under locks and seals of the Government. He suggested that officers be appointed to watch each other and the distiller.

To the mind of the writer, Commissioner Orton points out the same difficulties which have always been urged as impossibilities hindering the enforcement of prohibition laws. Hence why should the government not go all the way and enact a prohibition law, throwing about it such precaution and aids at enforcement as are now in use safeguarding the revenue? Indeed, every step in these complications reveals evidence of compromise on the part of the nation with the liquor traffic in the sole effort to obtain revenue regardless of the consequences of such a method. It cannot be that revenue was the only outcome of such enactments, as some legislators contended at first.

In his report of November 30, 1867, Commissioner Rollins described the frauds connected with the production and removal of spirits. He observed that "there is no question of a higher personal interest

to every faithful officer, nor one of greater importance to the public, than that which relates to the recovery of the revenue service from the reproach under which it has fallen. The failure to collect the taxes upon distilled spirits, he attributed more to frequent change of officers and to the inefficiency and corruption of many of them, than to any defect in the law, to which he added, "I write this with shame." The legal evidence of that truth might never be found, he continued, but the moral evidence was patent to all. Frauds had become so common and flagrant that he discussed them under the special heading, "frauds and how they are perpetrated." He referred to the corrupt taking of bonds; shipping of water in lieu of alcohol, and many other suspected methods. He recommended as a remedy, the striking out of the system of compromise and the withdrawal of privileges, and requiring free access to every distillery while in operation, by the proper revenue officer, and penalties for tampering with meters.

In his report of November 20, 1865, Comm. Rollins, speaking of frauds, said, "Their remedy lies in the improved character of the revenue and judicial officers, rather than in the increased stringency of the law or improved regulations and requirements of the departments." We have seen how complications arose in fraud of the revenue on the part of the manufacturers and revenue officers. We shall now turn to the complications of Congress with the whisky speculators, which Mr. Rhodes characterizes as "a case of legal corruption in Congress."

When it was proposed in the House to raise the tax on whisky to sixty cents per gallon, in the act approved March 7, 1864, Mr. Fernando Wood of New York, moved to amend by taxing spirits on hand. This called for prolonged and heated discussion. The states of Illinois, Ohio, New York, Pennsylvania and Indiana all had large distilling interests. Their representatives contended for the local interests. Mr. Rhodes, commenting upon this discussion, says that Mr. Morrill of Vermont had examined the question free from sectional consideration, and yet he admitted that most of the spirits were in the hands of speculators, but, he added, "you can no more reach that speculation than you can reach the speculation in gold or any other commodity." He defended the distillers who had paid their taxes, as he believed, as fairly and honestly as men in any business. 5

Garfield, and other prominent men supported Mr. Wood's amendment in
the House. When the question on the Wood amendment was put before
the House, the vote stood, yeas 97, nays 57.

When Mr. Fessenden, Chairman of the Committee on Finance of
the Senate, presented the bill which had passed the House, taxing
spirits sixty cents per gallon and including the amount on hand,
he said, that the Committee had considered the bill merely as the
best means of deriving the most revenue possible; having in view
the interests and feelings of the community at large, and doing as
little damage as possible to the business interests of the country.

Hence they had determined to consider the question of distilled
spirits precisely as they would any other article of commerce and
that it was not their business to look at it from a sumptuary point
of view, or with reference to any opinions that might be entertained
in the community with regard to temperance or otherwise. He observ-
ed that our laws regarded distilled liquors as an article of traffic
and as an article upon which it is proper to lay a tax for the bene-
fit of commerce, the government and the people; thus recognizing its
existence as an article of commerce, and to be treated, therefore,
as all other articles of merchandise are. Nor did they consider
that they were bound to inflict punishment upon any class of the com-
munity.

It is well to remember just here the hard fought battle be-
tween the same Mr. Fessenden and Messrs. Wilson and Pomeroy in 1862,
when Mr. Fessenden's side prevailed and the national Congress, pass-
ing the "Tax Bill", legislated the article into such legal and com-
mercial recognition and sanction as Mr. Fessenden claimed for it in
the above speech. Referring to speculators, Mr. Fessenden was in-
clined to consider them, as a general rule, a very useful part of the
community. At any rate the Committee did not feel inclined to go
into the question as to whether good or harm had been done by them;
but simply to recognize the subject as one before them for considera-
tion, with the single view to see how far an additional revenue could
be derived from the article itself, and with as little injury or op-
pression to that branch of business as possible. He said that the
Committee had received such testimony in regard to taxing liquor on
hand, but that most of it was against taxing it.\(^1\)

When the bill came up for discussion and the question of taxing liquor on hand was mentioned, Mr. Sherman of Ohio and Mr. Grimes of Iowa, plead for the concurrence of the Senate as to this amendment. Mr. Grimes declared that all the store-houses in Cincinnati, St. Louis, Chicago and smaller towns of the North-west, were chock-full of whisky, most of which was owned, not by distillers, but speculators.—"If we want to get money into the Treasury", he said, "it seems to me we should impose some tax on whisky on hand", but the Senate refused to concur with the House on the question of taxing spirits on hand. When the bill was referred back to the House without the concurrence of the Senate, the Committee of Ways and Means adopted the Senate's view. Mr. Thaddeus Stevens, stating the views of the Committee, said, "the Committee placed themselves upon the grounds of justice to the manufacturers who were pursuing a lawful business, one sanctioned by the country, and one forbidden by no law". This recommendation by the Committee and failure of Senate to concur, aroused Mr. Wood, and he replied in strong terms. He declared it an "extraordinary spectacle", favoring monopolies and speculators at the expense of the public Treasury. He asserted that those whose duty it was to protect the public interests had not thronged that hall; they had not button-holed the two Committees of both Houses of Congress. Gentlemen connected with these Committees had not been button-holed by those who desired to protect the public interest or the public Treasury, but by those who were looking for protection of their individual interests to the exclusion of the public interests. The amendment was defeated in the Senate almost two to one, and when returned to the House, the action of the Senate was concurred in, tho the discussion was long and intense, but the whisky power prevailed over both Houses of Congress.

Of that contest the New York Herald, under the topic, "The Favored Class", said, that the House of Representatives had decided that the favored class was to be enriched at the expense of all other classes and that the Treasury should be the whisky speculators', and added, "such is the lobby power". The New York Tribune of March 5, 1864, also of February 16,17 and 18, said, "we repeat, 'who believes that with no new facts submitted, and with the sentiments of the

1. I Session 38th Congress, p 460
2. I Session 38th Congress p 462
3. I Session 38th Congress p 660
4. I Session 38th Congress p 883 (Vote year 53, nays 78)
country overwhelmingly the other way, the whisky vote can have been honestly run up from 33 to 77? Who can doubt the character of the influences brought to bear? But then again, who can doubt that 'loyal Union Congressmen', engaged in the interests of God and humanity, have acted wisely. The whisky gamblers have cornered the Treasurer and pocketed some five millions". Commenting further, the Tribune said that gentlemen in Congress scouted the idea of corruption and claimed to have voted free from pecuniary motives, but the facts were that when Mr. Wood moved to tax spirits on hand, the House voted fully two to one in favor of it. No petitions had then been presented and no newspapers had spoken on the subject, and surely that was an unbiased and free expression of judgment. But as soon as the bill went to the Senate, whisky monopolies gathered at Washington to watch Congress. "Any member who does not know that these were there in force, numerically and otherwise, may easily be convinced if he will but inquire." Following this, the Finance Committee of the Senate surprised everyone by reporting according to the wishes and interests of the speculators; and in due time the Senate concurred in the report. The bill was then sent back to the House and some fourteen members changed their votes from the side of the Treasury to that of the monopolies; Hence they won at the expense of the consistency of Congress and the interests of the nation. The Tribune concludes by asking the question: "Who believes that the subservient members have given all this immense sum to the whisky gamblers and kept nothing for themselves? We do not."

When we consider the report of David K. Wells, Chairman of the Revenue Commission in January 1866, we cannot but feel that one of the two things is true; either the above accusations are well founded, or those Senators and Congressmen were greatly mistaken in judgement in taking the stand they did with regard to taxing liquor on hand. According to Mr. Wells of the Commission, "Congress, by its refusal to make the advance in taxation, in any instance, retrospective, virtually legislated for the benefit of distillers and speculators rather than for the Treasury and the Government. The profits realized by the holders of stocks, these made in anticipation of the advance in taxation, has probably no parallel in history of any similar speculation or commercial transactions in this country, and cannot be estimated in less

1. New York Tribune March 3, 1864
than fifty million dollars."

The "Whisky Ring" was a climax of all liquor frauds. It was a combination of the forces and means of the liquor interests in a concerted and continuous effort to defeat the ever-increasing stringency of the revenue law restrictions, and, by avoiding the tax on liquor, to retain for themselves the vast profits on that article which the tax would add. The "Whisky Ring", says Alexander Johnston, a close student of the subject, "was an association, or series of associations of distillers and Federal officials for the purpose of defrauding the Government of a large amount of the tax imposed on distilled spirits, and, further, of employing a part of the proceeds in political corruption.

Concerning the origin and formation of the ring and the date of its beginning, our only source of information is McDonald's, "Secrets of the Great Whisky Ring". Discoveries and prosecutions by the government reveal the combination and its work. We will discuss the latter under another heading. McDonald says in his opening chapter, "no ring was ever before formed embracing such a gigantic scope and including among its chief instigators and membership, such distinguished governmental officials. The original intention of the organizers, adopting suggestions from the highest authority in the land, was to make the Ring co-extensive with the nation, with headquarters in all the large cities, for the purpose of raising a campaign fund with which to advance the interests of President Grant in his aspirations for a second term". He further states that the money received from the distillers and rectifiers was used for the purpose intended until Grant's re-election, and then it was divided among the Ring members. McDonald's testimony may not be considered altogether reliable in view of his guilt, and his grudge against President Grant, but it must be admitted that it is as difficult to explain the position and actions of the President in any other light than that given by McDonald, in the face of the facts brought out in the trials of Babcock and the testimonies before the special committee of investigation in Congress.

John McDonald was appointed Supervisor of the district including Arkansas and Indian Territory, November 1st, 1869 and February 14th, 1870, the State of Missouri was added with headquarters at St Louis.

1. History of American Politics Chap. 23. (Johnston's)
2. McDonald's Secrets of the Great Whisky Ring pp 17, 18. (this first
McDonald tells the story of the organization of the Whisky Ring. He says that Mr. William McKee was senior proprietor of the Missouri Democrat and that he had a talk with McKee soon after coming to St. Louis on the ground that Grant was constantly appointing persons to office in St. Louis contrary to McKee's wishes. He was especially bitter against Ford, a collector. McKee was trying to wield the power of political boss over Missouri. On August 19, 1870, he wrote an editorial entitled, "An Open Letter to the President", on the political situation. McDonald asserts that this letter was aimed as a threat to the President, saying that if he did not remove some of these officers so offensive to McKee, particularly Ford, that he (McKee) would organize a liberal party in Missouri that fall. But it was soon discovered that Ford, in connection with Ulrici's distillery, was found guilty of fraud -- stealing from the government $117,600 which amount was due from the distillation of forty-eight thousand bushels of grain. McDonald went to Ford and accused him of guilty knowledge and, "after skillful evasion, Ford admitted it and manifested deep humility and remorse of conscience". McDonald then reported to McKee and McKee at once became anxious to have Ford retained in office. McDonald claims that some time previous to this McKee had suggested to him the organization of a Ring among the revenue officers in St. Louis "to divide the profits from illicit distilling, but Ford had prevented the consummation of this intention". Terms were arranged so that Ford and McKee could harmonize affairs. The matter of McKee's hostility was laid before President Grant and through him matters were arranged so that Ford and McKee could arrange terms for entering the Ring together. But McDonald adds that only circumstantial evidence implicates the President here.

McDonald says that revenue was honestly collected until the fall of 1871, "when, at the suggestion of McKee, one Conduoe G. Magrue was imported from Cincinnati to manage illicit distilling and to arrange for the collection of the assessment to be made on the distillers and rectifiers". With the illicit funds the St. Joseph Herald was bought off in favor of Grant; the St. Louis Globe was started with McKee as editor, and later the Democrat, which had passed out of McKee's hands, was bought by the Globe.

"The first money assessed from illicit distilling", says McDonald, "was used in the city election in April of 1871, but the first
money derived was in September 1871, the month Magrue appeared. No
definite rule regulated the assessment of money, but one month any
assessment of $20,000 may have been levied on the distillers and
rectifiers and during the next month five times that sum may have
been called for. Much depended upon the demand for money made by
General Babcock (private secretary to Pres. Grant) for division
among the administration conspirators and the demand for local purposes".
In addition, continues McDonald, the Washington segment of the Ring
sent out agents to the district for the purpose of blackmail distillers
to scare them into the payment of large sums for their silence. More
than $100,000 was thus paid out of the fund and $31,000 was sent to
Indiana to help a political campaign. McDonald reports a letter from
Jesse E. Woodward of St Louis, dated June 11, 1874, written to Commis-
sioner Douglass telling of the whisky ring, in which he stated that
one distiller during the years 1871-1872, distilled over $500,000
worth of whisky, of which amount some $300,000 was "crooked whisky".
and of course not reported to the Government. This was not an unusual
proportion for during the years 1871, 1872 and 1873 three times as
much whisky was shipped from St Louis as was taxed.

Rhodes tells us that if a distiller was honest, he was entrapped
into a technical violation of the law by the officials, who, by virtue
of authority, seized his distillery and gave him choice of partnership
in the Ring or bankruptcy, and he usually succumbed. McDonald estima-
ted that during his six years in office, at least $2,736,000 was de-
frauded from the revenue. Rhodes says, "unquestionably considerable
money was used in this way (referring to the way McDonald said it was
used for the Republican party to procure second and third terms for
Grant) but a good deal of it stuck to the fingers of the officials
whose peculiar operations necessitated large personal expenditures".
Mr. Rhodes also credits McDonald's story of the large expenditures
of the Ring in entertaining the President and party at the Lindell
Hotel during the ten days in St Louis in 1874, in the road wagon
and pair of horses, blankets and $25.00 whip, (a total cost, says
Rhodes, of $1750. but the page from McDonald's book to which he refers
says $6000 ) and the outfit sent to the White House, and "there re-

1: McDonald's, Secrets of the Great Whisky Ring pp 17-70.
2: McDonald's, Secrets of the Great Whisky Ring p 383.
3: Rhodes History of United States VII p 133.
ceived with oriental nonchalance." 1 Mr. Rhodes, speaking of the facts which were unearthed during Bristow's investigation of the whisky frauds, says, "he ascertained that Orville E. Babcock, the confidential friend as well as private secretary of the President, was a member of the Ring and a sharer in its profits." 2 Since, as has been said before, McDonald does not make out a case against the President except by circumstantial evidence, and since Mr. Rhodes who does no believe the President guilty, does not make out a strong case in defense of the President's innocence, the writer shall not attempt to show the expansion of the ring beyond, as Rhodes indicates, the private secretary and most intimate friend of the President of the United States. St. Louis seems to be the place of the beginning of the ring, but as we shall see in the Chapter, "Policy Fixed", "Whisky Ring Overthrown", Ringer were established in Chicago and Milwaukee.

   McDonald's, Secretary of the Great Whisky Ring pp 102, 109, 316, 317.
in regard to legislation the Commission assumed that the rate of duty be high or low. The judgment was announced in a revenue act.

The judgment of the Commission was that stringent restrictions

In respect to legislation, the Commission assumed that the revenue act

were or which it was possible to levy without increasing the

duty on the amount of that article the highest amount

was the principle upon which Parliament has always acted in repeals

where tax had been adopted by England and had been enforced for

Congress in 1863. So now the Commission acts England as an example.

In the case where the tax was introduced in the 37th

and the rest of the

attempts at evasion of payment by the smuggler, the direct

impoise which they can bear, without too largely encouraging

the duty. The Commission to improve upon these articles the max-

ment of the country, assessed in the interest of the national public interest.

Regulation, and what seems to them to be the general public interest.

miscreant, taking as their guide the history of past congressional

continued ever since. "In respect to the duties" the Com-

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The policy fixed.
would not be below a certain standard largely productive of revenue. The Commission were of the unanimous opinion that the law required such alterations and amendments as would enable the Government to regulate in detail the process of manufacture, and also providing for a rigid inspection of the whole liquor business. "In fact, with a tax of from one to two dollars per gallon, on an article whose normal cost of manufacture is from seventeen to twenty-four cents, it may be fairly assumed that every distillery in the country is a government manufacture — conducted for the interests and profits of the Treasury, and therefore may be argued, on the grounds of expediency alone, that the Government in the first instance should protect its own interests, and secondly, that after having, through reasons of public necessity, interfered with the business of a class of its citizens, it is bound by every principle of justice to give to the men who furnish, at their own expense, the apparatus for manufacturing."

The above is quoted literally from the report of the Commission because of the extraordinary nature of it and the policy outlined — practically in realization today by the national government. Another remarkable statement from the Commission was that the proposed policy was not in harmony with public sentiment, but was rather as the result of an extensive and impartial examination of the whole subject.

The overthrow of the "Whisky Ring" was no small factor in fixing the Federal liquor policy. After the "Whisky Ring's" overthrow, Mr. H. V. Boynton gives us a most interesting and impartial account in the October number of the North American Review — 1876. He tells us that since the investigations of Congress and the press have given us a somewhat disjointed account of the overthrow of the Whisky Ring, he proposes to supply some omissions, and correct current errors and set the story in proper order, but does not tell us where he got his information. Concerning Sec. Bristow he says, that the President appointed him June 2, 1874 without consultation, a clear case of the office seeking the man. The Secretary began definitely and with sharp outlines a campaign for a sudden ending of the whisky frauds, much of the secret mechanisms were known only to the Secretary himself. He entered the department in the summer, and, in the fall struck a blow at the frauds. Mr. Boynton tells us that the movement against the

Ring began by voluntary information of Mr. George W. Fishback, proprietor of the St Louis Democrat, on Feb. 8, 1875, to Secretary Bristow in a letter addressed to the correspondent at Washington. He told the Secretary that if he wanted to break up the powerful "Ring" which existed there in St Louis, the man could be furnished, who if clothed with necessary authority and assured of absolute secrecy about the matter, would undertake to furnish the information, and he (Fishback) would guarantee success. On receipt of this information the Secretary telegraphed for the man's name. After waiting two days and receiving no reply, a second telegram was sent by the Secretary, in answer to which a message came saying that the wires could not be trusted. The mail brought cautions and explanations. When the man whose name Mr. Fishback sent in to the Secretary, received a telegram commissioning him, his heart failed him and he declined the responsibility. Mr. Fishback then sent the name of Marion Colony instead. Mr. Colony was Secretary of the Commercial exchange and Commercial Auditor of the Democrat. Together with this name Mr. Fishback sent, in a letter, a statement of the supposed extent of the "Ring", its personnel, names of the officers it controlled, and, that it received regular information from the departments of all actions affecting its interests. On this account Mr. Fishback suggested that no one connected with the Internal Revenue service, or in the office should know of the new move. Secretary Bristow then placed the whole matter in the hands of Solicitor Bluford Wilson, in compliance with the conditions suggested by Mr. Fishback. All correspondence was kept from the files and secure in his private desk.

Mr. Fishback was summoned to Washington and a whole day was occupied by Messrs. Bristow, Wilson, Fishback and the correspondent canvassing the situation. The next day a letter of instruction was sent to Mr. Colony. The letter reached him March 5, and he began work at once. Development showed that the Ring was obtaining information by means of a cipher and this compelled outside methods to insure safety of messages between Bristow and his St Louis helpers. Mr. Fishback was made Superintendent of the work in St Louis. He and Mr. Colony perfected the plan of investigation. Seven or eight distillers and as many rectifiers were suspected of being in the combine and on
organized force was set to watch them. All features of the day regarding the shipment, etc., were noted and recorded. The watchmen were changed each day to avoid being suspected or noted. The first day's observance discovered that all the distilleries, except one which was undergoing repairs, were running night and day. The distillers soon discovered through their drivers and employees that they were being watched, and accordingly they hired roughs to beat the watchers. The police, under direction of superior officers, assaulted and arrested some, and the force was finally withdrawn for a time, but not until most of the desired work was accomplished, and a general movement was justified against the distillers.

Mr. Colony's next step was to copy the freight receipts of shipments from all the depots in St. Louis. These were compared with those reported by the government officers. Since he had often been accustomed to examine shipments for commercial information for the papers, he was not suspected. Thus the work of investigation went on.

A veteran Special Agent was secured, who organized a force to watch Chicago and Milwaukee where the same results were accomplished. Nearly every distiller in the two cities was captured. This work was begun in St. Louis March 3, 1875, and by May 3rd, all was in readiness to seize distillers in the three cities. The seizure was made simultaneously on May 10th. So secretly had the work been done that not even the office of Internal Revenue had suspected it. The Whisky Ring throughout the country soon found itself completely overthrown and it turned frantically to the officials it had controlled and who had shielded and served it so long, only to find them helpless. It next appealed to politicians to whom it had rendered service, but found scarcely one of them who would dare assist. Secretary Bristow had been teaching some new lessons in political science. "For once the political machine stood still".

This first blow caused consternation at first, but the Ring soon rallied and a brief period of recovery and defiance followed.
The Ring sought the removal of such men as Bristow from office, and this it finally accomplished, but not until there had been such a wide-spread publication of political and official corruption and exposure of the Ring, that public sentiment would not again tolerate such work.

We will now let the original documents speak the facts. Mr. Benjamin H. Bristow succeeded Mr. Richardson as Secretary of the Treasury, in June 1874. He found the department in such need of reform. He early discovered that the Government was not receiving the full amount of revenue due from distillation of whisky in a number of cities in the West, chiefly among which was St Louis. Mr. Bristow had two aims, suggests Mr. Rhodes, one to stop the stealing and the other to punish the thieves. The Secretary was assisted chiefly by his solicitor of the Treasury, Bluford Wilson, the Atty. General Edwards Pierrepont, and for a time by the President. He succeeded in securing the indictment and conviction of three officials, one journalist in St Louis, and, one official in Washington. Mr. Rhodes tells us that in working up the evidence he unearthed certain facts which profoundly affected public sentiment "thus adding historical importance to the episode". He learned that Orville E. Babcock, confidential friend as well as private secretary to the President, was a member of the Ring and a sharer in its profits. A letter implying this was shown to the President (at Long Branch, probably on July 23, 1875) which, when he had read, wrote on the back of it, "Let no guilty man escape", and said, "if Babcock is guilty there is no man who wants him so much proven guilty as I do, for it is the greatest piece of traitorism to me that a man could possibly practice".

...
But the attitude of the President changed somewhat soon afterwards when the grand jury in St. Louis returned a true bill against Babcock, Dec. 9, 1875, for conspiracy to defraud the revenue. After this the President's attitude became at first covertly hostile and then openly so. When Avery, the Washington official, was being tried, ex-Senator John B. Henderson, led special council in behalf of the Government, during his speech touched on the friction then beginning between Grant and Bristow. "What right," he asked, "has the President to interfere with honest discharge of the duties of a Secretary of the Treasury?" The President on hearing of this, relieved Mr. Henderson of further duties in the prosecution, and in a cabinet meeting said Henderson's speech was regarded "as an outrage upon professional propriety thus to reflect upon the President." Mr. Henderson was discharged Dec. 10, 1875 and James O. Braddock succeeded him. Mr. Bluford Wilson, protesting against the removal of John Henderson, said, "it is a fatal blow to the prospects of a successful prosecution of the Babcock case". This, they asserted,

Mr. Rhodes tells us that when Babcock was put on trial the proceedings were marked by an extraordinary occurrence. The President voluntarily gave his deposition on the part of the defense. The President's testimony was taken Feb. 12, 1876, at the White House. Mrs. Bristow and Attorney-General Peirce-

1. Whisky Frauds Testimony, I Session 44th Congress Miss Doc. #186, p. 5.
2. Whisky Frauds Testimony, I Session 44th Congress, Miss. Doc. #186.
3. Ibid. p. 86.
pont for the government; an attorney for Babcock; and Chief
Justice Waite, acted as Notary. The New York Tribune, Feb. 14,
1876, gave an account of the taking of the testimony of the
President. The testimony was to the effect that he (the Presi-
dent) had never seen anything in the conduct or talk of Babcock
which indicated to his mind that he was in any was connected
with the Whiskey Ring at St. Louis, or elsewhere; that Babcock
gave every evidence to him of fidelity and integrity in regard
to public interest, and performed the duties of private Secre-
tary to his entire satisfaction. "I have always had great
confidence in his integrity and efficiency," said Grant. The
President further testified that he had never had any information
from Babcock or any one else, indicating in any manner, directly
or indirectly, that any funds for political purposes were being
raised by any improper methods. Both the New York Tribune
and The St. Louis Daily Times of Feb. 12, 1876, called attention
to the manifest eagerness of the President for the acquittal
of Babcock, as evidenced in his deposition. This, they asserted,
no doubt had weight with the jury, who, being farther influenced
by the charge of the judge in Babcock's favor, brought in a
verdict of not guilty. Babcock immediately resumed his duties
at the White House as the President's Sec., but public sentiment
did not long permit that sort of thing. The President pardoned

1. Ibid p 292.
2. Ibid p 296.
3. Ibid pp 293, 335; New York Tribune, February - April 1876.)
Jan. 26, 1877. President Hayes pardoned Joyce a little later. The Federal liquor policy thus far worked a very practical regard to the conduct and attitude of President Grant, which, if distilling and confined the traffic to fewer persons, applied in defence of any other man, not in his high position as Chief Executive of the Nation and a party politician, would be considered worthy of a place on a page of history. Mr. Rhodes and organized, first to create the efficiency and tries to explain the President's peculiar conduct and he gives evidence that the President was innocent, the testimony of need legislation. To advance the traffic more capital was Judge E. Rockwood Hoar, whom, he said, knew the President well and who was in a position to prove competition in the trade. In this was and yet thought the President strictly and thoroughly honest. Judge Hoar tries to substantiate his belief by saying, "I would Judge Hoar's allusion to St. Paul and the thirty pieces of silver, is rather poor backing for such important evidence. The freedom of the Whisky Ring was the last great and important overthrow of the Whisky Ring was the last great and important step taken by the Federal Government which practically fixed the nation's policy with regard to the liquor question.
The Federal liquor policy thus far worked a very practical advantage to the liquor interests. The tax system stopped promiscuous distilling and confined the traffic to fewer persons, recognizing these as real business firms. Thus began the centralization and organization of the liquor power. They centralized and organized, first to promote the efficiency and productiveness of their own interests, afterward to watch and resist legislation. To advance the traffic more capital was enlisted. This provoked competition in the trade. To this was added more intelligent organization and business management. The tax law had been in force but from July 1835 to November twelfth, when thirty-four members of the facilities for manufacturing liquor. "It was now," says Mr. Fehlandt, "that the economic formula reversed, and the supply was made to create the demand." With the change in formula it was no longer sufficient to note the use they made of "United States" in came also the change in business methods. The dealer must have the organizations also the motto, "Unity is customers and since his drink was more expensive to the customer, he must make it more attractive and enticing in order to hold the former customer and to create the appetite in new customers. Defeated in agitation committee, sent a delegation to Washington. Rectifying had been sanctioned by Congress. In this the retail dealer had a precedent for fixing drinks which would create a thirst for more. After the mixed drink came the free lunch and every novelty possible to lend an imposing respectability. Hence the expression in society, "a decent saloon", as if it were possible for the gate of hell to be made decent. The "decent saloon" became a real gate of hell for both sexes, since
it had the sanction of the Government and added a ladies entrance to prove its decency. This opened to both sexes a place to get warm on cold nights and to cool on warm nights, as well as revel together in midnight debauch. All of this created a demand for the distiller's and brewer's production, and a strict tax for the Federal coffers. As a result, there was an ever-increasing change in the liquor traffic—a gradual consolidation of capital into fewer hands and fewer companies.

Another practical advantage which the liquor tax and extended license gave the traffic was that it led to the banding together of liquor interests for mutual defense and against legislative encroachments. The tax law had been in force but from July first until November twelfth, when thirty-four members of the brewing interests met in Pythagoras Hall on Canal Street, New York and organized the United States Brewer's Association. It is significant to note the use they made of "United States" in their naming the organization; also the motto, "Unity is Strength", suggested by their first President and adopted. They at once appointed an Agitation Committee to correspond with the Internal Revenue Bureau and sent a deputation to Washington. The next year they succeeded in getting the tax on beer reduced from one dollar to sixty cents, notwithstanding the great needs of the Government for funds. In 1864, at the Brewers Congress in Milwaukee, the Agitation Committee was made a permanent body and they adopted, as a part of their work, deputations to Washington. From that date the beginning of the liquor lobby
at Washington. So good, but in others gross evil and untold.

The organized liquor power, with its Committees keeping watch at the Nation's capital, was determined to yield to no requirement it could successfully resist or even evade. Hence the Commissioner of Revenue and Congress were kept busy restricting and regulating the liquor policy seem to prevent frauds. From the very first, attempt to enforce the liquor tax it has been a struggle against frauds. Every law enacted seemed a desperate attempt to prevent them. The Government experimented by changing the rate of tax on liquor until 1875, after which time the rate has not changed until the Spanish-American War. But this change in tax did not prevent fraud. Besides Congress seemed to be conscience-smitten on the question of license and changed the term "license" during the first thirteen years, so that it read "special tax", and yet frauds still existed.

It has ever been an unwritten law of governments and nations, to hold in check the Legislative enactments and national policy by the time-honored custom established by the precedents which have been introduced at similar times and under similar circumstances in measures and policies, and this custom has greatly influenced legislators and executives regardless of the motives and often gross mistakes of their predecessors and originators of such laws and policies. In some instances

1. A Century of Drink Reform p 175.
this is well and good; but in others gross evil and untold misery and ruin have been wreaked upon its citizens for an unlimited period. No one will doubt, at this present time, that such has been the case with the United States in regard to the present Federal Liquor policy, by the means. The effect.

The report of Commissioner of Internal Revenue, Pratt, of November 8, 1875, in his discussion of "Our Internal Revenue System", virtually admitted that the Federal liquor policy was not a success. He says: "An examination into the practical working of Internal Revenue Legislation shows that the imposition of an increased tax is not usually followed by an immediate corresponding increase in the amount of revenue collected." He said that the receipts during the thirteen years had varied greatly and that the fixed medium rate of tax had failed either to prohibit from general consumption or from too much temptation illicit distilling. He also said that the amount of spirits consumed had varied greatly during that period and this he considered a standing argument in favor of taxing liquor. "The demand", he said, "is as steady as the appetite to be fed as fast and exacting". He further admitted that, after thirteen years experience, frauds were more numerous and troublesome to the Government. In view of this fact, he discusses the subject of frauds at length.

Thus we have seen how the liquor policy in its development has entrenched and empowered the liquor interests; has entangled the Federal Government with the traffic, and has thrown National and State Governments into conflict with each other. Surely the end does not justify the means. The effect upon society and the stability of the Government cannot be other than the very worst, verity, "What a tangled web we weave, when first we practice to deceive". A policy which thus entangles the Government cannot be constitutional or fundamentally legal. A thing fundamentally right and legal cannot be productive of so much wrong, and this leads us to inquire of Blackstone and the United States Supreme Court, to find if the policy is also entangled with law, and whether Congress had a right to inaugurate such a policy.

Blackstone defines law to be "a rule of civil conduct by the supreme power in a state commanding what is right and prohibiting what is wrong". The United States Supreme Court says: "There are acts which the Federal or State Legislature cannot do without exceeding their authority""They may command what is right and prohibit what is wrong, but they cannot change innocence into guilt." Again the United States Supreme Court says: "No Legislature can bargain away the public

2. Calder vs. Bell, 3 Dallas, (U.S.) pp 386-388.
health or the public morals. The people themselves cannot do it, much less their servants.\(^1\) The same Court again says: "There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen or the state, or a citizen of the United States."\(^2\) The same Court, in another case says: "We cannot shut out of view the fact within the knowledge of all, that the public health, the public morals and the public safety may be endangered by the general use of intoxicating drinks."\(^3\) On the legality of license, this same Court says: "if a loss of revenue should accrue to the United States (because of prohibition) from a diminished consumption of ardent spirits, she shall be a gainer a thousand-fold in the health, wealth and happiness of the people."\(^4\) Yet in spite of the legal rights in the case, no small contention arose in Congress over the moral side of the licensing and taxing the liquor business. Those who contended for taxation for revenue, urged insistentely that they were not dealing with a moral issue. Especially did they so argue against Senators Wilson and Pomeroy in the debate over licensing the retail of liquors.

\(^2\) Crowley vs. Christensen, 137 U.S. p 96
Senators Wilson and Pomeroy were right in contending against the licensing of an evil. Statutory enactments cannot change right or wrong. We have already seen, in the beginning of this study, how that public sentiment was largely in favor of prohibition. The anxiety of Congress to secure a tax led the best lawyers and statesmen of that day to overlook the woe of the Judge of all the earth who doeth right. - "Woe unto them that call evil good and good evil; that justify wickedness for a bribe and take away the righteousness of the righteous from him". Congress made the mistake of adopting for a principle upon which to base the right to tax and license liquor, that of taxing the habits and vices of men. As if it were legitimate for the Government to derive a revenue from the destruction of the health, homes, happiness and lives of its helpless citizens. This mistake is plainly seen in the Government's struggle ever since.