

# **“Protecting the Public Welfare and Morals”**

Political Institutions, Federalism, and Prohibition, 1834-1934.

Thesis by

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In Partial Fulfillment of the Requirements

for the Degree of

Doctor of Philosophy

California Institute of Technology

Pasadena, California

2001

## Acknowledgements

First, I would like to thank my Lord and Savior Jesus Christ for his mercy and faithfulness. Next, I would like to thank all of those who have supported me throughout my doctoral career. I will start in the following order: thesis support, candidacy support, graduate education support and general support.

For thesis support, I first like to thank my committee, Mike Alvarez, David Grether, Rod Kiewiet, and Peter Ordeshook. Special thanks goes to the Chair, Rod Kiewiet, for the tremendous energy spent making sure my thesis was coherent, clear and consistent. I then like to thank Bill Deverell, the special consultant to my thesis, for the guidance early on, that helped shape my focus. A special thanks goes to Nancy Brown and Ruth Sustiatia for the incredible amount of effort they spent helping me find documents and data. Then I like to thank Ron Roberts Jr., for his expertise in communication, which played a big role in my oral defense delivery. I also like to thank Kathy Zeiler and Fred Boemke for taking special time out of their schedule to read parts of my thesis.

For candidacy support, a special thanks goes to Scott Page and Simon Wilkie for putting forth extra efforts to help me past the second part of my candidacy. A special thanks goes to Kim Border, who spent hours working with me to help me prepare to retake my preliminary exams.

For graduate education support, a special thanks goes to the Irvine Foundation, Mike Alvarez and Scott Page for their commitment to diversity in graduate education. I also like to thank Matt Spitzer, and John Ledyard for making sure I had food and shelter during the summers. A special thanks goes to Danny Howard and John Carter for education and moral support. Lastly, I'd like to thank Bob Sherman and David Grether for their teaching, from which I benefited from tremendously.

For general support, I would like to thank the Baldwin Hills Church Family, Ed Mc Cafferey, Tara Butterfield, Rosy Meiron, Ana Salazar, Patricio Vela, Victoria Nelson, Dion Tynes, Ron Roberts Jr., Al Ayetin, Debbie Dismuke, Robert and Goldie Buchanan, Naomi Graham, Amelia Roberts, Von Johnson, Esther Preston, and Juanita Roberts. Most of all, I'd like to thank my Parents, Alma Nelson, Doris Kirk and Laurel Auchambaugh.

## **Abstract**

Social Scientists have developed a research agenda that seeks to explain prohibition policy adoption through the theory of collective action or the economic theory of regulation. They have found that the relative strength of interest groups has indeed played a role in the adoption of prohibition policy at the state and national level. I have chosen to take a different approach to the study of the prohibition era. In this thesis, I have chosen to make the state and federal constitutions the primary focus in determining what shaped prohibition policy outcomes at both the state and national levels.

I have sought to show three things. First, state institutions played a key role in the spread of prohibition policy. Second, the state's ability to enforce prohibition was compromised by the conflict between state police powers and the federal interstate commerce powers. Third, the ambiguous wording of the Eighteenth Amendment was a major factor in the failure of national prohibition enforcement.

In chapter 2, I showed that pro-prohibition forces preferred constitutional amendments to statutory laws. The ability to adopt state constitutional amendments, however, was hampered in some states by high institutional barriers at both the initiation stage and ratification stage. In chapter 3, I showed that prohibition states had limited success in prohibiting alcohol sales because their police powers conflicted with federal interstate commerce powers.

In chapter 4, I show that the Supreme Court's interpretation of the ambiguous wording of the Eighteenth Amendment gave states incentives to free ride on the federal enforcement effort. Consequently, the asymmetry in capabilities between the states and federal

government was a chief cause in the failure of enforcement of the Eighteenth Amendment.

I conclude that prohibition policy might shed some light on the current direction of research on how policies, particularly moral policies, diffuse across states. Second, the federalism perspective I have adopted may shed some light on the likely life cycle of moral policies, the “war on drugs,” that are tending toward prohibition today.

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## Chapter 1 Introduction

The convention wisdom concerning Prohibition holds that it was a national experiment, the product of a cultural schism that long existed in America and which came to a head with the ratification of the Eighteenth Amendment in 1919 (Gusfield 1963; Sinclair 1964). This amendment banned the sale of intoxicating liquors in all the states and territories of the U.S. It represented the triumph of Protestant-dry-native-rural American values on one side over Catholic-wet-foreign-urban on the other. It is widely accepted that the repeal of National prohibition in 1933 resulted from shift in the balance of power between these two cultural blocs, and that this shift was hailed by the presidential election of 1932. Roosevelt's victory, by this view, signaled the triumph of the urban working class (Lichtman 1979).

Another common belief is that, instead of temperance, Prohibition engendered disrespect for the law, crime, violence, federal corruption, and the persistent, widespread demand for intoxicating beverages. Policy experts, searching for clues from the failed experiment, often conclude that the current prohibition of drugs leads to the same form of enforcement problems that the federal government experienced during the Prohibition Era. However, after acknowledging that national prohibition can teach us something about the futility of trying to enforce a national drug policy, policy scholars typically find little that is important about this period.

## **Historical Studies of Prohibition: A Brief Overview**

As indicated above, historians studying the reform movements of the late nineteenth and early twentieth century have focused on the role that ethnocultural cleavages have played in initiating social reform. Gusfield (1963) asserts that social elites from New England, once having great status and influence in shaping society, lost this power after the Civil War in the face of growing immigration. In order to regain their status and influence, they championed temperance crusades in order to control the social behavior of new urban immigrants. Supporting this view of rural influence over the urban masses are Clark (1965) and Odegard (1928). Clark studies the influence of rural interests as manifested in prohibition policy in Washington. Odegard, studying the Anti-Saloon League, examines rural influence in terms of its power to shape the preferences of political elites.

Several scholars have also studied the goals, structure and philosophy of a variety of temperance groups in U.S. history. The three groups that have received the most attention are the Prohibition Party, the Women's Christian Temperance Union (WCTU), and the Anti-Saloon League (ASL). Because temperance reformers were unable to persuade the Republican Party to take a strong stand behind prohibition, there was a mass exodus in 1869 to form the Prohibition Party. The Women's Christian Temperance Union was formed in 1874 in response to the externalities that the saloon imposed upon the home (Blocker 1992). The last and most influential temperance groups was the Anti-Saloon League. It was founded 1893, amidst the disarray in goals and perspectives of the Prohibition Party and the WCTU.

Each group made its own distinct contribution to the success of the prohibition movement. The Prohibition Party is responsible for linking prohibition with other progressive reforms of the late nineteenth and early twentieth century (Blocker 1976). The WCTU also believed in broad based reform (Donovan 1995). The ASL, in contrast, devoted itself solely to the adoption and enforcement of prohibition laws (Hamm 1994). According to Hamm, in its first 15 years of existence, the ASL had participated in over 31,000 cases of liquor law enforcement. During Prohibition, the League also took the lead in enforcement efforts.

Differences in goals and strategies tended to undermine the collective impact of the major groups seeking prohibition (Munger and Schaller 1997). Opposition interest groups such as the Volunteer Committee of Lawyers (VCL), the Women's Organization for National prohibition Reform (WONPR), the American Federation of Labor (AFL), and the Association Against the Prohibition Amendment (AAPA) also began to gain strength during the mid 1920s.<sup>1</sup> These organizations, with the exception of the AFL, represented middle and upper class opposition to the Eighteenth Amendment (Kyvig 1989). Prohibition also meant that the federal government was forgoing a large source of tax revenue. The Great Depression, along with problems with enforcement, gave opposition interest groups the opportunity to mobilize alongside former alcohol producers to press for repeal.

## **Important Quantitative Studies of Prohibition**

Subsequent to much of the historical research on prohibition, recent scholarship has turned to quantitative analysis of prohibition adoption. Three papers (Goff and Anderson 1994; Hersch and Netter 1989; and Munger and Schaller 1997) have primarily sought to test the extent of interest group influence over prohibition policy after controlling for ethnocultural factors. Hersch and Netter (1989) apply the economic theory of regulation to their study of prohibition. Looking at the period between 1907 and 1919, the authors seek to explain why 30 states adopted prohibition laws prior to National prohibition. They hypothesize that the stronger the pro-prohibition interest groups were relative to the economic interest supporting alcohol production, the earlier a state should have adopted state-level prohibition. Hersch and Netter employ a Tobit model (three states were censored from the dataset) to assess the diffusion of prohibition across the states.<sup>2</sup> Using percent protestant as a proxy for the religious composition of a state, the authors find that the prohibition force was a significant predictor of the timing of prohibition adoption.

Goff and Anderson (1994) examine support for and opposition to prohibition in the U.S. Senate. They too seek to examine how organized interest groups influence Congress in the face of strong public pressure. They find that support for national adoption, as well as for repeal, was influenced not only by public opinion, but also by the distilling and brewing interests, both legitimate and illegitimate.

Munger and Schaller (1997) address the question of whether voters changed their preferences during the Prohibition Era or whether prohibition and repeal were largely the consequences of interest group activity. How can one explain such overwhelming support for prohibition in 1919 and, just 14 years later, explain the overwhelming support for repeal? Forty-five of the forty-eight states ratified the Eighteenth Amendment, with more than eighty percent of the legislatures voting for it (Merz 1930). The authors assert that citizen preferences did not change much during prohibition. Following Brennan and Lomasky (1993), they instead argue that voters faced a collective action problem that they could not resolve. Although they were opposed to moral policies in private, voters were supportive of them in public. If all voters have incentives to support moral policies in public and opposed them privately, we have an n-person prisoner's dilemma, in which an unwanted policy passes. This collective action problem left prohibition policy to organized interests. They further hypothesize that support for Prohibition arose from a coalition of economic and political interest groups. The economic interests were the large industrialists, who were seeking a more productive work force (see also Rumbarger 1989). To this group, they add the bootleggers.<sup>3</sup> The main pro-prohibition interest groups were the Anti-Saloon League and the Women's Christian Temperance Union.

The key argument is that these interests were an alliance held together through the common interest of prohibition. However, their underlying goals were different. The industrialists and bootleggers sought profits. The WCTU primarily wanted social reform, including women's suffrage and election reform. The ASL's sole focus was prohibition. Once prohibition was written into the Constitution, the alliance had great difficulty holding together. This is evident in the failure of the pro-prohibition alliance to mobilize

in 1933. According to Munger and Schaller, the Depression gave the opposing political entrepreneurs a window of opportunity in which to couple the federal government's need for revenue with a proposal for the taxation of beer. Thus, changes in economic conditions caused business interests to abandon the coalition.

Munger and Schaller also argue that another factor underlying the pro-prohibition coalition was the successful passage of the Nineteenth Amendment, which required states to grant women's suffrage. Now that women could vote, women's political organizations lost membership and energy. In other words, prohibition was a means to an end for many women, who really were interested in their voices being heard through the right of suffrage as opposed to it being heard on a particular subject.

The dependent variable in Munger and Schaller's regression equation for adoption is the Eighteenth Amendment ratification votes in the lower and upper chamber of state legislatures in 1919. For repeal, the authors' dependent variable is support for prohibition repeal in the state convention votes for ratification of the Twenty-first Amendment (repeal) in 1933.<sup>4</sup> For citizen preferences, percent Catholic is used as a measure of the strength of public opinion against Prohibition. Farm income and state wealth were used as measures of the strength of the rural and middle class citizenry that presumably favored prohibition.

The authors found that states having women's suffrage prior to National prohibition were also more likely to support prohibition. This follows from the strong support women's movements such as the WCTU gave to the prohibition cause.<sup>5</sup> Surprisingly, the economic interests of states (alcohol production before prohibition) had no effect on support for the Eighteenth Amendment.

These three studies provide quantitative support for the hypotheses that the relative power of interest groups, as well as ethno-cultural factors, shaped prohibition policy outcomes. In fact, these studies largely recapitulate the findings of each other, largely because their *frame of reference regarding prohibition is based upon conventional understanding of the era*. The primary objective of this dissertation is to change the frame of reference to better understand the phenomenon of prohibition at both the state and national level. It does so by assessing the role that federalism and state political institutions played in shaping prohibition policy outcomes.

## **Influence of Political Institutions Prohibition Policy Outcomes**

Instead of attempting to gauge the power that interest groups wielded in the battle over prohibition, I examine the power of institutions to shape policy outcomes. By understanding how federalism and state political institutions were able to constrain government and interest group power, a better understanding is gained as to why the policy was adopted by so many states and yet was so short-lived at the national level.

In the following chapters I seek to show that political institutions have shaped prohibition policy outcomes in three basic ways. In chapter 2, I demonstrate that state political institutions significantly affected state prohibition policy outcomes in the years prior to National prohibition. In chapter 3, I argue that federal institutions, in particular the Interstate Commerce Clause, limited the effectiveness of state prohibition. In chapter 4 I find that federal institutions severely limited the cooperation of state and federal governments enforcing in national prohibition, thus undermining possibilities for success.

In chapter 2, I examine the adoption of state-level prohibition in the years preceding national prohibition. I depart from the standard presentation of prohibition policy by distinguishing between constitutional amendments and statutory laws. Pro-prohibition groups preferred state constitutional amendments to statutory laws. However, the hurdles for adoption were higher for constitutional amendments than for statutes. Statutory prohibition only required simple majorities of the state legislature to enact it. For constitutional amendments, the hurdles to adoption of this policy were substantially higher. Constitutional amendments require both legislative and voter approval through the process of submission and ratification. Some states required two consecutive legislatures to take action before an amendment could be submitted to the people for ratification. This meant that after one legislature voted to approve the amendment, the next newly elected legislature would have to concur in that vote before the amendment could be submitted to the people. The length between proposal and submission of an amendment limited pro-prohibition interest influence over the adoption of prohibition policy in these states.

The next hurdle for constitutional amendments was one of ratification. Unlike Munger and Schaller (1997), who posit that voters could not resolve the collective action problems, leaving prohibition policy up to interest group influence, I assert that voters played a major role in the prohibition outcomes. Pro-prohibition interest groups could not gain the ratification of a prohibition policy without the support of the voters.

State institutional requirements, however, varied in their ratification requirements. Some states required a simple majority of those voting on the amendment, while others required

an absolute majority of those voting at the election or of the electorate in the state as a whole. Burnham (1965) found that voter turnout tends to be lower in off presidential election years and of those who turnout, a lower proportion tends to vote for ballot propositions than for candidates. Burnham calls these phenomena of voter roll-off and drop-off respectively. When considering the relationship between absolute majority ratification requirements and voter behavior, one can see how enormous the hurdle of adoption typically was.

In chapter 3 I examine how the Interstate Commerce Clause limited the effectiveness of state prohibition. States without prohibition imposed externalities on neighboring states that had prohibition. Dry states could not remain dry as long as alcohol could be shipped from wet states into dry states under federal protection through the Interstate Commerce Clause. Because the Constitution makes the federal government the supreme power of the land, federal interstate commerce powers trumped the states Tenth Amendment police and regulatory powers. This conflict meant that the national government would have to become part of the prohibition solution.

In chapter 4 I examine the limits the federal constitution put on state and national cooperation in enforcing national prohibition. In order for national prohibition to be successful, it would require a massive enforcement effort and an experienced police force was required. The federal government could not enforce national prohibition within the states because the Tenth Amendment had given that power to the states. Consequently, the Eighteenth Amendment was designed to transfer state police powers to the federal government, to limit state police powers, and to create a uniform prohibition policy across the states.

During the ratification period for the Eighteenth Amendment, the Anti-Saloon League encouraged states that did not already have state prohibition to adopt enforcement codes that would replicate federal law. The hope was that one policy would be set at the national level, and that states would use their enforcement machinery to carry out the policy. Relying upon state law enforcement would also mean relatively little money would have to be allocated by the federal government to enforcement.

The Constitution, however, limited the coercive power of the federal government over state police actions. These limitations meant that the federal government would either have to find the money and train the personnel to properly enforce National prohibition, or to rely upon the voluntary cooperation of the states to do the majority of the enforcement. As in countless other contexts, voluntary cooperation did not extend very far.

In short, this dissertation aims to show that by changing the paradigm from which we view prohibition, we can gain additional understanding of how this phenomenon swept the country only to fizzle out fourteen years later. I switch the focus from the relative power of interest groups to the impact of political rules and institutions. In so doing, I hope to demonstrate the important contributions that an institutionalist perspective can make to our understanding of policy diffusion.

## Notes

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<sup>1</sup> Samuel Gompers, representing the AFL in testimony before Congress against national prohibition, argued that prohibition was a discrimination against the wageworker, who depended on the saloon and the drink after a hard day's work.

<sup>2</sup> These three states are Kansas, Maine, and North Dakota, which all adopted prohibition prior to 1907. The authors insist that the factors determining prohibition adoption in these states were probably different because they were adopted in the 1880's.

<sup>3</sup> Munger and Schaller claim that bootleggers were envisioning rent-seeking opportunities that prohibition would undoubtedly provide. Thus, the bootleggers promoted prohibition on economic grounds. The authors admit that they have no way to measure specific activities and or levels of influence. Goff and Anderson attempt to measure the influence of bootleggers in senators' votes to continue prohibition in 1933, as discussed above. They attempt to do this by measuring the amount of unreported income in a state. Their assumption is that bootleggers are making a large non-taxable profit which they are depositing in their checking accounts. I find the bootlegger argument rather strange and not credible predictor on prohibition policy outcomes. I make no attempts to measure or discuss their activities in this dissertation.

<sup>4</sup> For 38 states, percent support for repeal was used as the dependent variable because these states had direct elections for delegates to the constitutional convention voting on repeal.

<sup>5</sup> These findings are not contrary to Hersch and Netter (1989), who found that women's suffrage was not a significant factor in adoption. Munger and Schaller find a significant effect on the ratification of the Twenty-First Amendment.

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## **Chapter 2 Prohibition Forces and State Institutions**

### **Introduction**

This chapter examines the role that state political institutions played in shaping historical prohibition policy outcomes in the states. After the experiences of the 1850's, in which laws passed by state legislatures were frequently overturned, prohibition interest groups adopted a new strategy of advocating constitutional amendments banning alcohol manufacture and sales. A constitutional amendment, once adopted, is usually harder to overturn. Consequently, state constitutions, in most cases, required a larger percentage of votes in the legislature and in the electorate in order to amend them. Thus, prohibition interest groups, wanting lasting societal reform, desired constitutional prohibition in every state. The prohibition movement was largely unsuccessful in attaining state prohibition adoption, however, until the Anti-Saloon League (ASL) arrived on the scene. The ASL recognized the importance of state institutions, and incorporated institutional considerations into their strategies.

To test my hypotheses concerning state prohibition adoption, I use a multinomial logit event history model. This type of model is often called a competing risk model, in that subjects in the study can "fail" from more than one cause. In my model, states are the subjects, and the "failure" events are either a statutory prohibition adoption or a

constitutional prohibition adoption. Much of the power attributed to the Anti-Saloon League can be explained by the variation in state institutions and their requirements for adoption. Before we examine how institutions shaped the ASL strategy and prohibition policy outcomes at the state level, we start at the beginning of the movement for state-level prohibition.

### **An Institutional Perspective on State Prohibition**

Prior to 1750, with the exception of the Quakers, nearly all Americans drank distilled spirits on regular occasions. Early American tradition, which stemmed from European traditions, held that rum, gin, and brandy were nutritious and healthful. Distilled spirits were believed to be able to cure colds, fevers, snakebites and a host of other ailments. Early Americans drank their liquor in social environments, making the American tavern a central focus in the community. Besides fun and games, business transactions and public debate were conducted in the tavern. Because of the important function that the tavern played in the life of the community in New England, the upper class believed that the tavern should be regulated to insure that upper-class individuals of good moral character would operate and own these taverns. Thus began the licensing of the sale of liquor in America.

A major factor that changed the social position of the tavern was the drop in the price of distilled spirits during the 1730s. The drop in price stimulated demand. Increased consumption brought with it public drunkenness, especially in the lower classes. Because public drunkenness was accompanied by lewd conduct, profanity, and a collapse of other inhibitions, it is no surprise that the clergy were the first to attack public drunkenness.

The clergy were eventually joined by many in the upper classes, who felt that the tavern was getting out of control. John Adams launched one of several crusades during the 1760s to reduce the number of taverns in Massachusetts (Rorabaugh, 1986). Public crusades were largely a failure, however, because there was a large demand for taverns by the mass public. Other methods were attempted, such as discouraging Sunday sales, requiring all taverns to provide lodging for travelers, revoking licenses if gaming were permitted on the premises, and prohibiting sales to seamen and slaves. The growing independence of the tavern from upper-class control was seen as a sign of the growing independence of the lower classes.

The elite citizenry were given help in moderating the drinking behavior of the mass public by the decision of the Methodist church in 1780 to push for moderation in drinking by its members. Unlike the Quakers, many Methodists did not come from backgrounds of privilege. John Wesley, who founded the Methodists, broke from other protestant denominations in his attempt to reform sinners through "methods." One of the methods advocated by the Methodists was abstinence from distilled spirits.

The medical profession also gradually turned against strong drink. In 1784, Dr. Benjamin Rush wrote "An Inquiry into the effects of Spirituous Liquors." Rush's essay held that liquor had little or no beneficial effect; it did not protect against either hot or cold weather, as commonly thought. In addition, liquor caused stomach sickness, vomiting, hand tremors, liver disorders, madness and palsy. His essay also discussed the effects of spirits on crime, including murder. He recommended that distilled spirits should be replaced with beer and light wines.

Over the next forty years, consumption of distilled spirits in the United States continued to increase. Part of the rise in consumption was due to the growth of the American market. Early in the nineteenth century, the western frontier opened up and allowed farmers to discover a profitable crop in corn. Western farmers in the Ohio Valley began to use the corn grown to make whiskey, which they sold to the eastern markets.

Meanwhile, in the east, Marcus Morton, along with other wealthy Protestants from Massachusetts, founded the American Temperance Society in 1826. The ATS formed with the intention of coercing the evangelical church into ceasing to condone moderate drinking. The ATS found a foothold among evangelical denominations in the Northeast, particularly the Methodists and Baptists, who held that liquor, especially spirits, was an unadulterated evil. The early activists believed that by abstaining from drink themselves, they would be able to convince other drinkers of the virtue of abstinence (Tyrell 1976). While the ATS's strategy was to reach groups that controlled the supply of distilled spirits in the community, such as distillers and traders, the ATS also hoped to reach the drinker and supplier with tracts and by sending agents to churches to preach temperance. Despite the efforts, the ATS strategy was ineffective in reducing the consumption of distilled spirits and the resultant problems of drunkenness and debauchery. Members of the ATS began to believe that weaker beverages such as beer and wine merely whetted the appetite of the drinker for stronger spirits. Thus, the ATS turned to a radical reform effort known as teetotalism, which meant that members would abstain from all fermented drink. The ATS also turned their attention to the supplier of alcohol (Tyrell 1976). As long as the seller sold alcohol, the drink would always be a temptation to the man

pledged to abstinence. It was believed that license gave a cloak of respectability to the alcohol markets. Therefore, attempts to eradicate liquor traffic started at the local level, targeting those responsible for granting liquor licenses. The target of temperance coercion became the town selectmen, whom the temperance groups tried to prevent from recommending licenses to the county commissioner, thus achieving prohibition at the local level.

In 1838, the ATS and other temperance organizations in Massachusetts were able to successfully press for passage of the first statewide partial prohibition law. It stipulated that liquor could not be sold in quantities smaller than fifteen gallons. The purpose of the law was to make it impossible for the individual consumer to purchase alcohol cheaply. The consumer would have to purchase alcohol from the retail dealer fifteen gallons at a time. Hence, the law became known as the “fifteen-gallon law” (Tyrell 1976).

Around this same time, temperance reformers in other states also began to favor coercive public policy over moral suasion. Tennessee made the retail sale of ardent spirits an offense punishable by fine, and Rhode Island, New Hampshire, Connecticut, and Illinois passed new state laws allowing local option on liquor licensing. Local option allowed towns or counties to vote themselves dry of all alcohol. By 1838, temperance organizations in South Carolina, Georgia, New York and Pennsylvania were pushing for statewide prohibition of all intoxicating beverages (Cherrington 1920).

During the 1840's, several events occurred that aided efforts to achieve statewide prohibition. In Baltimore, a group of working-class men formed the Washingtonians. The members pledged total abstinence, and promised to convert other drinkers through

the “experience” meeting. In the experience meeting, members would stand up and give an account of their struggle to overcome the temptation of drink. The movement spread throughout the country during this decade. In 1842, another group emerged in New York called the Sons of Temperance. The Sons of Temperance spread a message similar to that of the Washingtonians, and had a strong impact, primarily in the east.

Statewide prohibition was first achieved in Maine. A member of the Maine state legislature, General Appleton, introduced the first state prohibition bill in 1837. The bill failed to pass, but its introduction sparked widespread debate on the merits of the idea. Neal Dow, a prosperous businessman of Quaker origin, took over the reigns of the movement for a state prohibition law shortly thereafter. With his hard work, along with the Maine Temperance Union, a weak prohibition law was adopted in 1847, and subsequently strengthened in 1851. The 1851 law provided search and seizure provisions, steep fines for the sale of liquor, prevented dismissal of cases by prosecution in state or local courts, and gave liquor law violations priority over all other non-violent cases.

Several states followed the Maine prohibition innovation and the first prohibition wave was underway. All of these state prohibition laws were statutory in nature and required no popular approval of the people to be implemented. However, in order to guide their decisions, several states legislatures did allow referenda to be held. According to Oberholtzer (1912), the reason for the advisory referendum was that prohibition was a vexing question. Legislators often preferred to disown the controversial policy. For advisory referendas, prohibition advocates had to muster the signatures of several thousand supporters. Colvin (1926) notes that it took a petition of 40,000 signatures in

order for legislatures to agree to pass the Maine law. The Massachusetts legislature considered a bill after 160,000 petition signatures. The New York and Pennsylvania legislatures were each faced with over 300,000 petition signatures for prohibition.

The successful adoptions of the first wave began to unravel as early as 1853. In that year, the courts declared certain features of the prohibition laws unconstitutional in Michigan. In Indiana, the state supreme courts deemed the submission of a law to the people for their approval in the form of a referendum “a delegation of power to a foreign body which is unknown to the Constitution.” By passing the law to be voted upon to the people in the form of a referendum, the legislature was not seen as performing its duty as authorized by the state constitution. The next legislature in Maine dropped prohibition, adopting instead a statute allowing for the license of liquor dealers. This innovation lasted for two years when in 1858 Maine returned to prohibition. In 1858 Nebraska and Iowa both adopted statutes allowing for the licensing of liquor dealers. By the end of the Civil War, however, only five states maintained prohibition laws on the books. Connecticut and Massachusetts repealed in the next couple of years, leaving only the New England states of Maine, Vermont, and New Hampshire with prohibition. Table 1 summarizes the first wave of state prohibition legislation.

Table 1 here

Tyrell (1976) lists several reasons why the wave of state statutory prohibition collapsed. First, the innovation was often met with strong popular resistance. Second, some state supreme courts declared the “Maine laws” unconstitutional because some of the provisions violated the rights of the individual guaranteed by the state. Third, large

numbers of immigrants from Ireland and Germany, who were largely hostile to the laws, had settled in some of these states.

The large immigration of German and Irish began redefining the perception of the alcohol problem along ethnic and class lines. The Germans and the Irish brought with them their drinking customs as well as improved technology for beer manufacturing. At this time, nativist movements targeted these immigrants. Members of the Know-Nothings, for example, seized upon prohibition as a means of reigning in the immigrant hordes.

In response to the growing threat of prohibition, liquor merchants and manufacturers began to organize in opposition. In 1855, Liquor Leagues appeared in Philadelphia, New York, Boston, and Milwaukee to provide legal defense funds for prosecuted dealers and to support legal challenges to restrictive or prohibitory laws (Blocker 1989). This opposition was successful in helping strike down state prohibition laws in New York, Michigan and Indiana.

In contrast to Tyrell and Blocker, Colvin (1926) contends that it was comparatively easy to secure a prohibition law because the liquor industry at that time was not well organized. It therefore did not exert the strong influence over the legislature that it did in subsequent prohibition efforts. Colvin also asserts that the movement was characterized by a lack of concern over enforcement, meaning that many believed that mere passage of the law would be enough to stop the manufacture and sale of alcohol. No one calculated the heavy financial burden that proper enforcement of the law would entail.

## **The Change of Strategy to Constitution Amendment**

The prohibition movement at this time also acknowledged a more practical frustration with the adoption of statutory laws. As Henry Blair, one of the leaders of the post- Civil War prohibition crusades, put it:

Though a Prohibitory Act of the most satisfactory character may be carried by a majority through a given legislature, there is no assurance, so long as the Constitution makes no explicit direction, that it will be retained on the statute-books for a period long enough to admit of a fair trial: the very next Legislature, meeting at the end of a year or at the utmost of two years, is then at liberty to repeal it (p.97).

Concurring with Blair, Wittet (1989) also believes that prohibitionist turned to constitutional amendments because they were more stable, and directly reflected the will of the people.

The first efforts to enact a constitutional prohibition amendment took place in New York in 1856. The Sons of Temperance of Eastern New York proposed a constitutional amendment worded as follows:

The sale of intoxicating liquors shall not be licensed or allowed in this State excepting for chemical, medicinal or manufacturing purposes, and then only under restrictive regulations to be made by the legislature. It shall be the duty of the Legislature to prescribe proper penalties for the sale of liquors in violation of this provision, such liquors being hereby declared a common nuisance, and liable to confiscation. (*Cyclopaedia of Temperance and Prohibition*. 1891, p. 99)

Both the Senate and the Assembly adopted the amendment in 1860. In order for the amendment to be submitted to the people, the state constitution required the next elected legislature to endorse the bill as well. The outbreak of the Civil War caused the abandonment of the New York campaign. It would be another twenty years before prohibition advocates would see the fruits of their efforts end in the adoption of a state constitutional amendment.

### **Constitutional Campaigns of the 1880's**

With the repeal of prohibition laws and the collapse of the first wave, the liquor industry expanded rapidly and drinking became centered in the saloon. Technological advances after the Civil War also played a role in encouraging alcohol consumption. The modern beer industry emerged when brewers introduced German yeast cultures that produced a light beer that they could store (lager). Lager beer appealed to American tastes. By 1867, there were about 3,700 separate brewing firms, manufacturing and marketing beer in every state and territory in the nation.

The introduction of mechanical refrigeration relieved brewers of the dependence on natural ice. Prominent brewers thus concentrated in big cities. Pabst, Schlitz, and Blatz were located in Milwaukee, while Anheuser-Busch was located in St. Louis. Brewers employed a strategy of vertical integration to control local markets called the "tied house system." The tied house system meant that big breweries would finance saloons as long as the saloons sold only their beer. In other instances, the brewery owned the saloons outright. The high concentration of saloons, however, meant competition was forcing the saloonkeepers to compete in major markets without much profit. Thus, some

saloonkeepers began to encourage customers to drink more at an earlier age, and allowed prostitution and other vices to take place in order to stimulate demand. In addition, saloonkeepers violated local Sunday closing ordinances. In order to stay in business and maintain lawless behavior, the saloonkeeper had to resort to bribing police officials as well as render support to urban political machines.

The proliferation of these abuses supplied prohibition pressure groups with their fuel (Kerr 1985). In their view, saloons were places where a man could take his day's wages and spend it on drinking, gambling, and prostitution. After he was finished spending the money that was meant to take care of the household, so the story went he would come home drunk and beat his wife and kids. Women had very little protection against these negative externalities. The temperance movement thus revived in the early 1870s, when women decided to take the lead (Blocker 1989).

Scenarios as that just described helped make the "Women's Crusades" of 1873 and 1874 a national movement. This crusade originated in the town of Washington Courthouse in southern Ohio. By 1873, Washington Courthouse had eleven saloons and three liquor dealers. A non-violent protest march was organized, led by three women -Bethiah Ogle and her daughters Alfretta and Florence. The peaceful march was successful, in that two liquor dealers turned over their stock to the protestors. Other marches ensued in small towns throughout the country. The success of the movement culminated in the founding of the Women's Christian Temperance Union in 1875, which was the largest women's organization to that point in history. Under the leadership of women, the movement shifted strategies to statewide constitutional campaigns and the second wave of state prohibition adoption was underway.

Added to the WCTU's strength was the founding of the Prohibition Party in 1869. Prohibition Party adherents were primarily disgruntled Republicans, who believed that the prohibition of alcohol was the next great reform to be achieved now that slavery had been erased. The Prohibition Party gained most of its support in the Northeast. In addition to the belief in state constitutional prohibition, the Prohibition Party also believed in nationwide prohibition. The Women's Temperance Union and the Prohibition Party also supported other social reform issues, such as women's suffrage, a graduated income tax, and compulsory education. These two large prohibition organizations, along with other smaller organizations, began a strategic campaign for statewide constitutional prohibition. One of the states that needed reforming the most was Kansas.

Kansas became a state in 1861. In the early years of statehood, Kansas was known mostly as a collection of cow towns. The male to female population ratio was 4 to 1 (Bader 1986). Demand for gambling, prostitution, relaxation, self-expression, and drink was strong, especially among the working class. Consequently, saloons spread rapidly to meet that demand. By the early 1870's, Kansas had a population of 400,000. To serve this population, Kansas had 2 distilleries, 46 breweries, and 1,600 retail establishments carrying a permit to serve drinks.

At the same time that Kansas's towns were growing, temperance reformers from New England were migrating west with their families to settle in frontier states like Kansas. These New Englanders, of Protestant middle class stock, brought with them their strong moral codes and ideas. These reformers would find opportunities for prohibition in Kansas very strong, because Kansans had shown signs of progressive leanings early on. According to Bader (1886), Kansas, in 1867, became the first state to consider women's

suffrage. The amendment did not pass at that time, but indeed the mere consideration was some evidence of reform-mindedness on the part of Kansans.

Joshua Rollins Detwiler, a member of the Kansas Grand Lodge of the Independent Order of Good Templars was given credit for the idea of a constitutional prohibition amendment campaign in Kansas. Bader (1986) seems to suggest that the idea of a constitutional prohibition amendment stemmed from the existing law at the time, and not the attempt that New York prohibitionists made at a constitutional amendment in 1856. The law regarding alcohol regulation in Kansas, as of 1877, was called a dram shop law. The dram shop law was really just a local option law. It required a vote on the prohibition question every two years for towns with populations under 2,000 people. At this time, temperance groups were considering pressing for an amendment to the dram shop law, which would require all towns to take the vote every two years.

Bader (1986) contends that the wets took advantage of the prohibition amendment and helped push for its consideration because they believed that it would take emphasis away from the dram shop amendment, which they believed had a realistic possibility of being adopted into law. What the wets did not consider was the wide support and the organizational strength of the temperance groups. In 1878, rallies and conventions were organized in which members from temperance organizations from around the entire country came to speak. These speakers included African-Americans, Native-Americans, and women. The rallies also included pledge campaigns in which those who attended were encouraged to sign petitions pledging voting allegiance. In addition to these rallies, state legislators received many letters pressuring them to consider the prohibition

amendment. To the surprise of the wets and the dries, not only was the amendment submitted to the voters, but the voters ratified the amendment.

In 1880 Kansas thus became the first state to adopt an amendment to its constitution prohibiting the manufacture and sale of intoxicating liquors. Iowa, Ohio, Maine, South Dakota, and Rhode Island soon followed. Despite the early success in Kansas and several other states, the second prohibition wave also ended largely in failure. After 1887, no state adopted a prohibition amendment for the next two decades. Blair (1891) cites several reasons for the failure of the second wave. One was that after observing the rapid spread of prohibition, pro-liquor forces became alarmed and began to mobilize. Another reason was that alternative methods for regulation were developed in the 1880's as substitutes for prohibition. Among the methods used were local option elections and "high license."<sup>1</sup> It was argued that these alternatives were used to pacify the more moderate elements of the temperance movement.

What was not explicitly addressed by Blocker and Tyrell was the variation in the requirements to amend state constitutions. This was not an issue with the statutory laws of the 1850's, which were easier to pass but also easier to repeal. Constitutional amendments were harder to pass, but were more durable once passed.

## **State Constitutional Amendment Requirements**

State constitutional amendments are more difficult to adopt than ordinary statutes. Most state constitutions require a two-part amendment process of submission and ratification. Statutory laws adopted in the 1850's did not require voter approval, although as indicated

earlier some states submitted the question to voters in the form of advisory referenda. Several accounts from the constitutional campaigns of the 1880's and the subsequent campaigns at the turn of the century reveal the hurdles that constitutional amendment requirements presented.

## **Proposal Submissions**

Legislative requirements for submission were the first obstacle that temperance advocates faced. Whereas some states required only a simple majority vote of the legislature to submit a constitutional amendment, other states required a super-majority, either three-fifths or two-thirds. According to Blair (1891), in 1887 more than 100,000 citizens signed a petition asking the legislature of New York to submit a constitutional amendment to the vote of the people. Submission, however, was defeated in the House by a vote of 61 yeas to 32 nays, just under the two-thirds necessary to submit to the people.

Blair also notes that in 1887, the West Virginia House voted for submission by a vote of 55 to 10. However, the Senate, while favoring the measure by a majority, refused to give the necessary two-thirds until the *prohibition managers threatened to pass a statutory law granting complete prohibition*. This threat enabled the submission resolution to gain approval.

The hurdle was even higher in New Hampshire. New Hampshire requires amendments to be made by constitution convention. Thus in order for any amendment to be submitted to the people, a constitutional convention must be called. Blair (1891) states that because of

this requirement, prohibitionists were forced to appeal to the state legislature for a statutory law, but the legislature refused to consider the question.

Many states required that in order for an amendment to be submitted to the people for a ratification vote, two consecutive legislatures had to first approve the amendment. On the surface, this may only seem like a minor obstacle. The problems this requirement posed, however, were formidable. Recall that some of the statutory laws adopted in the 1850's were overturned by the next elected legislature. Between submissions, opposing interest groups can rally their constituents to petition legislators not to vote for the pending amendment. Incumbents face the threat of being voted out of office by a mobilized opposition. In some districts, legislators that voted for the first submission might be voted out of office between sessions. Some legislators may find it wise to just vote against a prohibition proposal if they know that anti-temperance groups will mobilize against the amendment between submission proposals.

Lutz (1994) provides good support for this position. In an attempt to build a theory of constitutional amendments, he finds that the more difficult the process of initiation, the fewer the amendments proposed and thus the fewer passed. His analysis also suggests that the most effective way to increase the difficulty of amendment at the initiation stage is to require the approval of two consecutive legislatures based upon a two-thirds majority each time.

## **Ratification**

Another hurdle associated with the adoption of a prohibition amendment is the share of the popular vote required for ratification. As with submission proposals, states vary in their rules for ratifying constitution amendments. Some states required a majority of those voting at the election or of the electorate of the state in order to ratify a proposed amendment. According to Colvin (1926), in 1918 a prohibition constitutional amendment was defeated in Minnesota, although it had received a majority of those voting on the proposal. The amendment failed, however, to receive a majority of those voting at the election. This is the difference between what we shall call a simple majority versus an absolute majority requirement. The same situation occurred in Mississippi in 1908.

Scholars commenting on the 1883 Ohio constitutional prohibition vote have made passing reference to the institutional requirement anomaly of Ohio (Colvin, 1926; Willet, 1989).<sup>2</sup> Blair (1891), also conjecturing as to the failure of the Ohio of 1883 submission, writes that:

There were indisputable evidence of fraud in the count, and the result was that though the prohibitory amendment had a majority of 82,214 of those voting in the question, it lacked 37,467 of a majority of all the votes polled on state candidates, and therefore, according to the requirements of the Ohio Constitution, failed of adoption” (p.108).

Cherrington (1920), speaking of the failed Ohio amendment of 1883, also notes that although the prohibition amendment had a majority of votes cast on that issue, it did not have the absolute majority of the electorate necessary for adoption. In general early twentieth-century scholars tended to place a heavy emphasis on variation in popular vote

requirements as a determinant of constitutional amendment adoption (Dealey 1914; Garner 1906).

Eleven states required a majority of those voting at the election, whether on the question of amendment or not. For example, if at an election in Indiana 600,000 votes were cast for governor, a proposed amendment, in order to be adopted, must receive an affirmative vote of at least 300,001. Dealey (1914) states that because more interest is usually taken in candidates than in measures, proposed amendments usually fail in these states for the reason that not enough votes are cast for them to give them the absolute majority that is constitutionally required. Ten other states require a majority of the electors as a whole to pass an amendment. If 700,000 people are registered to vote in a state and at a particular election if only 300,000 people vote, a constitutional amendment could not be adopted even if all of the people voted for the amendment.<sup>3</sup>

Two voting phenomena can thus potentially affect constitutional amendment prospects within an absolute majority state. Burnham (1965) defines “drop off” as the decline between presidential and succeeding off-year elections. The other phenomenon, “roll off,” measures the tendency of the electorate to vote for presidential offices but not for lower offices on the same ballot and in the same election. When an electorate does not turn out for special elections or state elections, the drop-off phenomenon has obvious consequences for absolute-majority states.<sup>4</sup> Roll off becomes a problem when the electorate is asked to vote on more than one issue on the ballot, as discussed in the Indiana example above. Consequently, states requiring an absolute majority of those voting in an election have posed a major obstacle to the passage of constitutional amendments.<sup>5</sup>

## Table 2 here

Table 2 illustrates the potential problem that roll-off played in constitutional amendment campaigns. Column 3 represents the percent of those voting on the amendment that voted for prohibition. Column 4 represents the total voting at the election that did not vote on the amendment. We see, for example, that in the 1880 Kansas election, 13.6 percent of those voting in the election (for president) did not vote for prohibition. Special elections represent the vote on the amendment alone. Thus, seven states held special elections on the issue of prohibition adoption. In these states, where roll-off is not an issue, the amendment failed to pass in all but one state, Iowa. What the table indicates is that had Maine, Kansas, South Dakota, and Rhode Island had absolute majority requirements, the outcomes may have not been a victory for the dries.

### **The Quiet Period of 1890-1906**

By 1890, states had chosen a variety of mechanisms to regulate the traffic in intoxicating liquors. Still, the second wave of prohibition saw fewer states adopt a prohibition policy than in the first. In addition to the disappointment of the constitution amendment campaigns of the 1880's, prohibition advocates were faced with the knowledge that mobilization of sufficient public sentiment to attain a constitutional amendment was, in a large number of states, a daunting prospect. Subsequent years, however, saw the rise of several movements that focused on putting an end to government corruption and the mixing of political institutions with "big business" through corporate elites and boss governments at the local level. The Populists mobilized in reaction to rapid industrialization and consequent economic dislocation. The Progressives, concerned with

the increasing political power of concentrated wealth, claimed that corporate money in politics corrupted politicians and the political process. The Progressives thus favored the initiative as a means of removing legislation from the trusts.

The rise of Populism and the Depression of 1893 largely turned the focus of people away from moral issues and toward the economic and agricultural crises. According to Storm (1972), populism caused internal dissension within both the WCTU and the Prohibition Party. The leadership of these largely middle class interest groups was divided as to how to deal with the growth and power of the Populists.

In 1893, Howard Hyde Russell founded the Ohio Anti-Saloon League, which by 1895 became a national organization. The ASL broke from the strategies and focus of the WCTU and the Prohibition Party (Blocker 1976; Donovan 1995; Storm 1972). It focused on the issue of obtaining prohibition exclusively, and did not concern itself with other social or moral issues. Realizing that state constitutional prohibition campaigns could be costly and unsuccessful; the ASL worked to secure any form of prohibition, whether local option, statutory, or constitutional. Part of the ASL's success was thus based on its pragmatic approach, in that they were willing to settle for second best when first best could not be attained. The ASL's pragmatic approach meant compromise with any group willing to support its goals. Depending on the local political context, this could be the Ku Klux Klan, Southern Democrats, Northern Democrats, or the Republicans. The organization supported any candidate, regardless of ideology, who would vote for the cause of prohibition and would favor strong enforcement of the laws once adopted.

## **The Initiative and Referendum in the Third Wave**

The Populist and Progressive movements greatly aided the Anti-Saloon League and the Women's Christian Temperance Union for with these movements came the advent of direct democracy. Prohibition forces attempted to take advantage of direct democracy institutions during the third wave of prohibition, which extended from 1907 to 1919. Like a standard constitutional amendment, the initiative required the vote of the people, usually under the same rules as constitutional amendment. When a state required an absolute majority of the electorate to pass a ballot measure, the relative advantages of the initiative and referendum depended upon whether this strategy was more cost-effective than mobilizing the required votes in the legislature to submit the bill to the people. The initiative and referendum had petition requirements that varied by state. As indicated earlier, states had legislative submission requirements that varied also. Prohibition forces had to weight the advantages of the initiative and referendum on a state-by-state base.

In addition to whether the petition requirements of states were more costly than pressuring state legislatures for submission, the initiative was subject to the same institutional constraints as regards to ratification. If a state required an absolute majority of the electorate of the state to ratify a legislative constitution submission, it required the same for an initiative. In other words, the referendum requirements for both forms of submission were the same.

Blocker (1976) contends that the initiative strategy did not work well for the ASL. He attributes the losses experienced in statewide prohibition campaigns during the 1909-

1913 period to the shift in Anti-Saloon League strategy from legislative chambers to ballot boxes:

The League's balance-of-power tactics were best suited to bringing pressure upon individual politicians in contested districts. When the prohibition question was the sole issue to be voted upon by citizens of an entire state, the League's voting bloc wielded no power greater than its actual numbers, which usually constituted a decided minority (p. 215).

Table 3 here

Although Blocker's arguments are plausible, they do not explain the empirical evidence based on the pattern of prohibition adoption. Table 3 shows the states adopting prohibition laws prior to National prohibition going into effect. This table shows that twenty states had adopted prohibition into their constitutions, and of these twenty, eight of them were adopted by the initiative process. Of these eight, however, three of the states required absolute majority requirements. These states were Colorado, Ohio and Idaho. Colorado experienced an unsuccessful campaign in 1912 before adoption in 1914, and the Ohio prohibitionists lost three times before victory in 1918.

### **ASL Strategy, Political Institutions, and Policy Outcomes**

Unlike previous waves, the third wave of prohibition adoption began in the South, and the pattern of adoptions was a mixed bag of both statutory and constitutional prohibition laws. Some of the statutory adoptions followed the rejection of constitutional amendments by the voters. In three states, Arkansas, New Hampshire, and Iowa, a statutory law was adopted in the year or two following to voter rejection of the

amendment at the ballot box. If we assume that prohibition interest groups were primarily responsible for pushing prohibition bills, then it would seem in the face of rejection by the electorate, a subsequent statutory bill was submitted. This would be consistent with the ASL strategy as discussed above. The League was interested in securing the maximum outcome possible. Sometimes this meant only a statutory law could be obtained; other times only a local option prohibition.

Gerber (1999) corroborates the strategic methods of the ASL. She posits that groups pursue forms of influence and political strategies that involve low costs, relative to the expected benefits of pursuing strategies. In addition, these costs are a function of the institutional and behavioral hurdles associated with each strategy.

Several cross tabulations are presented in tables 4-5. These cross tabulations represent the relationships between the key institutional factors and state prohibition policy outcomes. States had several policy choices, as seen previously in table 3. States could have chosen to remain a non-prohibition state (wet) or a prohibition state by either a statutory law or a constitutional amendment.<sup>6</sup> The pattern of adoption in these states should indicate that the more resistant a state constitution is to amendment, the more likely states are to be distributed among the other two alternatives i.e., wet or statutory prohibition.

Table 4a, shows the relationship between the two consecutive legislature action requirements and the type of policy outcome observed in a state.<sup>7</sup> As can be clearly seen, there is a clear relationship between this institutional hurdle and the policy outcome of the state. Two consecutive legislature states were far less likely to have a constitutional amendment and much more likely to be statutory or wet.<sup>8</sup>

Table 4a here

The relationship is in the same direction for table 4b as it was in table 4a, but is not as strong. Simple majority states were more likely to have a constitutional amendment.

Table 4b here

Table 4c presents a cross-tabulation of the supermajority requirement versus prohibition policy. The pattern here is not in the expected direction. We might expect that states that require a super-majority of at least one house to be less likely to adopt a constitutional amendment than states with a statutory prohibition law.<sup>9</sup>

Table 4c here

According to Dodd (1922), states that require the action of two successive legislative bodies for the most part did not require super-majority votes of the legislature. This would imply that wet states are likely to have action of two successive legislatures, whereas dry states are likely to have super-majority requirements as their constraints against hasty adoption.

Early twentieth-century state constitution scholars perceived the most significant barriers to submission and ratification to be the two-consecutive-legislatures requirement for submission of a referendum and the absolute majority of the electorate requirement for ratification (Dealey 1915; Dodd 1922; Garner 1906). None of the scholars gives any mention of the size of the legislature vote for submission being an institutional hurdle to submission. The entries in tables 4a-4c certainly appear to be consistent with their observations.

If constitutional amendments were truly harder to pass than statutory laws, we would expect them to be adopted more slowly relative to ordinary statutes. The time variable in

table 4d is divided into two intervals: 1907 to 1916 ( less than ten years from the start of the third wave) and 1917 to 1919 (which is the category greater than ten years). Table 4d indicates that there is a relationship between the type of policy outcome and the timing of adoption. A majority of states with constitutional prohibition adopted after 1916, while the opposite was true for states statutory laws.

Table 4d here

Why did some states with serious obstacles to constitutional amendments? One solution is to examine the role of the initiative, which, as discussed above, may have useful in circumventing these obstacles. Table 5 reports the duration interaction with the initiative. The table indicates that of the four constitutional states that adopted it early, three of them had the initiative. A majority of the constitutional states that adopted it in 1917 or after did not have the initiative.

Table 5 here

Table 6 presents all of the constitutional amendment votes in all of the states requiring an absolute-majority of the electorate for ratification between 1898 and 1908. Column 2 lists the number of amendments voted upon in each state. Column 3 lists the number of amendments that received a majority votes on the question, but were rejected because they did not receive an absolute majority of those voting in the election. Column 4 gives the average roll-off percentages over all the amendments.

Table 6 here

The influence that this institutional requirement has on amendment adoption is apparent. Tennessee had all seven of its amendments approved by a majority of those voting on the

question, but all seven were rejected because they failed to receive an absolute majority of the state electorate. Nine of Minnesota's amendments were also rejected although they had received a simple-majority of those voting on the question, as were six of Ohio's. Such strong institutional obstacles may have shaped the strategy of the ASL away from pushing for prohibition in states in which an amendment was believed to be unfeasible. The large roll-off percentages on these constitutional amendments indicated that voting on amendments to the constitution were not nearly as important as other ballot issues in the state. The empirical evidence, then, suggests that strong institutional constraints, combined with low turnout, meant that working for a constitutional amendment made little sense in many states.

Cross-tabulations do not provide a means for controlling for the influence of other factors on the observed outcomes. Controlling for certain factors such as a state's demographics, or whether a state had the initiative, will affect the association between constitutional amendment requirements and the distribution of state policy outcomes. In the next section, we thus employ more sophisticated estimation techniques to identify the impact of institutional factors more rigorously.

## **Event History and Competing Risk Analysis**

The third wave of prohibition adoption (1907-1919) has the greatest variation of patterns of state adoptions. While some states had no prohibition (wet states), other states adopted constitutional amendments, while others adopted statutory prohibition laws. Thus, the third wave, which was the most successful wave of prohibition adoptions, becomes the

ideal period to examine the variation in state policy adoptions and to assess whether different stochastic processes govern different modes of prohibition adoption.

The main purpose of this analysis is to determine how the institutional variables described above influenced the rate and type of prohibition policy adopted by the states. The model we develop, the competing risk model can be tested using an event history formulation. What the competing risk model assumes is that in certain social processes, individuals or entities are “at risk” of experiencing a number of mutually exclusive events. In this case, a state cannot simultaneously adopt a constitutional amendment and a statutory law. The resultant policy outcome in a state depends upon the characteristics of that state, including the preferences of legislature, constituents, the interest groups, vote aggregation rules, and other measurable and immeasurable factors. Finally, we also assume the independence of irrelevant alternatives.

The following section provides an overview of duration models, the competing risk formulation, and the multinomial event history formulation used in this analysis. We specify the distribution of state adoption times with a density function  $f(t|X, \beta)$  and the cumulative distribution function with  $F(t|X, \beta)$ . In the event history specification, we estimate the probability that a state will adopt prohibition in a given time period, conditioned on not already having adopted prohibition in all previous time periods. The dependent variable is thus a conditional probability function, called the hazard rate. We will let the hazard rate  $\lambda(t|X, \beta)$  be the probability that a state adopts prohibition in time period  $t$ , given that the state has not previously adopted. A state not adopting prohibition up to some time period  $t$  is  $1 - F(t|X, \beta)$ , which we will designate as  $S(t|X, \beta)$ . Thus the

hazard rate of a state adopting prohibition in time period  $t$  is

$$\lambda(t|X, \beta) = \frac{f(t|X, \beta)}{S(t|X, \beta)} .$$

A competing risk framework modifies the formulation above by introducing risk-specific hazard rates  $\lambda_j(t|X, \beta)$ , where  $j = 1, \dots, r$  are  $r$  possible events. In this paper, there are two risk-specific events, statutory adoption, and constitutional amendment adoption. Therefore  $r = 2$ . The competing risk hazard rates are specified as

$$\lambda_j(t|X, \beta) = \frac{f_j(t|X, \beta)}{S_j(t|X, \beta)} .$$

The likelihood function is specified following (e.g., Diermeier and Stevenson 1999).

A state that fails by either a statutory law or a constitutional amendment contributes the following information to the likelihood function:

$$L_i = f_j(t_i | X_{ij}, \beta_j) \prod_{j \neq i} S_j(t_i | X_{ij}, \beta_j) .$$

The equation above says the likelihood of observing adoption  $j$  at time period  $t$  is the product of surviving the other policy adoption up to time  $t$ , and adopting policy  $j$  in time period  $t$ . Where the notation  $j \neq j$  simply means to take the product over all risks except  $j$ . Next substitute  $\lambda_j(t|X,\beta)$  for  $f_j(t_i|X_{ij},\beta_j)$  to obtain

$$L_i = f_j(t_i | X_{ij}, \beta_j) \prod_{j=1}^r S(t_i | X_{ij}, \beta_j).$$

Now let  $T_j$  be the observed risk, i.e.,  $T_j = \min\{T_1, \dots, T_r\}$ , with corresponding failure times  $t_{ji}$ ,  $i = 1, \dots, n_j$  is the number of failures due to risk  $j$ . Then we can rewrite the likelihood function as

$$L = \prod_{j=1}^r \prod_{i=1}^{n_j} \lambda_j(t_i | X_{ij}, \beta_j) S(t_i | X_{ij}, \beta_j).$$

Finally, if we define the following indicator function:

$$d_{ij} = 1 \text{ if } i \text{ failed due to risk } j$$

$$d_{ij} = 0$$

we can write

$$L = \prod_{j=1}^r \prod_{i=1}^{n_j} \lambda_j(t_i | X_{ij}, \beta_j)^{d_{ij}} S(t_i | X_{ij}, \beta_j).$$

Each observation in the dataset either fails by one of the two  $j$  failures  $\lambda_j(t|X_{ij}, \beta_j)^{d_{ij}}$  or survives to censoring  $S(t|X_{ij}, \beta_j)$ . In this paper, I posit that the functional form that the hazard takes is multinomial logit. That is if a state fails from risk-specific hazard  $j$ , then

$$\lambda_j(t|X_j, \beta_j) = \frac{e^{at+x(t)\beta_j}}{1 + e^{at+x(t)\beta_k} + e^{at+x(t)\beta_j}}$$

The survival probability is the baseline hazard of a state never experiencing the event, which we designate as

$$S(t|X_j, \beta_j) = \frac{1}{1 + e^{at+x(t)\beta_k} + e^{at+x(t)\beta_j}}$$

$S(t|X_{ij}, \beta_j)$  is equivalent to  $1 - \lambda_j(t|X_j, \beta_j)$ .

$X(t)$  is a time varying covariate. The multinomial event history formulation takes the likelihood for each time period for all non-censored observations.<sup>10</sup> The overall likelihood function is

$$L = \prod_{s=1}^t \prod_{j=1}^r \prod_{i=1}^{n_j} \lambda_j(t_s | X_{ij}, \beta_j)^{d_{ij}} S(t_s | X_{ij}, \beta_j).$$

Time is index from period  $s=1$  to the last period  $t$ . But this is equivalent to writing the likelihood function as

$$L = \prod_{s=1}^t \prod_{i=1}^{n_i} \lambda_{sji}^{d_{ij}} (1 - \lambda_{sji})^{(1-d_{ij})}.$$

## **Dependent Variable**

The dependent variable has three possible outcomes. A state may choose prohibition by a constitutional amendment, by statutory law, or remain wet and enact no prohibition law at all.<sup>11</sup>

The key assumption needed in order for the multinomial logit model to be an appropriate model for the data is the Independence of Irrelevant Alternatives ( IIA) assumption. On the other hand, conversely, the assumption means that the multinomial logit model is not appropriate when two or more alternatives are close substitutes. This analysis hinges on this assumption being valid. I assume that a constitutional amendment was the preferred choice of interest groups and a statutory amendment was a second best alternative for prohibition interest groups. Because the independence of irrelevant alternatives assumption might be problematic, I will use a Hausman McFadden Test to test whether the restricted choice set obeys the properties of IIA.<sup>12</sup> Parameters  $\theta_e$ ,  $\theta_r$  and their covariance's are estimated from the efficient (full choice) and the restricted choice set. A quadratic function is created to measure how different the parameters are. If the parameters are approximately the same, then the MNL specification is not rejected.

## **Independent Variables**

### **Duration**

I model the baseline hazard as a sequential counter of years in the risk set before an event occurrence.<sup>13</sup> I hypothesize that absent other measurable covariates, states should face a higher risk of a statutory adoption than of a constitutional adoption. In other words, a

statutory adoption should provide a lower overall hurdle to a prohibition adoption than a constitutional amendment. This would follow if statutory adoptions were chosen when hurdles for constitution adoptions were high.

The main purpose of the analysis is to estimate the extent to which different institutional factors influenced the probability of state adoption by one of two policy choices. One reason for a dynamic specification is the need to understand how growth of neighboring state prohibition policy adoptions influenced the chances of a state going dry. This is the wave or cascade phenomenon. Another reason is that changes in demographic factors may increase or decrease the likelihood of a state adoption. I dynamically model the state movement toward national prohibition from 1907 to 1919. Scholars typically consider 1907 as the first year of the third wave of prohibition adoptions.<sup>14</sup> The three states that had adopted prohibition before 1907 are coded as “failing” in the first period. The onset of national prohibition in 1919 thus censors those states that had not yet adopted.

For the regression analysis, a robust variance-covariance estimator was used in which observations on each state were grouped together. This was necessary to control for the heteroskedasticity within the time series for each state.<sup>15</sup>

## **Political Institutional Variables**

The main variables we focus on are the requirements for constitutional amendment. These variables are the legislative requirements for submissions, the number of legislatures required to approve submission of a proposal, the ratification requirement for

a constitutional amendment, and whether a state has the initiative or not. Each variable is discussed below.

## **Legislative Super-Majority**

States requiring a super-majority of at least one of the two houses to submit an amendment for popular approval will have a lower hazard of adopting a constitutional amendment than a statutory law. The effect of this variable is not expected to be as strong as that of requiring two legislatures for reasons argued above.

## **Sessions**

States requiring two-consecutive-legislatures to approve submission of an amendment to the people will have a reduced risk of adopting constitutional amendments relative to states that require only one legislature to propose an amendment.

## **Absolute Majority Requirement for Ratification**

States requiring an absolute majority vote of the electorate will have reduced the hazard of adopting a constitutional amendment relative to states only requiring a simple majority vote on the amendment.<sup>16</sup>

## **Initiative**

This is a dichotomous variable, which takes on the value of 1 indicates that the state has the initiative, a zero. The presence of the initiative will reduce the hazard of adopting a constitutional amendment or a statutory amendment. As discussed above, the initiative should have a strong effect in states that require two legislatures to approve an amendment before submissions. In absolute majority states, its effects should be much weaker.

## **Neighbor Effects**

This variable measures the number of states that have previously adopted prohibition and that are a neighbor of the state in the risk set. The logic is that as neighboring adopt prohibition; the cost of enforcement should diminish<sup>17</sup>. I therefore hypothesize that the more neighbors around a state that has adopted a prohibition amendment, the higher the likelihood that the state currently in the risk set is to adopt either a constitutional or a statutory policy. This is because states will face reduced cost of policing their borders when other surrounding states adopt prohibition. The reduced cost may make prohibition policy appear more beneficial.

## **Social and Demographic Variables**

As indicated in the introduction, certain demographic factors are correlated with the adoption of prohibition. I control for percent urban in 1910, percent Catholic, and percent Black, and percent foreign born. In order to estimate the effects of changes in demographic factors, data were interpolated. I used census data from 1900, 1910, and 1920 to construct a trend, using STATA linear interpolation was constructed for each state. In other words, missing values were interpolated for the years in between. Up to 13 years (1907-1919) were taken from each of the four socio-demographic variables (percent Catholic, percent Black, percent Foreign born, and percent Urban) for each state depending on the number of years a state appeared in the risk set.<sup>18</sup> Higher percentages of those groups usually thought to be against prohibition should decrease the likelihood of a constitutional adoption. Because the popular vote is not directly involved in a statutory adoption, these factors should have a smaller effect on statutory adoption.

Many Southern states at this time had a very high percentage of blacks in their population. According to the ASL, African-Americans, like many immigrant groups, were largely opposed to prohibition. It must be noted, however, that the African-American vote was suppressed during this period, and it is therefore possible that, African-Americans did not significantly hinder prohibition adoption.

## Results

Table 5 shows the results of the competing risk analysis. The second variable in the column label is the base reference category. For Constitution vs. No Prohibition, the base comparison category is the No Prohibition category. Significant coefficients are discussed below.

The sessions coefficients,  $-3.22$  and  $5.75$ , support the hypothesis that two consecutive legislatures have a significant (.01 level) and negative impact on the chances of adopting a constitutional amendment. Faced with the hurdle of requiring two legislatures to submit an amendment, a state is more likely to adopt either a statutory law or no prohibition law at all. The ratify coefficient  $-2.67$  indicates that requiring an absolute majority also significantly reduces the likelihood of adopting a constitutional amendment.

Next, we see that the supermajority coefficients of  $1.40$ , indicates that a state requiring a supermajority of at least one house to submit a proposal is likely to adopt a constitutional amendment. As was discussed earlier, this could be an artifact of the fact that most states that require two successive legislature actions compensate for this harsh requirement by only requiring a simple majority of each house to submit an amendment. Indeed, 56% of the states that had simple majority requirements required action of two legislatures, compared to only 24% of all super-majority states. The coefficient of  $-.61$  is larger than  $-.44$ , which supports the hypothesis that states are likely to adopt statutory prohibition before constitutional prohibition. The main thesis of this paper is that institutions are significant hindrances to constitutional policy adoptions. This result is consistent with this view.

The neighboring state variable is significant for both constitutional and statutory policy, respectively. This validates the hypothesis that a neighbor's adoption increases the chances of a state adopting prohibition. Once again, two factors are believed to be at work here. A dry state bordering a wet state might expect to have a higher cost to enforcement, because the state borders will have a higher illegal traffic. A social learning phenomenon may have also been a factor.

Finally, the results indicate that the initiative was not a significant factor in helping prohibition interest groups overcome institutional barriers. These results validate Blocker's (1976) belief that the initiative did not aid the ASL in gaining prohibition. The initiative usually had the same ratification requirement as the constitutional amendment. Thus, to the extent that a state's ratification requirement was a hurdle for legislative submissions the initiative did not provide a remedy.

## **Demographic and Socioeconomic Variables**

We see that the greater the percent foreign born and black, respectively, the lower the chances of a constitutional adoption, as expected. The percent urban has the right sign but is not significant. Percent Catholic is significant (.03), but the sign is not in the expected direction. In an alternative specification used Percent Protestant Denominations known to support the ASL. This specification did not yield significant results, although the sign was in the right direction<sup>19</sup>. Next, I tested to see if there were any saturation in the model due to high collinearity of the demographic variables. I found that percent Catholic was correlated with foreign born with an  $r^2$  of .66.

Table 6 here

Many of the constitutional amendment states were western states, which typically had high percentages of Catholic. For instance, New Mexico which according to the census of 1920, was 84% Catholic, had adopted a constitutional amendment.

## **Simulations**

The coefficients and standard errors in nonlinear models are often difficult to interpret and are only indirectly related to the substantive issues that motivated the research. Thus, in order to illuminate the analysis results, simulation analysis was performed on the key factors in the competing risk model. The two key institution constraints from the regression results are the requirement of two legislatures to vote to submit an amendment, and the absolute-majority requirement of the electorate in order to ratify an amendment. Predicted values were generated from the data. Using the information from the observe data, this prediction was simulated 1000 times to generate 1000 predicted policy outcomes.

Three ternary plots were created (see Katz and King 1999). The coordinates in the plots represent the predicted odds of a state adopting either one of the prohibition policy outcomes or remaining wet. A point closer to one of the vertices indicates a higher probability of a state moving into that state. Each plot represents the mapping of 1,000 predicted policy outcomes. A point in the exact middle would indicate a .33 chance of that state adopting either of the prohibition policies or remaining wet.

## Table 9 here

Table 9 presents the predicted probabilities under three different scenarios. Figures 1-3 correspond to each of the conditions. Under counterfactual condition 1, all states require two consecutive legislature sessions to approve an amendment, and all require an absolute majority of the electorate to ratify the amendment. Under these high constraints, the simulations predict that a state will adopt a statutory law 55% of the time, a state will remain wet 44% of the time, and in only one percent of time would we observe a state adopting a constitutional amendment.

## Figures 1-3 here

Condition 2 allows all states to have a simple majority requirement but two sessions to approve a submission. A change from absolute majority to a simple majority increases the chances of a constitution adoption from one percent to ten percent.

Condition 3 relaxes both institution constraints. All states require only one legislature to vote to approve a submission of an amendment and a simple-majority to ratify an amendment. These are easiest possible conditions for prohibition interest groups. Under these conditions, there is a dramatic swing in predicted probabilities. Nearly 80% of the predicted outcomes are constitutional amendments.

## **Conclusion**

The results of this chapter clearly show that political institutions played a role beyond the power of interest groups and public opinion in shaping prohibition policy outcomes. States that required two legislatures to approve a constitutional amendment before submission, or an absolute majority of the electorate to ratify an amendment, were significantly less likely to adopt a constitutional prohibition amendment.

The event history analysis indicated that states were more likely to adopt a statutory law sooner than a constitutional amendment. These results are in keeping with the ASL's strategy. That is a pragmatic approach led to a distribution of states that included a strong mix of both constitutional and statutory states before the advent of national prohibition. In states in which institutional barriers stood in the way of a constitutional amendment, they settled for statutory prohibition.

**Table 1: Statutory Prohibition Adoptions 1851-1860**

State	Adoption Date	Repeal Date	Nature of Repeal
Connecticut	1854	1872	Replaced with license
Delaware	1855	1856	Overtured by Legislature
Indiana	1855	1857	Rejected by Supreme Court
Iowa	1855	1857	Overtured by Legislature
Maine	1851	1856	Replaced with license
Maine	1858		
Massachusetts	1852	1868	Overtured by Legislature
Michigan	1853	1853	Rejected by Supreme Court
Minnesota	1852	1854	Overtured by Legislature
Nebraska	1855	1858	Overtured by Legislature
New Hampshire	1855	1903	Replaced with Local Option
New York	1855	1856	Overtured by Legislature
Rhode Island	1852	1863	Overtured by Legislature
Vermont	1852	1902	Overtured by Legislature

Source: Tyrell (1976)

*The Standard Encyclopedia of Alcohol Prohibition* (1926)

**Table 2: Constitutional Amendment Campaigns 1880-1889**

State	Vote Date	Percent for Amendment	Percent Roll Off	Outcome	Election	Majority Requirement
Kansas	1880	52.2	13.6	Approved	Presidential	Simple
Iowa	1882	55.2		Approved	Special	Simple
Ohio	1883	57.2	21.8	Failed	State	Absolute
Maine	1884	74.8	34.6	Approved	State	Simple
South Dakota <sup>1</sup>	1885	50.3	64.4	Approved	Constitution	Simple
Rhode Island	1886	62	9.5	Approved	State	Simple
Michigan	1887	49.2	4.7	Failed	State	Simple
Texas	1887	36.9		Failed	Special	Simple
Tennessee	1887	44.7		Failed	Special	Absolute
Oregon	1887	41.6		Failed	Special	Simple
West Virginia	1888	35.2	25.9	Failed	Presidential	Simple
New Hampshire	1889	45.4	37.6	Failed	Town	Simple
Massachusetts	1889	39.4		Failed	Special	Simple
Pennsylvania	1889	37.9		Failed	Special	Simple
Rhode Island	1889	26		Failed	Special	Simple
South Dakota	1889	54.1	6.2	Approved	State	Simple
North Dakota	1889	51.6	5.6	Approved	State	Simple
Washington	1889	38.2	12.7	Failed	State	Simple
Connecticut	1889	30.9	53	Failed	Town	Simple

Source: *Cyclopaedia of Prohibition*. (1891) p.102

**Table 3: Prohibition Adoptions 1880-1919**

STATE	Date	Policy	Means	Vote For	Vote Against
Maine	1884	Constitutional	Submission	70,783	23,811
Kansas	1880	Constitutional	Submission	92,302	84,304
North Dakota	1889	Constitutional	Submission	18,522	17,393
Georgia	1907	Statutory	Legislative		
Oklahoma	1907	Constitutional	Const'l Conv	130,361	112,258
Mississippi	1908	Statutory	Legislative		
North Carolina	1908	Statutory	Submission	113,612	69,416
Tennessee	1909	Statutory	Legislative		
West Virginia	1912	Constitutional	Submission	164,945	72,603
Virginia	1914	Statutory	Enabling Act	94,251	63,886
Oregon	1914	Constitutional	Initiative	136,842	100,362
Washington	1914	Statutory	Initiative	189,840	171,208
Colorado	1914	Constitutional	Initiative	129,589	118,017
Arizona	1914	Constitutional	Initiative	25,887	22,743
Alabama	1915	Statutory	Legislative		
Arkansas	1915	Statutory	Legislative		
Iowa	1915	Statutory	Legislative		
South Carolina	1915	Statutory	Submission	41,735	16,809
Idaho	1916	Constitutional	Initiative	90,576	35,456
Montana	1916	Constitutional	Submission	102,776	73,890
South Dakota	1916	Constitutional	Initiative	65,334	53,360
Michigan	1916	Constitutional	Initiative	353,378	284,754
Nebraska	1916	Constitutional	Initiative	146,574	117,132
Indiana	1917	Statutory	Legislative		
New Hampshire	1917	Statutory	Legislative		
New Mexico	1917	Constitutional	Submission	28,732	12,147
Nevada	1918	Statutory	Initiative	13,248	9,060
Ohio	1918	Constitutional	Initiative	463,654	437,895
Wyoming	1918	Constitutional	Submission	31,439	10,200
Florida	1918	Constitutional	Submission	21,851	13,609
Utah	1918	Constitutional	Submission	42,691	15,780
Texas	1919	Constitutional	Submission	159,723	140,099
Kentucky	1919	Constitutional	Submission	<u>208,905</u>	<u>198,671</u>
				2,837,580	2,274,863
					Majority for: 662,717

Source: Colvin (1926).

**Table 4a: One vs. Two Consecutive Legislature action, 1880-1919**

	One Legislature	Two Legislatures
<b>Constitution</b>	<b>19</b>	<b>0</b>
<b>Statutory</b>	<b>6</b>	<b>7</b>
<b>No Prohibition</b>	<b>6</b>	<b>9</b>

**Table 4b: Simple vs. Absolute Majority Ratification Requirements**

	Simple	Absolute
<b>Constitution</b>	<b>13</b>	<b>6</b>
<b>Statutory</b>	<b>8</b>	<b>6</b>
<b>No Prohibition</b>	<b>7</b>	<b>7</b>

**Table 4c: Legislative Simple vs. Super-majority Requirements**

	Simple	Super
<b>Constitution</b>	<b>5</b>	<b>14</b>
<b>Statutory</b>	<b>6</b>	<b>8</b>
<b>No Prohibition</b>	<b>8</b>	<b>7</b>

**Table 4d: Short vs. Long Duration for Adoptions**

	Less than Ten	Ten Years or More
<b>Constitution</b>	<b>4</b>	<b>15</b>
<b>Statutory</b>	<b>10</b>	<b>3</b>
<b>No Prohibition</b>	<b>0</b>	<b>15</b>

**Constitutional Hurdles****Table 5: The Initiative vs. Time to Adoption****Initiative**

<b>Duration</b>	<b>No</b>	<b>Yes</b>
<b>Short</b>	<b>1</b>	<b>3</b>
<b>Long</b>	<b>10</b>	<b>5</b>

**Table 6: State Constitution Amendments and Absolute Majority Requirements 1898-1908**

<b>State</b>	<b>Number of Amendments</b>	<b>Number of Absolute-Majority Rejections</b>	<b>Roll-off</b>
Alabama	5	1	.20
Arkansas	7	2	.26
Illinois	2	--	.30
Indiana	3	3	.53
Michigan	22	1	.46
Minnesota	13	9	.39
Mississippi	8	3	.26
New Hampshire	11	5	.58
North Dakota	9	--	.29
Ohio	14	6	.34
Oregon <sup>2</sup>	22	1	.32
Rhode Island	3	1	.39
Tennessee <sup>1</sup>	7	7	--
Wyoming	3	2	.61

1. Dodd claims that the state government of Tennessee did not make the election statistics available.

2. After 1906, Oregon repealed the absolute-majority requirement.

Source: Dodd (1914) P.295-344.

**Table 7: The Effects of Institutions and Demographic Factors Upon State Prohibition Policies, 1907-1919**

Variable	Constitution vs. Non-Prohibition	Statutory vs. Non-Prohibition	Statutory vs. Constitution
<i>Baseline</i>			
Constant	<b>3.20</b> (.215)	.84 (2.11)	-4.04 (3.00)
Duration	<b>-.61</b> (.16)	<b>-.44</b> (.19)	.16 (.25)
<i>Federalism</i>			
Externality	<b>1.26</b> (.27)	<b>.70</b> (.34)	-.56 (.41)
<i>Political Institutions</i>			
Supermajority	<b>1.40</b> (.65)	1.90 (1.30)	.49 (1.49)
Sessions	<b>-3.22</b> (1.22)	2.53 (1.43)	<b>5.75</b> (1.85)
Ratify	<b>-2.67</b> (.74)	-1.07 (.88)	1.60 (1.08)
Initiative	.23 (.61)	1.31 (1.55)	1.07 (1.78)
<i>Demographics</i>			
Foreign	<b>-.019</b> (.00)	-.007 (.01)	.012 (.01)
Black	<b>-.011</b> (.00)	-.002 (.00)	<b>.008</b> (.00)
Catholic	<b>.034</b> (.01)	-.031 (.03)	<b>-.065</b> (.03)
Urban	-.000 (.00)	.001 (.00)	.001 (.00)

$X^2 = 171.25$  Pseudo  $R^2 = .4023$  Log Likelihood = -70.32 N = 424

Degrees of Freedom 20 Prob >  $X^2 = 0.0000$  Standard Errors in Parentheses

**Table 8: Predicted Probabilities from the Simulations****Condition 1**

<b>Simulated probability</b>	<b>Mean</b>	<b>Std. Dev.</b>
<b>Pr(policy=Statutory)</b>	<b>.549</b>	<b>.346</b>
<b>Pr(policy =Constitution)</b>	<b>.012</b>	<b>.008</b>
<b>Pr(policy=Wet)</b>	<b>.438</b>	<b>.340</b>

**Condition 2**

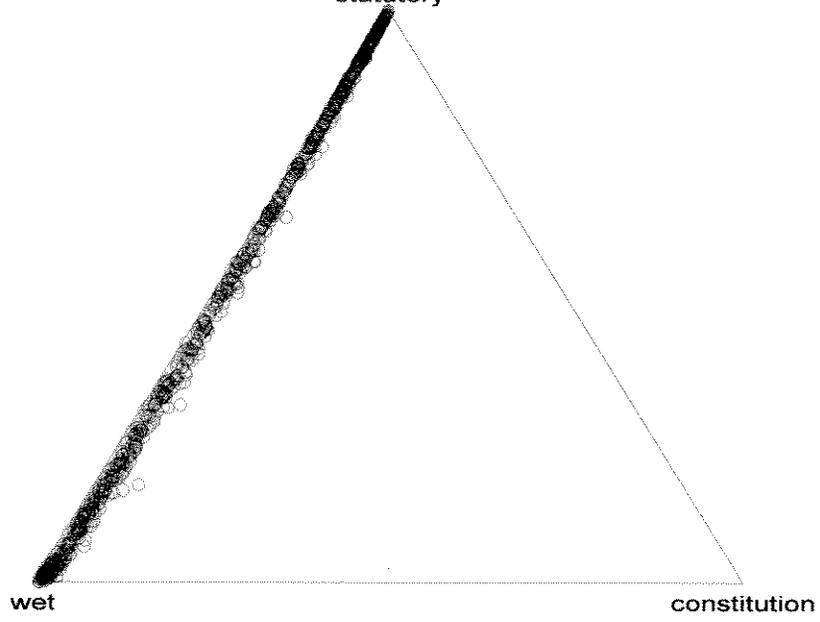
<b>Simulated probability</b>	<b>Mean</b>	<b>Std. Dev.</b>
<b>Pr(policy=Statutory)</b>	<b>.593</b>	<b>.334</b>
<b>Pr(policy =Constitution)</b>	<b>.103</b>	<b>.081</b>
<b>Pr(policy=Wet)</b>	<b>.302</b>	<b>.269</b>

**Condition 3**

<b>Simulated probability</b>	<b>Mean</b>	<b>Std. Dev.</b>
<b>Pr(policy=Statutory)</b>	<b>.160</b>	<b>.232</b>
<b>Pr(policy =Constitution)</b>	<b>.797</b>	<b>.222</b>
<b>Pr(policy=Wet)</b>	<b>.041</b>	<b>.030</b>

**Plot 1**

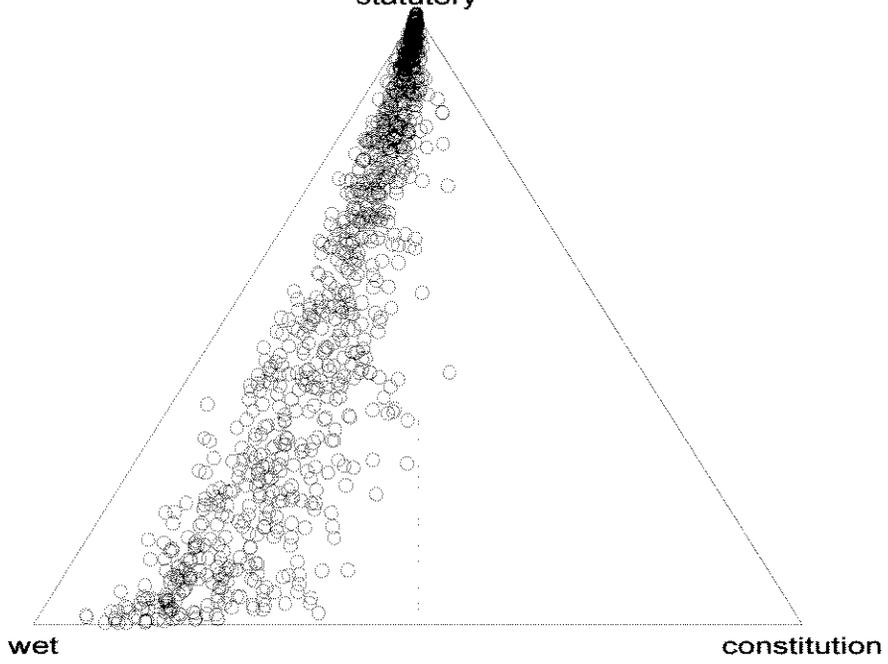
Plot 1 : All States Require: Two Sessions, Absolute Majority  
statutory



Predicted Hazards of 1,000 Simulations

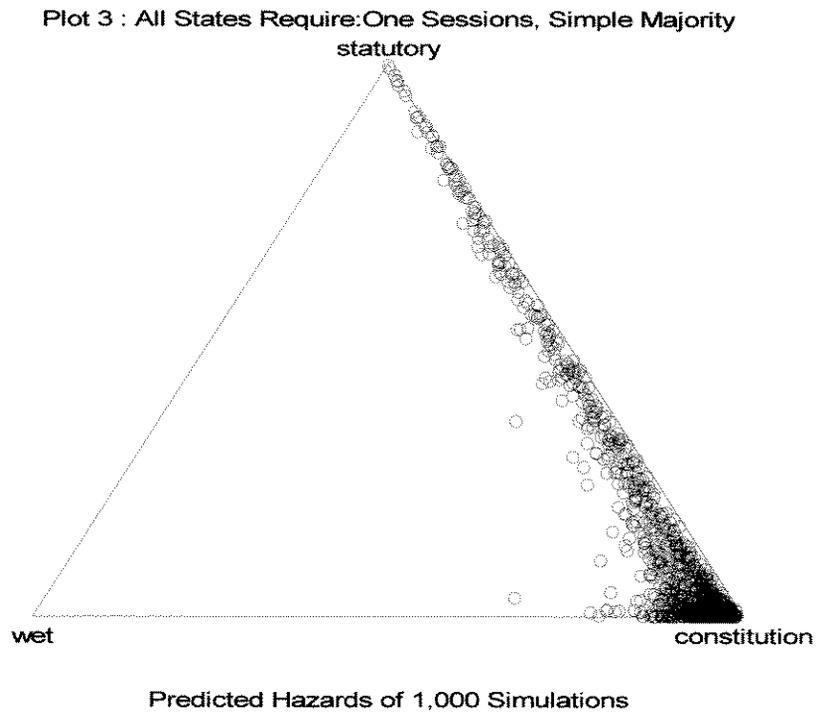
**Plot 2**

**Plot 2 : All States Require:Two Sessions, Simple Majority  
statutory**



**Predicted Hazards of 1,000 Simulations**

**Plot 3**



## **Appendix**

### **Data Sources**

Data for the demographic variables were provided by the Inter-University Consortium for Political and Social Research (file 0015), a dataset compiled originally by Hofferbert. All the variables were derived from the 1910 and 1920 census. As mentioned earlier, linear interpolation was used to predict the values of the demographic variables. The institutional variables are taken from two sources. The first is Dodd's (1917) treatise on variation in state constitutions and the Book of the States (1955). The Percent Catholic variable comes from the Census of Religious bodies' (1916) table 38. This table reports the percent Roman Catholic for all states in 1890, 1906, and 1916. The neighboring states variable comes from Berry and Berry (1990) who generously provided me with this data.

### **Left Censoring and Other Data Issues**

There was no left censoring perse in the data set. Left censoring occurs when the researcher does not know the time the observation first became at risk. However, two variables entered the risk set later than the other states. Arizona and New Mexico do not officially become states until 1911, and thus cannot enter the risk set until that year.

Oklahoma was eliminated from analysis because it adopted prohibition directly into its constitution upon becoming a state. Thus, its adoption was by constitutional convention

and not by amendment, which means that Oklahoma could have never entered the risk set.

## **Coding Issues**

The Sessions variable was coded one if a state required two votes of the legislature before submission to the people otherwise. Three states required that a legislature vote for submission of an amendment to the people, then the people were to vote on the amendment, and then a second vote of the legislature was to be taken at the next convening session. They were nevertheless coded one on this variable, because the key issue is the lapse of time between submission and complete ratification. Following is a table of state institution requirements for the time periods between 1907-1919.

**Table A2: 1 State Constitutional Amendment Procedures**

State Requirements	Legislative Majority	Number of Legislative Sessions	Majority Required for Electoral	Majority Required for Ratification	Referendum Vote
Alabama	3/5	1		A	
Arizona	S	1		S	S
Arkansas	S	1		A	A
California	2/3	1		S	S
Colorado	2/3	1		A	S
Connecticut	2/3	2		A	
Delaware	2/3	2			
Florida	3/5	1		S	
Georgia	2/3	1		S	
Idaho	2/3	1		A	
Illinois	2/3	1		A	
Indiana	S	2		A	
Iowa	S	2		S	
Kansas	2/3	1		S	
Kentucky	3/5	1		A	S
Louisiana	2/3	1		S	
Maine	2/3	1		S	S
Maryland	3/5	1		S	S
Massachusetts	S	2		S	S
Michigan	2/3	1		S	S
Minnesota	S	1		A	
Mississippi	2/3	1		A	
Missouri	S	1		A	S
Montana	2/3	1		S	S
Nebraska	3/5	1		A	A
Nevada	2/3	2		S	S
New Hampshire				A	
New Jersey	3/5	2		A	
New Mexico	S	1		S	S
New York	S	2		S	
North Carolina	3/5	1		A	
North Dakota	S	2		A	S
Ohio	3/5	1		A	A
Oklahoma	S	1		A	A
Oregon	S	1		A	S
Pennsylvania	S	2		S	
Rhode Island	S	2		A	
South Carolina	2/3	1		S	
South Dakota	S	1		S	S
Tennessee	2/3	2		A	
Texas	2/3	1		S	
Utah	2/3	1		S	S
Vermont	S	2		A	
Virginia	S	2		S	
Washington	2/3	1		S	S
West Virginia	2/3	1		S	
Wisconsin	S	2		S	
Wyoming	.67	1		A	

S = Simple Majority vote

A = Absolute Majority vote

Most states did not have the initiative for constitutional amendments by 1919.

Sources: *The Book of the States*, 1955. Dealey, 1914. Dodd, 1910. Garner, 1906.

## Notes

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<sup>1</sup> A “high license” policy implies that very high fees are charged for retail liquor licenses, and that such licenses come with tight restrictions on operating hours, etc. This was intended to result in small numbers of saloons being licensed. Consequently those receiving a license have shown they have an incentive to be responsible in obeying local laws for fear of losing their large and lucrative investment.

<sup>2</sup> Ohio submitted two amendments to the people at the same time. Ohio had been under a no license policy since the 1850’s. The voters chose prohibition over a high license policy.

<sup>3</sup> Most states have since repealed absolute-majority requirements. At the time of the prohibition movement, between 1907 and 1919, however, twenty-one states had these requirements. Garner (1906) only lists eighteen states. Subsequent to Garner’s article, several states either joined the Union and added absolute-majority requirements or existing states changed their requirements from simple to absolute.

<sup>4</sup> During this period, only West Virginia and Kansas had prohibition amendments votes during presidential elections. Pennsylvania, Rhode Island, Massachusetts, Oregon, Tennessee, Texas, and Iowa had special election votes.

<sup>5</sup> Whether the absolute majority of the electorate in the state or of those voting at an election presents the greater hurdle is not specified by the state constitutional scholars writing at the time. I too reserve judgment as to which hurdle is higher.

<sup>6</sup> States with or without local option were considered wet if they did not have a state prohibition law. By the time of the third wave just about every state had either statutory, constitutional or local option policies. There were four states that did not have local option and were wet; these were Connecticut, Vermont, Pennsylvania, and Maryland.

<sup>7</sup> The time period for which the data was recorded in tables 4a-c are the dates prior to each state’s adoption during the third wave and the onset of national prohibition.

<sup>8</sup> North Dakota is the one state that required two consecutive actions of the legislature prior to submission of a constitutional amendment. It did so the same year that it became a state. The vote for prohibition was separate and was not a part of the constitutional convention as was Oklahoma. It is not clear how the vote was taken on this amendment. There seems to be evidence that only one legislature action was necessary to submit the amendment. I could not find enough information on the constitutional amendment campaign of 1889 to justify switching North Dakota to the one legislature requirement.

<sup>9</sup> The initiative is not an institutional barrier to state constitution adoptions and thus is not modeled.

<sup>10</sup> Each state contributes several observations to the likelihood function. In time period 1, each state either adopts an amendment or does not adopt. If a state adopts in the first period, it drops out of the risk set and does not contribute any information to the likelihood function in time period 2. The remaining states either adopts in time period 2 from one of the risk-specific hazards or are censored (experience the non-event). The explanatory variables may have changed values from time period 1 to period 2. The likelihood function would be structured to capture the fact that the explanatory variables change over time.

Similarly, multinomial logit likelihood's can be formulated for each of the remaining time periods, with the number of observations contributing to these likelihood's diminishing as individuals are censored or leave the non-adoption state. A giant likelihood can then be formed by multiplying together all of these separate period likelihood. Thus, each state contributes several terms to this overall likelihood, one term for each time period for which that state was at risk of leaving the non-adoption state.

<sup>11</sup> Theoretically a state can transition from no prohibition to a statutory law and then to a constitutional amendment. This actually happened in two states, which would suggest a misspecification of the model. I get around this misspecification two ways. First, this study is interested in the final prohibition outcomes, not all of the transition states in between. Second, in each of the cases in which a state moved from a statutory law to a

constitutional amendment, there was only one year in between the transition, which appears to be a situation in which the prohibition interest groups took the safe, easier route, to secure the passage of a statutory law, and then when an election year came around, they tested the public sentiment as regards the statutory law. In the two cases in which the transition occurred, the prohibitionist won. It may have been bad judgment on my part, but I chose to ignore these transition between these two states because of the one year gap, and two observations are too small to use in the formulation of a fourth policy route.

<sup>12</sup> A Hausman test was performed to test the Independence of Irrelevant Alternatives assumption. The results of the test were not significant which is an indication that the assumption is valid. A  $X^2$  of 12.30 with a probability value of .2657 indicates that the differences in the coefficients from a model including both the statutory and the constitutional alternatives is not systematically different than the model that excludes one of the prohibition alternatives.

<sup>13</sup> Like Jones (1997), I tried several specifications for the baseline hazard. I attempted an exponential specification, a log transformation of duration, as well as adding dummy variables for each year. Neither the log transformation nor the exponential increase the model's significance over the linear specification. I found, like Jones, that the coefficient became highly unstable, as the number of dummy variables increased. I lost many degrees of freedom, although the variables of interest were still significant under all specifications, the linear specification was the cleanest to interpret. Modeling the dummy variable interaction within a logit setting is clearly a good choice for the baseline hazard, when there are many subjects within the risk pool relative to the dummy variable count and when there are strong theoretical reasons for doing this. The typical researcher modeling of duration of an individual or other living organism has substantive reason to believe that the baseline hazard may increase nonlinearly over time. With prohibition, it is not clear that in the absence of any of the covariates that I have model that we should expect the hazard of adoption to increase nonlinearly. Another alternative is to parameterize the baseline distribution, but again there is no substantive theory that should

lead me to believe that the baseline hazard of prohibition adoption follows some known baseline distribution.

<sup>14</sup> This fact might pose a problem with the model specification, because the likelihood function does not account for reversals of policies. Technically Alabama's prohibition law was not formally reversed. In 1911, a Whiskey-option law was adopted allowing counties to vote themselves wet. Thus the statutory law was nullified but not formally reversed. After several counties voted wet, a statutory law was adopted in 1915 making those counties dry. If the policy reversal were a constitutional amendment reversal, it would have strong implications for any hypothesis concerning institutions as barriers to amendment adoption. It turns out that the legislature overturned the law and then readopted it in 1915.

<sup>15</sup> The probability that a state adopts a prohibition policy depends on its  $x$ -values and an error term  $e$ . Each year, a state has a probability of adopting a policy as well as an error associated with this probability of adopting a prohibition policy. Each year states values of  $x$  might change, thus changing the chances a state adopts a prohibition policy. As  $x$  changes, so does the error term. This is due to the inherent structure of the discrete choice formulation. Thus the variance of the error term can increase or decrease with changes in  $X$ . The heteroskedastic nature of the data within states overtime needs to be accounted for. The Huber-White robust sandwich estimator accounts for this.

<sup>16</sup> There were two states that did not require both proposal and ratification at the time of the third wave. New Hampshire required amendments to the constitution be by state convention only. Delaware requires that amendment be by legislature action only. There are other methods of state ratification, such as conventions, commissions and the initiative-referendum, this as seen in the table 3.1 above.

<sup>17</sup> *I don't consider contemporaneous correlation of the errors in the model because I believe that the inclusion of neighbor effects accounts for the heterogeneity caused by adoptions in one state being potentially related to adoptions in another state. As will be seen below, this variable is significant.*

<sup>18</sup> In event history analysis, once an observation fails, it exits the dataset (risk set). Thus, if Idaho adopts a constitutional amendment in 1916, then I will have no more

observations on Idaho in the data set after 1916. So I would have less than 13 observations on the state of Idaho, only states that never adopt prohibition have the full 13 observations.

<sup>19</sup> I followed the specification used by Hersch and Netter (1989). They aggregated five groups from the census of religious bodies, as I did. These groups were Baptist, Methodists, Presbyterians, Disciples of Christ, and Congregationalist. According to the authors these groups were known to support prohibition. Their religion variable was significant in the regression that they ran. However, they added Mormons to his specification, which I know were not explicit supporters of the Anti-Saloon League; Toma (1988) used a religion variable in trying to explain county option adoption in 1980. He was unable to find any effect of religion, as measured as percent of population affiliated with religious organizations exclusive of Jewish, Catholic, and Episcopalian. Another study, by Goff and Netter (1994), used Baptist and Methodist for their religious variable in an attempt to determine if religious affiliation played a role in the adoption of prohibition. The coefficient on this measure, taken from the 1916 *Census of Religious Bodies*, was also insignificant.

## Chapter 2 References

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## **Chapter 3 State Prohibition and Federal Institutions**

### **Introduction**

We saw in the previous chapter how interest groups favoring prohibition often faced formidable obstacles posed by the requirements for constitutional amendment adoption. In this chapter, we investigate the limitations imposed by the federal constitution upon state prohibition. These limiting factors made enforcement of dry state laws highly problematic at best.

Merchants operating near the borders of dry states became the chief source of supply of alcohol to prohibition states. Because economic transactions between states and foreign countries were the jurisdiction of the federal government through the Interstate Commerce Clause, dry states were powerless to exercise their Tenth Amendment rights as long as the jurisdiction over liquor transportation was left in the hands of the federal government.

## **The Original Package Doctrine**

The Supreme Court decision of *Brown v. Maryland* in 1827 is the first instance of federal and state conflict involving the regulation of liquor. Brown was convicted in Maryland of selling foreign goods without paying state taxes. The Supreme Court heard the case on appeal after Brown lost the case in state court. The Supreme Court ruled that the Maryland law violated the Constitution's provisions prohibiting states from levying duties on imports. State power, furthermore, could not attach until federal commerce ended. This did not happen until the good became mixed up with the mass of property within the state. Justice Marshall interpreted mixed up to mean that the goods had been broken from their original package. In other words, the wholesaler took the goods out of the shipping box with the intent to sell. The Chief Justice reasoned, since the purpose of importation was to sell the good that state laws could not interfere before sale of the goods. With the ruling in *Brown v. Maryland*, the Supreme Court had drawn a line indicating when federal power would end and state power would begin. The precedent set by the Supreme Court was referred to as the "Original Package" doctrine (Hamm 1995).

The Original Package doctrine received its first test in the 1847 License Cases, wherein the U.S. Supreme Court ruled on several state alcoholic beverage regulations. Before the first wave of prohibition, several states experimented with partial prohibition laws. As

discussed in Chapter 2, the Massachusetts “fifteen-gallon law” was one example. Rhode Island had a similar law that forbade sales of alcohol in quantities less than ten gallons.<sup>1</sup> New Hampshire’s law required licenses for all liquor sellers. The plaintiff, in *Pierce v. New Hampshire*, charged that the laws enacted by Rhode Island, Massachusetts and New Hampshire interfered with the federal authority to regulate commerce with foreign nations and among the several states (Colvin 1926).<sup>2</sup> The judgments in the Rhode Island and Massachusetts cases relied on the clear precedence established in *Brown v. Maryland*. The Court ruled that laws in question did not violate the Constitution because liquor shipments had been broken out of their original package and had been sold in quantities smaller than what the state laws forbade (Hamm 1995). Once liquor had been taken from its original package, it was no longer protected by the Original Package doctrine.

The *Pierce v. New Hampshire* case was slightly different. In this case, dealers purchased a barrel of gin in Boston and took it (in its original package) to New Hampshire. The vendors sold the barrel of gin in its original package without having acquired a license to sell liquor in the state of New Hampshire. A prosecution was initiated and the vendor was convicted. The case was taken to the Supreme Court, where the Court opinion favored the states’ police power. According to Chief Justice Marshall

Upon the whole, therefore, the law of New Hampshire is in my judgment a valid one. For, although the gin was an import from another State and Congress have clearly the power to regulate such importations, under grant of power to regulate commerce among the several states, yet as Congress has made no regulation on the subject, the traffic in the article may be lawfully regulated by the state as soon as it is landed in its territory, and a tax imposed upon it, or a license required, or the sale altogether prohibited, according to the policy which the state may suppose to be its interest or duty to pursue (Quoted by Stubble (D, IA) in CR-House, 51<sup>st</sup> Cong 1 sess., p. 495).

Thus, the Supreme Court concluded that none of these state laws was in conflict with the Interstate Commerce Clause, or with the Original Package doctrine established 20 years earlier. Thus, even if the liquor was in its original package a state could prohibit its sale. These rulings opened the way for the first wave of prohibition in the 1850's, which we discussed in the previous chapter.

## **Federal Civil War Tax**

In 1862, the federal government instituted a number of taxes to raise revenue in order to fund the Civil War effort. One of the taxes was imposed upon the production of distilled spirits. This tax remained in place long after the war ended. Between 1873 and 1890, the alcohol tax generated between 15 and 20 percent of total federal revenue. Hamm (1995) contends that the liquor tax created a symbiotic relationship between the liquor producers and the federal government.

Because collection of the taxes on distilled spirits was threatened by avoidance and corruption, the federal government took strong enforcement measures. Federal regulators directed construction of all distilleries. Distilleries were required to maintain bonded warehouses, and liquor was released for sale only upon payment of tax. <sup>3</sup>

Pro-prohibition groups opposed the federal liquor tax, labeling it a “sin” tax because in their view the federal government was licensing vice. Prohibitionists also believed that the tax made the liquor industry a potent political force. They further contended that the tax should have been repealed with the other taxes that were repealed after the Civil War. Many dries contended that the federal government should replace the revenues it obtained from liquor taxation by a direct tax or by a progressive income tax (Hamm 1995).

In the years following the Civil War, pro-prohibition forces found that those opposed to prohibition had a new tool to employ in the cause. With the abolition of slavery came three new amendments to the constitution. One of these, the Fourteenth Amendment, was designed to prevent states from taking away the privileges and immunities of citizens.

### **The Fourteenth Amendment Defense**

In 1887, Peter Mugler was charged with illegally manufacturing beer and maintaining a nuisance, thus violating Kansas’s prohibition laws. The state authorities had closed the brewery in a civil proceeding without a jury trial. Mugler argued that his business had been illegally enjoined and that his property had been confiscated without compensation in violation of the Fourteenth Amendment. His argument hinged upon the fact that he had been selling beer brewed before the passage of the state prohibition law (Colvin 1926). In addition to this argument, Mugler contended that the building structure had been constructed especially for the purpose of manufacturing beer and thus had limited alternative usage.

The case built by Kansas's attorneys was based upon the arguments espoused by prominent prohibitionist, John Finch, in a famous debate in Detroit. He reasoned that liquor was not a common food or drink article and that a series of decisions by state courts had not deemed it to be in the same class as other legitimate business. Any individual engaging in the manufacture or sale of liquor was thus putting himself at risk, knowing that at anytime the liquor trade could be suppressed. Precedents for prohibition were seen in similar evils, such as slavery and lotteries. States had never been compelled to compensate slaveholders and lottery keepers for loss of property, and the Fourteenth Amendment did not change this.

The Court, in answering the challenges as presented by Mugler, clearly expressed the right of the state to define and prohibit externalities caused by markets against third parties. The Court said:

But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system, that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the State, and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety. (Quoted in Colvin 1926, p.526)

The essential issue before the court was whether the prohibition statute of Kansas was in violation of the Fourteenth Amendment. The Court asserted that precedent decisions had made clear that state legislation prohibiting the manufacture or sale of intoxicating liquors did not necessarily infringe any right, or privilege secured by the Constitution of

the United States.<sup>4</sup> Prohibitionists thus felt themselves empowered by what they called “The Great Prohibition Decision”.

*Mugler v. Kansas* was a triumph for prohibitionists. The case validated a states right to define what markets constituted harm to its people and thus could be prohibited without compensation. The decision greatly aided state enforcement efforts through the Fourteenth Amendment. Just one year later, however, the Supreme Court would deliver a severe blow to efforts to enforce state prohibition.

## **The Interstate Commerce Challenge**

Iowa adopted state prohibition in 1882. Its dry laws were difficult to enforce, however, because its neighbors, Missouri and Illinois, remained wet. Two Supreme Court cases bearing on Iowa’s attempts to enforce its prohibition laws reveal the unresolved externality problem.

The first case was *Bowman v. Chicago and Northwestern Railroad* 1888. George and Fred Bowman were Iowa wholesalers who sought to import liquor from out of state for sale in state. The Chicago and Northwestern Railroad refused to deliver liquor into dry states. The Bowman Brothers sued the railroad for interfering with interstate commerce. Attorneys representing the state of Iowa and the Chicago and Northwestern Railroad argued the contrary position that states are given police powers through the Tenth Amendment, and therefore it is the right of a state to enforce its prohibition laws.

The Supreme Court, while acknowledging Iowa’s right to protect the welfare and morals of its people, ruled that the Iowa statute on transporting liquor was unconstitutional.<sup>5</sup> The

statute was held to be an effort to exercise control over property within the limits of other states and thus an unauthorized interference with the commerce power of Congress. The Bowman ruling established the right of an individual from a wet state to export alcoholic beverages into a dry state. On the other hand, it did not rule against the rights of states to ban the sale of liquor within their boundaries.

The Bowman ruling encouraged some manufacturers to switch to retail sales to meet the demand in dry Iowa. Gus Leisy, a Keokuk brewer who had been shut down by Iowa's state prohibition laws, moved his manufacturing plant to Peoria, Illinois, and opened a retail outlet in the brewery building that had been shut down by Iowa's prohibition statute. Leisy, using the original package doctrine as a shelter, sold beer to customers in full kegs or cases with federal government revenue stamps attached.

In 1888, a reform regime came to power in Keokuk, determined to stamp out liquor traffic. The Leisy Company found itself the target of these efforts. Sheriff A.J. Hardin, who sympathized with the wets, was forced to confiscate the company's entire stock. Leisy subsequently sued A.J. Hardin for compensation. Leisy's argument was that the power to regulate interstate commerce rested exclusively with Congress, and that this power extended within state borders. The attorney for Hardin asserted that the prohibitory laws were regarded as valid regulations under the states' police power, and that the silence of Congress acknowledged the right of the state to enact such laws. Moreover, the power to tax, regulate, and control took hold as soon as imported goods were delivered to the consignee. Thus, the sale of beer should not be protected by the federal interstate commerce power.

The Court ruled in favor of Leisy, stating that the absence of any law by Congress as regards to the subject matter is equivalent to the requirement that commerce shall be free of state laws. In other words, Congress must actively delegate its powers over commerce to the states in order for states to prevent the sale of alcohol in its original package. The Prohibition Party, seeing that the Supreme Court had ruled against state police powers in this case, concluded that the Supreme Court had made prohibition a national question (Hamm 1995).

The effects of the two Supreme Court rulings were substantial. The Bowman decision weakened state prohibition laws because individuals were allowed to import liquor from wet states. The Leisy ruling essentially nullified state laws because retail sales were protected under the Interstate Commerce Clause as long as the liquor remained in its original package. In other words, the Supreme Court ruled that only by sale did the beer become mingled in the common mass of property of the state. In absence of congressional permission to do so, the states had no right to interfere with interstate commerce. As long as goods remained in their original package, they could be sold under the protection of the federal government.

Bader (1986) provides a good example of just how limited state police powers were following Bowman and Leisy. His account reveals the great difficulty that the attorney general of Kansas had in enforcing Kansas's prohibition laws. Because of the original package ruling, liquor dealers from Missouri could legally ship their products into Kansas and sell it to customers through an agent. Nevertheless, arrests were made for nuisances, selling from opened packages or permitting drinking on premises. As soon as arrests were made, however, lawyers gained the release of violators through habeas corpus

proceedings in the federal district court. The federal courts became inundated with cases and complaints. In response to this congestion, the federal court enjoined county attorneys and other local officers from making further prohibition related arrests.

## **The Wilson Act**

In the wake of the *Leisy v. Hardin* decision, prohibition advocates pressed Congress to act quickly to protect the prohibition laws of dry states. The Fifty-First Congress took action grudgingly. From the *Congressional Record*, it is evident that both sides were aware that the Supreme Court had reversed the precedents established in the License Cases of 1847 and wanted Congress to resolve the renewed conflict between wets and dries. This was not a task that Congress was eager to take on.

What prohibitionists desired was for Congress to move the point of state power from the sale of goods to the point at which goods crossed state boundaries. The Senate passed the bill that was intended to ban the sale of spirits, beer, and wine only. The House Judiciary Committee offered a substitute bill, intended to give states police powers over all commerce deemed harmful to the public welfare and morals. After a debate in the House upon the bill, the Senate version was adopted.

The bill reads as follows:

All fermented, distilled or other intoxicating liquors or liquids transported into any state or territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such state or territory be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been purchased in such state or territory, and shall not be exempt there from by reason of being introduced therein in original packages or otherwise (quoted by Colvin 1926, p.534).

It was not long before liquor dealers challenged the limits of the Wilson Act. In 1898, the *Rhodes v. Iowa* case raised the question of where and when did alcohol cease to be subject to interstate commerce laws and become subject to Iowa law. John Rhodes a Western Railroad attendant, moved a box of liquor bottles six feet from the train platform to a warehouse. The liquor was seized and Rhodes was indicted for violating Iowa's transportation law. The Supreme Court, faced with another prohibition case from Iowa, sought to interpret the Wilson Act in such away as to prevent commercial anarchy (Hamm 1995). It was believed that giving states the power to stop any good that was en route through a state would give the states extraterritorial power. In *Rhodes v. Iowa*, the Supreme Court ruled that states could not act upon the good until its arrival to the consignee. This decision did not bring back the original package saloons, but it did allow free importation of liquor against a state's prohibition law. Thus, the *Rhodes v. Iowa* significantly limited the extent of prohibition that could be achieved within a state.

Adam's Express, American Express Company and other "Cash On Delivery" businesses flourished under the *Rhodes* Supreme Court ruling. Consumers simply ordered alcoholic beverages through the mail and receive shipments delivered directly to them. Previously, states could not confiscate liquor within their borders if the liquor had a federal revenue stamp attached to it, because to do so violated the Interstate Commerce Clause and the original package doctrine. With the passage of the Wilson Act, states were given the power to confiscate the liquor in its original package once it crossed state lines. Subsequent Supreme Court rulings, however, allowed states to confiscate liquor only

after it had reached the hands of the purchaser. Such restrictions meant that no state could become completely “bone-dry.”

By the latter part of the Nineteenth Century, pro-prohibition groups were losing strength, as new reform movements arose in the wake of the Depression of 1892 and the problems associated with urbanization and industrialization. Couple these problems with the nullification of the Wilson Act that *Rhodes v. Iowa* decision produced, and one can easily understand the dissipation of the movement by the turn of the century.

Given the overwhelming enforcement problems, the Anti-Saloon League sought to use the federal government’s liquor tax as a way to aid states in enforcing their prohibition and local option laws. The League encouraged dry states to adopt “*primaefacie*” laws, which simply said that the payment of a federal liquor tax was *primaefacie* evidence of the intent to sell intoxicants. Thus, because of the tight regulation of the distilled spirits industry, dry states could use this information to help them enforce their prohibition laws. In 1906, Congress passed the Certified List Law. This legislation required the federal government to furnish a list of all those who had paid federal liquor taxes to any state or locality that requested the information. Through the Certified List Law, the federal government aided the state enforcement effort.

Although this Certified List law did assist dry states, prohibition advocates sought even greater enhancement of state police powers vis-à-vis the Interstate Commerce Clause. Two factors aided the dries in their efforts to persuade the 62<sup>nd</sup> Congress (1912) to revisit the issue. First, eight more states had adopted prohibition laws. Second, Congress had passed a series of laws using their interstate commerce powers to protect the rights of states.

Several of these laws were:

- The Lacey Act of 1900, which supported State efforts to conserve game birds by banning interstate transportation of game contrary to state laws.
- The Pure Food and Drug Act of 1906
- The Mann Act (White Slavery) of 1908, which used the Commerce powers to ban prostitution from interstate trade.
- Immigration Act of 1910, intended to slow the tide of immigration.

As it turns out, however, the Interstate Commerce Clause was something of a two-edged sword. Until this point in time, it had been an obstacle preventing dry states from enforcing prohibition. In subsequent years, however, Congress would use the authority given it by the Interstate Commerce Clause to materially assist the cause of prohibition.

Following this same strategy, the temperance movement under the lead of the ASL sought to pressure Congress to use the *Interstate Commerce Clause* as a tool to solve the externality problem between the states. In 1912, four bills were presented before a subcommittee of the Senate Committee on the Judiciary for discussion. Kenyon (R-IA) sponsored the bill that emerged. After passing the Senate, the bill moved to the House, where it was co-sponsored by Webb (D-NC).

The argument for the Webb-Kenyon bill was that the state should not only punish those who illegally sell liquor, but also prevent illegal sale. States had found it impossible to effectively enforce their prohibition laws, when compelled to wait until the offense had

been committed. The states sought the power to confiscate alcoholic beverages in bulk before it reached the consumer.

Those in favor of Webb-Kenyon argued that the federal government was a partner in the liquor traffic through the shelter it provided under the Interstate Commerce Clause.<sup>6</sup> In 1913, temperance advocates succeeded in achieving passage of the Webb-Kenyon Act, which, by divesting the federal powers over liquor, essentially banned liquor from interstate commerce protection.

The bill read as follows:

Be it enacted, etc., That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package, or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, is hereby prohibited.

After the passage of the Webb-Kenyon Act, the adoption of prohibition, by states began to increase rapidly. In 1914, five states adopted prohibition laws. In 1915, five more states were added. By 1916, some states were also adopting bone-dry laws, which banned the importation of intoxicants into the state.

In January 1917, the validity of the Webb-Kenyon law was challenged in *Clark Distilling Company v. Western Maryland Railroad Company*. This case was similar to the 1888

Bowman case, where a railroad company refused to ship liquor in violation of state laws.

The Supreme Court upheld the validity of the Webb-Kenyon Act.

In the same year that the Supreme Court upheld the Webb-Kenyon Act, another piece of legislation aided the cause of state prohibition. At this time, purveyors of alcoholic beverages were able to advertise freely in dry states. Several bills were presented before the Committee on Post Offices and Post Roads to ban the advertising of liquor through the mail. Senator Reed (D-MO), a staunch wet, introduced a rider (a “killer” amendment) in an attempt to defeat the liquor advertisement bill. The Reed Amendment would outlaw the transportation of liquor into any state that had a prohibition law. Reed shared the belief of many wets that prohibitionists were not truly serious about prohibition; if they were, they would push for a ban on the importation of liquor as well as its sale. This idea of forcing every prohibition state to become bone-dry would also serve to undue the Anti-Saloon League’s pragmatic approach, of settling for small gains to avoid huge losses. The ASL was aware of Reed’s game plan and vigorously opposed the rider. To the surprise of the dries the bill passed. The Reed Amendment thus made every state that had prohibition bone-dry. Yet, instead of a backlash against the Reed Amendment from states that had allowed the importation of liquor for personal use, several more states adopted prohibition laws.

With the passage of Reed, states had thus been delegated complete police power over intoxicating beverages.

## Conclusion

This chapter has discussed the various limitations that states faced in being able to exercise their Tenth Amendment rights over alcohol markets. States faced great limitations in exercising their rights to practice prohibition. In addition to the instability caused by statutory prohibition and the difficulty in attaining constitutional prohibition, this chapter has addressed the difficulty of states enforcing their prohibition laws in the context of a federal system. In chapter 2 we saw how interest groups were influenced by state institutions. In this chapter we saw how state police laws were influenced by federal institutions.

Federal institutions originally helped spark the first wave of prohibition through the Supreme Court's liberal interpretation of the interstate commerce powers of the federal government. After the Civil War, however, the state prohibition movement was hampered by the narrow interpretation of the Supreme Court of the federal interstate commerce powers. It was not until after 1912 that Congress and the Supreme Court worked in favor of dry state rights against externalities created by wet states. Once Congress gave up its power over alcohol markets, the state prohibition movement spread rapidly. To this point, much of the scholarship of the prohibition era has given credit for the spread of prohibition to the relative strength of economic interests versus religious interests. This chapter shows that some of the credit ought to go to federal institutions.

## Notes

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<sup>1</sup> These laws required the purchaser to buy fifteen gallons (ten gallons) all at one time. The purchaser would have to find a way to transport all fifteen gallons away from the retailer or tavern.

<sup>2</sup> I have not seen any author that has identified the name of the other to Supreme court cases. All scholars writing on the subject that I have read refer only to *Pierce V. New Hampshire*.

<sup>3</sup> The malt liquor tax rate was low compared to the distilled spirits tax rate; the incentives to cheat were also not the same (Hamm 1995).

<sup>4</sup> There were several cases during the 1870's that challenged state laws concerning alcohol regulation in terms of confiscation of property based upon nuisance laws. *Beer co. V. Massachusetts* was litigated in 1877. There were several other cases previous to this one. *Mugler v. Kansas* was a unique decision because it validated some state prohibition laws as being legitimate.

<sup>5</sup> Much of this history of federal involvement can be found in Hamm's treatise of prohibition.

<sup>6</sup> *Congressional Record*, December 16, 1912. The 62<sup>nd</sup> Congress, 2<sup>nd</sup> session-Senate, p. 700.

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It must be borne in mind that the federal government is one of limited powers. Except as granted to the United States or implied in those granted, all powers are jealously reserved to the state. Certain traditional lines of federal activity had become well developed and understood. Policing, except incidental to certain relatively narrow and specialized functions of the general government was not one of them. Importation, transportation across state lines, and the enforcement of excise tax laws were natural subjects of federal action. But prohibition of manufacture, distribution and sale within the states had always been solely within the scope of state action until the Eighteenth Amendment. This radical change in what had been our settled policy at once raised the question how far the federal government, as it was organized and had grown up under the Constitution, was adapted to exercise such a concurrent jurisdiction. (House Document no. 722, 71<sup>st</sup> Cong, 3d sess.:56)

## **Chapter 4 National Prohibition and the Collapse of Concurrent Enforcement**

### **Introduction**

Historians of the Prohibition Era have emphasized the growth and mobilization of opposition interest groups, combined with the apparent shift in public opinion, as explanations for the repeal of National prohibition (Dobyns, 1940; Sinclair, 1963; Kyvig 1979). Only passing reference has been given to the nature of the construction of the Eighteenth Amendment, and to the role it played in shaping state and federal enforcement efforts.

The Eighteenth Amendment created a peculiar arrangement under which the federal government was delegated a share of responsibility for state police powers, but was not

transferred access to state law enforcement machinery. At the time of prohibition there was a huge asymmetry in enforcement capabilities. The federal government had not yet established the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, or the host of other federal policing agencies that exist today. In contrast, the states had relatively large judicial institutions present throughout many localities within their borders. The federal government also had a minimal number of courts in which to prosecute cases. As a result, the states were vital in determining whether National prohibition could be enforced.

I hypothesize in this chapter that the second section of the Eighteenth Amendment, which specified that both the state and the federal government “shall concurrently enforce National prohibition,” essentially gave states the ability to nullify federal law. These nullification rights dramatically increased the burden on the federal government because of the asymmetries in capabilities.

## **The Adoption of National Prohibition**

Just months prior to the introduction of the National prohibition amendment into both Houses of Congress in 1914, the Webb-Kenyon Act was passed. As discussed in chapter 3, Webb-Kenyon forbade the transportation of alcohol from one state to another against the wishes of the dry state. It removed the protection of the federal government from alcoholic beverages, thus giving states the right to confiscate liquor that entered the state with a federal revenue stamp attached. The Webb-Kenyon Act also strengthened state power over liquor regulation. Less than one year later, during the second session of the

63<sup>rd</sup> Congress, several proposals for a nation-wide prohibition had reached the floor of the House for debate.

The major alternatives were the Morrison plan and the Hobson plan. Martin Morrison (D-IND), part of the solid voting bloc known as the Indiana Thirteen, believed in the principle of prohibition but was also a strong advocate of state's rights. His amendment originally had the support of the Anti-Saloon League, largely because the ASL needed an alternative in the event they could not win enough support for the Hobson plan.

The Morrison Amendment (House Joint Resolution 389), which would further protect dry states from the importation of liquor, read as follows:

Section 1. The importation of any spirituous vinous, malted, fermented, or other intoxicating liquors into any state of the United States, or into the District, Territory country, place, or region, domestic or foreign, is forever prohibited.

Section 2. It shall be the duty of the Congress from time to time to enact appropriate legislation for the effective enforcement of the provisions of this article.

Richard Hobson (D-AL) was a young Progressive Democrat and an avid proponent of national prohibition. After more than 1,000 prohibitionists marched to the steps of the Capital in 1913, Hobson was picked to represent the ASL's prohibition bill in the House, Senator Morris Sheppard (D-TX) in the Senate.

The Hobson Resolution ( House Joint Resolution 168) provided for federal enforcement within every state:

Section 1. The sale, manufacture for sale, transportation for sale, importation for sale, and exportation for sale of intoxicating liquors for beverage purposes in the United States and all territory subject to the jurisdiction thereof are forever prohibited.

Section 2. Congress shall have power to provide for the manufacture, sale, importation, and transportation of intoxicating liquors for sacramental, medicinal, mechanical, pharmaceutical, or scientific purposes, or for use in the arts, and shall have power to enforce this article by all needful legislation.

The first section of both the Morrison and Hobson Resolutions defined what was to be prohibited. The Morrison Amendment would prohibit importation of intoxicating liquors, into the United States from foreign countries, as well as prohibit importation from one state to the next. Hobson, on the other hand, would prohibit both importation and exportation “for sale,” as well as the transportation and the manufacture of alcohol “for sale.” The Hobson prohibition only applied to intentions for sale. It purposely did not refer to home manufacture for personal use.

The Morrison plan would not transfer any powers over to Congress from the states. It was, in some ways, a natural extension of the Webb-Kenyon Act. By only banning importation, Congress would be well within its defined constitutional powers. Congress had been enforcing laws related to interstate commerce and the protection of the U.S. borders throughout its history. Morrison argued that his plan would allow wet states to manufacture alcohol for themselves, but would not allow states to import liquor from other states or foreign countries.

Morrison’s plan seemed to be little different from the Webb-Kenyon Act, but it did have severe implications for the alcohol industry. By banning interstate commerce of alcohol, it would effectively destroy alcohol markets. Soil and climate are important to the proper production of beer, wine and spirits. Good beer cannot be made in Florida, nor can good whiskey be made in Arizona. The profit margins enjoyed by the alcohol industry were

heavily dependent upon the ability to export their product into other states. The Morrison amendment would thus deal many alcohol producers a lethal blow.

In contrast, the Hobson Resolution would require Congress to expand its power to regulate markets beyond that of interstate commerce and the U.S. borders. It would require Congress to enforce a prohibition within the states as well. Arguments against Hobson during the House floor debates centered on the infeasibility of enforcing a prohibition against sale. The dry proponents of Hobson had difficulty answering questions concerning enforcement. How, for example, does one tell for certain if the intention of transportation is for sale?

The debate over Hobson also focused on state's rights. President Taft feared that the bill would greatly expand federal power. States' rights advocates, fearing a return to the Reconstruction Era, attacked the bill as well. Although little emphasis was given to federal enforcement capabilities, it is clear that asking the federal government to police the importation, exportation, manufacture, and transportation of alcohol within the states and along its borders would be vastly more costly than the Morrison plan.

This may partly explain why the Hobson Resolution was revised ten times before reaching the floor. The key changes made to the Hobson Resolution were in the second section, which defined which sovereignty had the power to enforce section 1. The House Judiciary Committee version, H.J.R. 168, held that "Congress shall have the power to enforce this amendment by appropriate legislation." By the day scheduled for floor debate, an amended version, H.J.R. 277, was offered as a substitute for the original resolution (H.J.R. 168). It stipulated instead that "Congress or the States shall have the right to enforce this amendment by appropriate legislation."

Witherspoon (D-MS) announced that state's rights advocates were not assuaged by the change in wording protecting state powers. Under the amendment's provisions, if the Congress were to Act at all, however feebly, all state jurisdiction and power would terminate. Witherspoon argued that only an imaginary adherent to the doctrine of state rights could deceive himself into believing that there is a substantial difference in his favor in Resolution 277 instead of Resolution 168.

## **Hobson Wins Over Morrison**

Both advocates and opponents of nation-wide prohibition objected to the Morrison Amendment. The ASL and their congressional backers had three major objections. First, no constitutional amendment was needed to adopt this provision. The Congress already had the power to prohibit importation of alcohol from foreign countries, while states already had the power to forbid the use of alcohol. The Hobson Resolution forbade the manufacture and sale of liquor in all states, whereas the Morrison Amendment only applied to dry states and the federal. The Morrison plan was rejected overwhelmingly by a voice vote.

There is another reason for the rejection of the Morrison's proposal. Although Morrison's proposal seemed to preserve the rights of both dry and wet states, as well as confine the federal government's power within its existing bounds, the amendment had severe and very real consequences for alcohol producers and for state tax revenues. The ASL also believed that the country would not be ready for true prohibition and that the bill would not pass the House. Therefore, it was important to them that a bill be proposed that would

maximize the chance that some form of prohibition would be adopted. Once adopted, any weaknesses in the bill could be fixed through changes in an enforcement clause.

Wets, on the other hand, believed that its unambiguous construction and feasibility made the Morrison plan a likely candidate for passage. Thus neither group had any incentives to support the measure. This may be why Morrison believed that there was a suspicious alliance between the brewers and distillers on the one hand and the Anti-Saloon League on the other to get the Hobson bill out of committee and on to the floor for a vote. Thus, the ambiguities in the Hobson Amendment made it more likely to gain the support of both sides than in the Morrison Amendment.

Despite attempts by drys to clear up ambiguities, the Hobson Amendment failed to achieve the two-thirds majority required for a constitutional amendment to pass the House. In the end, the Hobson Resolution went down in defeat with a simple majority for the bill, 197 to 190.<sup>1</sup>

After the House version of the bill failed in 1914, the Senate version never reached the floor for debate. Nevertheless, while Americans were increasingly focused on the War in Europe, prohibition forces were actively campaigning for state prohibition. Between 1914 and 1916, twelve more states passed prohibition amendments, raising the total of dry states to twenty-one.

## **World War I and the Revival of the Hobson Plan**

The 65<sup>th</sup> Congress convened on April 2, 1917. This Congress would have ordinarily not met until December, but President Wilson called it into special session in order to declare

war. Two days later, the Hobson Resolution was revived in the form of Senate Joint Resolution 17. S.J.R. 17 was sent from the Senate Judiciary Committee to the floor for debate. Just two days after that, Congress declared war. According to prohibition advocates, this meant that food would have to be conserved for the armed forces and the soldiers would have to be sober and ready to fight. Prohibition forces hoped that the war would aid the passage of S.J.R. 17.

S.J.R.17 sponsored by Senator Morris Sheppard (D-TX), was close in form to H.J.R. 168. It provided "Congress to have the power to enforce the legislation by appropriate measures," which was the provision of the original Hobson Resolution. In floor debate, the method of enforcement, as defined in section 2, was rarely discussed.

The bill was tabled from April to August. In the meantime, other temporary prohibition measures to aid the war effort were debated and acted upon. On May 18, 1917, Congress passed the Selective Service Act, which, among other things, created dry zones around military camps, and forbade the sale or gift of any liquor to any member of the military establishment. According to Merz (1930), the passage of this Act greatly aided the arguments for national prohibition.

By August 1917 the dries were able to force national prohibition onto the agenda as top priority for floor debate. There were seven proposed Senate amendments to Sheppard's bill. Amendments ranged from prohibiting distilled spirits only, to putting a time limit on adoption by the states. It was clear that sentiment had swung strongly in favor of passage of some form of nationwide prohibition. Historians have attested to the fact that the war greatly aided the passage of the national prohibition bill. The bill passed the Senate on the

same day it was introduced. The bill specified a seven-year time limit for the necessary thirty-six states to ratify the amendment. It was then sent to the House where it was referred to the Judiciary Committee. Meanwhile, to conserve grain, Congress wrote into the Lever Food and Fuel Control Act of 1917 an amendment that forbade the production of distilled spirits, and authorized Congress to give the president the power to limit the use of food products in the production of beer and wine.

### **Passage of the Eighteenth Amendment**

While Congress was passing wartime prohibition measures, the national prohibition bill was being amended during House Judiciary Committee hearings. Two changes were made to the bill. First, the time limit for adoption was changed from seven years to six. The other change was a concurrent enforcement clause, which took the place of the “Congress shall have the power to enforce.” The clause states “Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Wayne Wheeler, lawyer for the ASL, testifying before the House Judiciary Committee in the 66<sup>th</sup> Congress, in 1919, explained why.

The section in controversy was inserted by the House:

The Judiciary Committee of the House raised the question whether the States would have complete and ample authority to enforce prohibition if the Senate provision was adopted. Such power was not exactly given. Many of the ablest lawyers in the Senate contended that states would have power to enforce prohibition under the clause, which they adopted, because power was not specifically limited or taken from the states. If the Senate provision had been adopted, the courts probably would have construed the amendment to give ample power to the States to enforce laws providing for the prohibition of the beverage liquor traffic. It will therefore be seen that the clause, which the wets hope will weaken the amendment and render it unenforceable, was designed to strengthen it and give it effectiveness. (CR-House 66, 1<sup>st</sup> session: 2469).

There was surprisingly little debate on this version of the bill in the House. On December 22, 1917, the bill passed the House by the necessary two-thirds majority. Nevertheless, the approval of the Eighteenth Amendment with the concurrent enforcement provisions confused many in Congress. Senator Henry Cabot Lodge (R-MA) predicted that states would cease to enforce prohibition laws after the ratification of the Eighteenth in order to avoid the expense of enforcement (Hamm 1995). The dries, on the other hand, believed that concurrent enforcement meant that the states would lend their machinery to the federal government, while the federal government would be in charge. As will be discussed shortly, the dries hoped to use the Supremacy Clause of the Constitution as a coercive tool to implement National prohibition from Capital Hill.

The Eighteenth Amendment had passed both houses, the war had ended, and the armistice had been signed for eight months, yet prohibition forces pressed on for additional wartime prohibition legislation. On November 21, 1918, Congress passed an amendment to the agricultural appropriation bill. This measure, known as the War Prohibition Act, forbade the manufacture of beer and wine after May 1, 1919, and outlawed the sale of all intoxicating beverages after June 30, 1919. Both provisions were

to remain in effect until after the termination of demobilization. The War Prohibition Act thus essentially implemented the Eighteenth Amendment while states were busy considering ratification and the country was still caught up in the war. Drys maintained that demobilization was so difficult that it should be considered as part of the war. Wets argued that the measure was a dishonest attempt by the drys to go back on their promise to give the liquor trade a year to wind up its business. By passing the War Prohibition Act, the drys were able to close up the gap between passage of the Eighteenth Amendment, which occurred on January 16, 1919, and the start of National prohibition one year later.

The next step for Congress was to adopt an enforcement Act to implement prohibition. The ASL composed a draft of an enforcement bill to present before Congress. This bill, sponsored by Andrew Volstead (R-MN), was reported to the House from the Committee on the Judiciary on May 19, 1919.

## **The Volstead Act**

Opponents and proponents of the Eighteenth Amendment understood that an enforcement Act would have to be written in order to make the amendment operational. The Volstead Act prohibited the manufacture, sale, barter, transportation, importation, exportation, furnishing, or possession of any intoxicating liquor. In addition, it defined the maintenance of any property where intoxicating liquors were manufactured, kept, sold, or bartered to be in violation of the Act as a common nuisance.

The Act contained other important provisions in addition to its criminal proscriptions. It broadly defined the term "intoxicating liquor" to include any beverage that contained

more than one-half of one percent alcohol by volume, and it included several noteworthy enforcement provisions. Another section provided for the forfeiture of vehicles used to transport intoxicating liquor. Another gave federal courts power to issue “padlock injunctions” that could order establishments where intoxicating liquor was sold to be closed for a year. Notwithstanding these provisions, the Volstead Act was not as extreme as opponents of Prohibition sometimes portrayed it. Neither possessing liquor in one’s private residence nor purchasing liquor was a crime under Volstead. Furthermore, the Act allowed searches of residences only when prohibition authorities could prove that liquor was being sold at the residence, or that the residence was being used in part “for some business purpose,” manufacturing for sale. I concentrate in this chapter on the parts of the Act that are relevant to my thesis.

The concurrent enforcement clause, however, was vague enough to permit both dries and wets the opportunity to move the enforcement provisions toward their preferred position. Dries sought to amplify the power of the federal government in order to create a uniform policy enforced across the country, whereas the wets sought to increase the power of the states in order to subjugate the federal government to the heterogeneity of preferences over prohibition that existed among the states.

The minority and majority reports reflected the two factions as regards to the meaning of concurrent power. Wayne Wheeler, representing the views for the ASL, had appealed to the Supremacy Doctrine (Article IX of the Constitution) in testimony before the Committee on the Judiciary . He argued that if a state did not enforce the Eighteenth Amendment, then the federal government could not be prevented from enforcing it. The dry position would guarantee enforcement of prohibition in every state regardless of state

policy. It also guaranteed a strong central federal power. According to Hamm (1995), Wheeler sought to use the Supremacy Clause of the Constitution to induce states to adopt uniform enforcement laws, conceding the power to define the rules of enforcement to the federal government, with the intent of using the state machinery to bring about compliance.

The counterargument, presented by the wets, was that concurrent power was one of equal power: the federal government and the states had the same authority to pass the same or similar laws. The two levels of government could not have dissimilar laws, because if one were enforced at the expense of the other it would imply supremacy of the one over the other. If one law is supreme, then the two sovereigns could not be equal in authority. This view of the concurrent enforcement clause obviously runs counter to the Supremacy Clause of the Constitution.

Henry Steele (R-PA), in defense of the wet position, suggested that the Volstead Act could not be valid in any state of the union without the concurrence of that state. Thus if states concurred in the construction of the Volstead Act, then the federal government and the state would coequally enforce the law in that state. If a state did not concur in the construction of the Volstead Act penalties and provisions, then federal or state officers in that state could not enforce it.

Wheeler disagreed and clarified his interpretation. Wheeler said that if one unit of government fails to use its full power, it does not prevent the other unit of government from doing that which the first unit of government had the power to do but chose not to do. Steele (R- Penn) responding to Wheeler's argument provided an example of the problem Wheeler's interpretation presented. According to Steele, Rhode Island had

passed an Act providing for the manufacture of beverages containing four percent alcohol.<sup>2</sup> If Congress legislated one-half of one percent, he asked, what is to be the threshold for intoxicating beverages in Rhode Island? Steele argued that permitting federal agents to arrest a state resident for doing something his state permitted would be intolerable (CR-House 66, 1<sup>st</sup> session, p. 2430).

Steele argued another point concerning the reason why the Act had a concurrent enforcement section and not an exclusive federal enforcement section. Steele claims that the concurrent enforcement clause was inserted because the original bill used the wording of the Thirteenth, Fourteenth, and Fifteenth Amendments, i.e. that “Congress shall have power to enforce this article by appropriate legislation.” This reminded members of Congress of a time when federal officers occupied Southern states (CR-House 66, 1<sup>st</sup> session: 2429). To avoid this situation, the text was changed to call for concurrent enforcement. Others concurred with Steele, claiming that Wheeler, the most prominent ASL lawyer, had defined concurrent as equal power (CR-House 66, 1<sup>st</sup> session: 2450) during the Senate Judiciary Committee hearings.

At the close of debate in the 66<sup>th</sup> Congress, it was clear that the two sides had very different positions on how the concurrent enforcement clause originated and what it meant. Such wide differences in interpretation may explain why the amendment was ratified in all but two states. Perhaps the vagueness of the enforcement clause made the amendment satisfactory to both sides of the issue. It would be up to the Supreme Court, however, to decide on one interpretation of the concurrent enforcement clause or the other.

On July 22, 1919, the House passed the Volstead Act by a vote of 287 to 100; the bill was referred to the Senate where it passed on September 5 by voice vote. On October 27, President Wilson vetoed the bill, chiefly because it made provisions for wartime prohibition, even though demobilization was already underway. The President's veto, however, was promptly overridden by the House, 176 to 5, and by the Senate the following day, 65 to 20.

Eugene Chafin, the most well-known member of the Prohibition Party as well as their 1912 presidential candidate, clearly foresaw the problems that the construction of the Eighteenth Amendment and the Volstead Act created. Storm (1972) reports that

When the Eighteenth Amendment was adopted, Chafin lay on his deathbed. Friends who had worked with him for a lifetime in the cause gathered around him to celebrate. But Chafin shook his head. He predicted that the Volstead Act would prove in the end to be a bi-partisan conspiracy to discredit the legitimate temperance movement by non-enforcement of a law, which the major parties really opposed. Before he died, he prophesied to them that the Eighteenth Amendment would be repealed in fifteen years and that the efforts of a century would have to be done all over again. As it turned out, it took only thirteen years (p.32).

## **The Supreme Court and Judicial Review**

On January 16, 1920, the country became officially dry. Immediately the validity of the concurrent enforcement clause was challenged. By 1920, the Supreme Court had already established precedents for concurrent enforcement arrangements between two sovereigns. In 1909, the Court handed down a decision in *Nielson v. Oregon* concerning the jurisdiction of the Columbia River between Washington and Oregon. The Court's decision in that case held that the statute that designated the Columbia River as the common boundaries of both states gave both states concurrent jurisdiction over the

waters of that river. The Court held further that concurrent jurisdiction implied that successive prosecutions could be proscribed, even in cases where two different governments had legislative authority to make the same conduct criminal. This precedent was applied to the Eighteenth Amendment.

The Court's decision on the meaning of concurrent enforcement with respect to Prohibition was handed down in *United States vs. Lanza* (253 U.S. 350.) The *U.S. vs. Lanza* ruling was in part a response to a lower court ruling in *United States v. Peterson*. In that case, the defendants were charged with violating the Volstead Act by manufacturing, transporting and possessing intoxicating liquor. The defendants had filed a plea claiming that they had been previously convicted for the offense in violation of Washington's prohibition statutes. The district court held that further prosecution by the federal government would constitute double jeopardy. The defendants in *United States v. Lanza* appealed to the same principle as that of the defendants in *United States v. Peterson*.

When *United States v. Lanza* comes before the Court in 1922, the Court appealed to the doctrine established in *United States v. Nielson* to make its decision. In so doing overturned the lower court's decision in *United States v. Peterson*. The Court ruled that concurrent enforcement means that Congress can establish one law for the entire U.S. and its territories, while at the same time States can establish another law within their respective boundaries. The Court also established that federal law did not impinge on state laws that were consistent with it. Most importantly when the same Act is an offense against both state and federal government, prosecution by one sovereign does not

preclude prosecution by another sovereign for the same offense. Finally, no state law could allow what the Eighteenth Amendment forbade.

Commenting on the *Lanza* decision, McBain (1930), a legal scholar of the time, said that the court construed “concurrent” to mean “independent,” at least so far as the power of Congress is concerned. Statutorily, administratively, and judicially, enforcement of National prohibition was held to be wholly independent of the enforcement of state prohibition.

McBain (1930) goes on to discuss the implications of the concurrent enforcement doctrine for State’s rights.

State prohibition laws, say the court, do not derive their force from this amendment. In other words, the States derive no power whatever from the amendment except perhaps the power to Act upon interstate and foreign liquor power, which had already been effectively granted to them by Act of Congress some years before the amendment was proposed. The amendment took power from the states; they cannot legalize liquor...

If the power which they now possess to adopt and enforce a policy of state prohibition is merely the power “originally belonging” to them, “preserved to them by the Tenth Amendment,” clearly a state has today, as it has already had, complete option to adopt or decline to adopt prohibition as a state policy (p.30).

The concurrent enforcement clause implied, then, that the federal government had no coercive power over the state, and the state had no coercive power over the federal government. By appealing to the Tenth Amendment, the Supreme Court clearly established that the separation of powers required that state and federal laws were independent. McBain (1930) goes on to assert that if the states derive no power to enact prohibition laws, they are under no obligation, morally or legally, to enact such laws because of the amendment. Thus, the Supreme Court, in *U.S. vs. Lanza*, was compelled to

maintain the boundaries between the federal and state governments. While expanding federal powers and limiting states' Tenth Amendment powers, the amendment nevertheless had no power to compel the states and federal government to cooperate with each other in enforcing National prohibition. States had no moral or legal obligation to enforce National prohibition. They simply could not make legal what it forbade. The concurrent enforcement clause thus established the right of a state not to enforce federal prohibition law which, given the vast asymmetry between federal and state enforcement capability, was tantamount to allowing states the right to nullify the Eighteenth Amendment.

Every state, with the exception of Maryland, adopted enforcement statutes. If states found that the costs of enforcing prohibition were too heavy, however, they could repeal their enforcement statute and shift the burden of enforcement onto the federal government. The federal government could be left shouldering the whole burden of enforcement. Nullification by the states was thus a real possibility. As we will see below, states took full advantage of the opportunity to explicitly and implicitly nullify the Eighteenth Amendment.

## **Asymmetries in Capabilities**

The passage of the Eighteenth Amendment and the National prohibition Act inaugurated the most extensive and sweeping efforts in history to change the social habits of the nation. One would naturally expect that the federal government would have had the institutions in place to handle such a sweeping reform. However, prohibition advocates were not prepared for the Supreme Courts interpretation of the Eighteenth Amendment.

The federal government was at a disadvantage for several reasons. First, there were no well-established federal agencies for enforcing National prohibition. Second, the institutions that were in existence were not suited for enforcing National prohibition. The federal government thus did not have any agency at the time of Prohibition that was readily available for the enormous task of enforcing the Volstead Act.

Even before Prohibition was adopted, there had been doubt as to whether the federal government would be capable of enforcing it. The Commissioner of Internal Revenue, in his Annual Report to the Secretary of the Treasury for the Fiscal Year ending June 30, 1919 (made while the National prohibition Act was pending in Congress) noted that the pending bill would place responsibility for the enforcement of its provisions upon the Bureau of Internal Revenue in the Treasury Department. The IRS, however, was already burdened with enforcing the revenue laws of the federal government.

Following passage of the Volstead Act, the Bureau of Internal Revenue proceeded to organize departments under supervising federal prohibition agents for the enforcement work. It created in each state an organization under a federal prohibition director for the regulation and control of the nonbeverage trade in alcohol. The country was divided into twenty geographic zones for enforcement of the law.

There were other federal agencies at that time that had trained police officers, but none were equipped to handle the enforcement of the Eighteenth Amendment. The largest federal police agency at the time, the Bureau of Investigation, was located in the Department of Justice. The Bureau of Investigation was charged with the investigation of offenses against the United States, and with the collection of criminal identification

records and police information.<sup>3</sup> The chief offenses were related to cross-state activities, such as motor vehicle theft and trafficking in prostitution. The Bureau was able to do an effective job enforcing these laws, even though it had less than 600 total employees.

In contrast to agents of the Bureau of Investigation, prohibition directors and agents were not subject to Civil Service laws. Salaries of prohibition agents were also too low to attract quality employees. Much of the criticism of the prohibition unit was directed toward the competence of the agents. In the first six years of Prohibition, 148 officers and employees were convicted on charges of criminality, including drunkenness.

Table 1 below shows the extent of turnover within the agency. In 1921, almost all enforcement agents were either replaced or quit. In 1923, 1924, and 1926, almost 50% of the agents were replaced. No agency can be expected to operate harmoniously with such high turnover rates. Clearly, the federal government did not have large, capable, well-established institutions to enforce National prohibition.

Table 1 here

Public outcry and media attention was focused on the failure of the federal government to enforce National prohibition. In the wake of the scandals and press coverage, Congress held hearings concerning the enforcement of the Volstead Act and the structure of the Bureau of Prohibition. In April 1926, an inquiry was opened before a subcommittee of the Judiciary Committee of the United States Senate, charged with the duty of

investigating and making a report to the full Judiciary Committee on the problems of enforcement and the Bureau of Prohibition. Actions taken because of the hearings were to make appointments to the Bureau of Prohibition subject to the provisions of the Civil Service laws and to raise salaries. In April 1927, the members of the Bureau of Prohibition were subjected to examination to determine their eligibility to continue in the service. Of those on the force who took the examinations, 41% passed and continued to hold their positions, while 59% failed.

Another issue brought before Congress was the lack of funding provided for prohibition enforcement. As shown in Table 2, even in the peak year of 1930, Congress appropriated less than fifteen million dollars a year to the Prohibition Bureau. This amount was twenty times smaller than Lawrence Andrews, the Director of the Prohibition Bureau, estimated would be required to adequately enforce national prohibition.<sup>4</sup> But even after the hearings, appropriations only increased marginally.

Table 2 here

Not willing to take all of the blame for enforcement failure, the Bureau of Prohibition passed the blame on to the states. The Bureau argued that the federal government simply did not have the capability to enforce National prohibition without state cooperation. The Bureau, in essence, was asserting that the states were implicitly and explicitly nullifying the law (Andrews 1930).

## **State Nullification**

This claim was not without substantial merit. On May 31, 1923, New York became the first state to repeal its prohibition enforcement Act. In the same year Nevada repealed its statute and enacted the much weaker California prohibition law in its place. This Act was subsequently held unconstitutional by the Supreme Court of the State. No new Act was substituted, thus making Nevada a free rider like New York. Montana formally repealed its prohibition law by a constitutional repeal amendment. As indicated earlier, Maryland had never adopted an enforcement statute, even after repeated attempts by dry forces within the state. By 1926, several states had repealed their state enforcement acts.

States also resisted federal attempts to coerce them into enforcing federal prohibition law. In 1926, President Coolidge attempted to coerce state cooperation by deputizing state, county and municipal officers as federal prohibition police officers through an executive order (Patch, 1926). The response to the order was largely unfavorable. Five governors explicitly declared their opposition. Seven other governors indicated that their state supreme courts would have constitutional or legal difficulties with the order. One legal difficulty was evident in Louisiana. The governor had planned to draft state parish and municipal officers into the federal prohibition force. A clause in the Louisiana Constitution, however, provided that no state or municipal officer shall hold an office in the federal government. In the face of public opposition and strong resistance in Congress, Coolidge subsequently withdrew the order (Patch 1926).

Upon taking office in 1929, Herbert Hoover urged state and local governments to help the federal government enforce the Volstead Act. That same year, though, Wisconsin held a referendum on its enforcement Act and the people voted to repeal the state enforcement Act. Still bent on enforcing the Eighteenth Amendment, Congress increased the penalties for prohibition violations. The Jones Act of 1929 actually increased the maximum penalties for most prohibition violations and made sale of intoxicating liquors a felony.

Although Congress stiffened the law, it only increased public resistance. After 1930 opposition to prohibition increased significantly. The Depression enabled opponents to add the economic arguments that repeal would mean more jobs and increased taxes to their earlier claims that repeal would safeguard personal liberties. President Hoover, who was still set on making the Eighteenth Amendment work, appointed a National Commission on Law Observance and Enforcement, led by George Wickersham, a former attorney general. While the commission was investigating the issues of state capabilities and effectiveness in cooperating with the federal government in enforcement, a cascade effect was taking place. In 1930, Massachusetts, Illinois and Rhode Island all repealed their prohibition enforcement acts. The wave of repeals may have helped shaped the largely negative report given by the Wickersham Commission on state and federal cooperation.

Table 3 here

The Wickersham Commission concluded that there were four categories of states that the federal government would have to deal with in order to facilitate cooperation. The first

were those where there was state level prohibition before National prohibition. In those states public opinion might be expected to demand and sustain active state enforcement and zealous cooperation with the federal government. Virginia and Kansas are given as examples of the first type, in which strong cooperation existed between the state and federal government. Many states in this category set up separate prohibition enforcement departments and eased the burden on the federal government.

In the second category were states where there was prohibition before National prohibition, but in which public opinion, either in the state as a whole or in the cities, was less supportive. State enforcement was sporadic, and there was at most lukewarm cooperation with the federal government. No explicit examples are given of the second type of state. All that is reported is that the tendency of these states was to leave enforcement primarily to the federal government, particularly in the cities, where people were often much more opposed to prohibition.

The third group was those that did not have prohibition before National prohibition, but that had state statutes conforming to it. The Commission reported that in these states, enforcement had become less active and had substantially broken down in the cities. New Jersey and Missouri were given as examples of this third type.

Fourth were those states in which there was no prohibition before National prohibition Act and which currently had no state statutes. Here the Commission concluded that only in localities where local option prohibition was in place before National prohibition was there clear evidence of a desire to cooperate with the federal government. Maryland and New York were cited as examples of this type of state.

States in categories two and four can be considered either explicit or implicit nullifiers. Explicit nullifiers formally repealed their prohibition laws or enforcement codes and shifted the burden to the federal government. When this happened not only was no assistance rendered from the state's police forces, but the courts were no longer available to the federal government. Implicit nullifiers provided little by way of effort or expenditures and thus shifted the enforcement burden on to the federal government. In order to show more clearly how a state's nullification made federal enforcement of prohibition impractical, I turn to a case study of New York.

### **The New York Nullification Experience**

In 1921 the New York state legislature passed prohibition enforcement legislation, known as the Mullen-Gage Act. Intoxicating liquor was defined as any liquor containing over one-half of one percent alcohol. The penalties for manufacture were not more than \$1,000 for the first offense and not more than \$2,000 for subsequent offenses, and thirty days to a maximum of five years in jail. For illegal sale, the first offense was not more than \$500 fine, and subsequent offenses were not more than a \$1,000 fine. For sale of intoxicants the offender could spend a maximum of two years in prison.

There were, however, several exceptions to the above provisions. First, manufacturing cider for personal use was not a crime. Second, possession of intoxicating liquor in one's home for personal use, which was legally owned at the time the Mullen-Gage Act was passed, was not a crime. However, like the Volstead acts provisions, possession of liquor without a permit was prima facie evidence that such liquor was kept for the purpose of

sale, and the burden of proof was on the possessor to show that it was legally acquired liquor.

The Mullen-Gage Act was enforced for two years until the state legislature, with the strong support of Governor Al Smith, repealed it in 1923. Following repeal, small rural towns wanted to continue to assist the federal enforcement effort. A provision in New York's statutes allowed local officials to take action against maintenance of premises for trafficking in intoxicating liquor, conducted without sanction or regulation of the state and in violation of the federal laws consistent with nuisance.<sup>5</sup> The Wickersham Commission reported that after the repeal of New York's enforcement Act, sheriffs and local officers in rural areas brought prohibition-based nuisance cases to federal court. Larger towns and cities, in contrast, showed little initiative in enforcing liquor laws or in aiding the federal government. The biggest problem in federal enforcement was of course New York City, which had a population of roughly six million in 1923.

The enforcement burden placed on the federal government was exacerbated by five factors. First, in many places there was strong popular sentiment against the law. Second, there were well-organized bands of law violators. Third, there was in many places a close connection between the lawbreakers and the local police. Fourth, and most important, was the inability of the federal courts to handle liquor cases, when the disposition on the part of the city officials was to bring whatever cases they made to federal court. Fifth was the shortage of local officers and officials willing to cooperate and furnish information to federal agents. Table 4 reveals the dramatic asymmetry in capability in enforcement in New York.

Table 4 here

The asymmetry between state enforcement potential and federal enforcement potential can also be seen in the number of officers that states had to enforce the law relative to the federal officers. States had 30,887 marshals, constables, 10,635 sheriffs, 81,874 policemen, for a total of 130,276, versus 2,000 federal prohibition agents. This difference is also evident in the judicial machinery of the states.

Table 5 here

## **Model and Analysis**

### **Hypotheses**

In order to assess the impact that the concurrent enforcement clause of the Eighteenth Amendment had on the federal enforcement burden, I examine the effect that explicit and implicit nullification of states had on the increase in per-capita federal arrests and other measures. In order to assess the validity of my hypothesis, an econometric analysis will be employed. First is the explicit nullification hypothesis: a state repealing its enforcement provision is likely to increase the number of prohibition cases brought to federal court as well as the number of federal arrests.

The implicit nullification hypothesis is a bit different: states that allocate meager funds to their state enforcement efforts, or to local government efforts, thereby are shifting the burden of enforcement over to the federal government. Implicit nullification is not as readily identifiable as explicit nullification and thus much harder to measure. If implicit

nullification exists, we would expect that states that allocate a lower amount of resources to policing prohibition might shift the burden onto the federal government. Both hypotheses are tested within the same models.

I employ three regression models using three different dependent variables in order to test whether state free-riding behavior increased federal burden. I first test whether nullification increased the federal prohibition arrest rates. Secondly, I test whether nullification increased amount of prohibition cases coming before federal courts. The third model is similar to the first. In this model I test whether nullification affected total federal enforcement efforts. Total federal enforcement effort is measured as total arrests by federal prohibition officers plus arrests made by state officers with federal aid. There are more observations with this third dependent variable than with the other two.

Nullification is measured both explicitly and implicitly as discussed above. Explicit nullification is a dummy variable that takes on a value of one when a state repeals its prohibition laws, otherwise the variable is assigned a one the year the repeal event takes place and all subsequent years.

Implicit nullification is measured by two variables. The first is how major cities allocate monies to law enforcement over time. If a major city increases its enforcement of a budget over time, we might expect to see a shift downward in federal arrest rates, as violators are being prosecuted in state courts. The reverse holds true also. Another measure taken from the Wickersham Commission report is the type of state. Recall that the Commission said that there were four types of states that differed in the level of

cooperation with the federal government. A good proxy for the different types of states may be given as follows:

In the ideal situation, the Wickersham Commission would have provided an exact list of those states that were cooperators and those states that they believed were free riding, either explicitly or implicitly. For that reason it is safe to only use two categories rather than to attempt to place every state into the four groups. We identify cooperators as absolute-majority adopting prohibition states (see chapter 2) along with the southern rural states that adopted before 1917. The Wickersham Commission gives Virginia and Kansas as examples of these states. These states likely had populations that voted for prohibition because a large majority of the people wanted it.

## **Regression Model**

### **Random Effects vs. Fixed Effects**

Two competing specifications are normally used for panel data. These models are the fixed and random effects models. The fixed effect model is a reasonable approach when one can be confident that the differences between states can be seen as parametric shifts of the regression function. A fixed effects approach would require the estimation of 48 coefficients in addition to the betas that are specified in the model. With such a small number of observations, the fixed effects approach would greatly diminish the degrees of freedom. A random effects approach specifies that the state-specific coefficients are state specific disturbances. There is but a single random draw from a distribution that enters the regression identically in each period. I chose the random effects specification.

### **Generalized Least Squares Theoretical Specification**

$$\text{(Per-Capita Arrest)} = \beta_0 + \beta_1(\text{Nullify}_i) - \beta_2(\text{Cooperate}_i) - \beta_6(\text{Police}_{it}) + \beta_7(\text{Urban}_{it}) - \beta_8(\text{Catholic}_{it}) + u[\text{State}_i] + e[\text{State}_{it}]$$

Where  $u[\text{State}_i]$  is a vector of unobserved state characteristics that are unique to the state and  $e[\text{State}_{it}]$  is random noise.

### **Dependent Variables**

My hypotheses assume that all three dependant variables share the common relationship with the independent factors in the model. These are:

Federal per-capita prohibition arrest rates. This variable is the arrest made by federal prohibition agents for the violation of the Volstead Act. The data is from 1924-1931.

Federal per-capita court cases. This variable is the per capita amount of cases facing each federal judge within a state-year. The data is from 1925- 1932.

Federal per-capita effort. This variable is the per-capita amount of federal prohibition arrest, in addition to the per-capita assistants federal prohibition agents made to state law enforcement officers.

## **Independent Variables**

### **Nullify**

Explicit nullification are the states that have repealed their state enforcement acts or prohibition laws by state legislature or referendum. Explicit nullification increases the burden to the federal government. This variable is expected to have a positive relationship with the dependent variables.

### **Cooperators**

The variable cooperators measures the overall general attitude of the enforcement agencies within the states that had an absolute majority as well as southern rural states that had adopted prohibition prior to the passage of the Eighteenth Amendment. The longer a state has prohibition with the people behind it, the more likely that state is to pull its weight in enforcement. This variable is expected to be negatively related federal burden. State cooperation lowered the burden to federal enforcement.

### **Police**

This variable is the average of a state's major cities budget proportion expended on law enforcement for a given state-year. This variable is a proxy for implicit nullification. I assume that there is a correlation between the funds allocated to the police department and the willingness to enforce prohibition. As cities decrease their expenditures on law enforcement, I assume that they are decreasing their efforts in enforcing the state prohibition laws. The relationship is thus expected to be negative with all the dependent variables.

### **Urban and Catholic**

Percent urban and percent Catholic, measured at the state level, provide controls for analysis. Percent urban is expected to be negatively related to federal and state arrest rates because urban areas were less likely to cooperate with either the federal or the state government in prohibition enforcement (Wickersham 1930). Within urban areas Catholics and foreign born were likely to be the targets of arrest. Thus, the sign for Catholics is expected to be positive.

## **Results**

Tables 6a-6c present the regression results. All of the models meet the specification criteria (see data appendix for a description of the Hausman and Breusch and Pagan test). All the overall models are significant as indicated by the Wald statistics. In general the models do a better job explaining the variation between states than within states. I will discuss each model in turn.

Turning first to per capita federal arrests, the .51 coefficient of the nullification variable tells us that the number of federal arrests per year increases by 51 for every 100,000 people in a state when a state repeals its prohibition laws. This coefficient is significant at the .01 level. Thus, a state with a million people that repeals its prohibition laws can expect to see the federal government arrest 510 more people per year than would be the case had the state kept its enforcement Act.

The -.34 coefficient of the cooperate variable means that in absolute-majority and southern prohibition states, federal arrest rates were lower by 34 for every 100,000

people. This relationship is not significant, but the sign of the coefficient is in the hypothesized negative direction.

The police variable, on the other hand, has a sign in the opposite direction of that which is hypothesized. The coefficient indicates that the more money that cities spend on enforcement, the higher the per-capita arrest burden to the federal government. The .82 coefficient, however, is not significant.

The coefficient of percent urban is in the hypothesized direction and significant. A one percent increase in the urban share of a state's population reduces the federal arrest rate by 92 for every 100,000 people (-.92). It must be noted that the dependent variable is per-capita arrest, thus the larger the population, the more violations. Thus, overall urban areas had more arrests, but fewer arrests per capita.

As hypothesized, the sign for the coefficient is positive. A one percent increase in the Catholic share of a state's population leads to an increase in the federal burden by 62 for every 100,000 people.

### **Federal Court Cases**

The nullify, urban, and Catholic variables were all significant predictors of caseload in the federal courts. Per-capita arrests were occurring less in more urban states. States with a high proportion of Catholics were also experiencing higher numbers of federal court cases. Again, the nullify variable produces an increased burden on the federal government. The cooperate coefficient has the right sign, but it is insignificant. The police variable is insignificant and has the wrong sign. The overall model explains 14 percent of the observed variance in federal per capita court cases.

### **Total Federal Prohibition Effort**

This model has the poorest fit of the three specifications. Nullify (0.17) and Urban (-0.91) are the two important factors. The model explains none of the variation within states. The police measure again had a coefficient that was not in the hypothesized direction but not significant. The cooperate variable had a coefficient in the hypothesized direction, but it was not significant.

In short, these models indicate that a state withdrawing its enforcement machinery from the prohibition enforcement effort increased the enforcement burden to the federal government. The model supports the Wickersham Commission Report findings that states were the key drivers of prohibition success, or prohibition failure.

### **Conclusion**

The three regression models show clear evidence of the impact that explicit and implicit nullification played in the enforcement of prohibition. Why is this result important? If the federal inability to enforce National prohibition was the key factor that drove public opinion against the experiment, then it no longer is clear that national prohibition would not work. The Eighteenth Amendment, as interpreted by the Supreme Court, did two things. One, it gave the state's the explicit and implicit right to nullify. Second, the federal government was left without the power to coerce states to cooperate. Prohibition took place at a time when the federal government was considerably smaller than it is now. The federal government was wholly dependent upon state machinery to enforce the amendment. Had Congress adopted an amendment akin to the Morrison Amendment that

preserved the existing federal and state powers, a National prohibition might have been considerably more effective.

Looking back in hindsight after eleven years of the failed prohibition experiment, the Commission had this to say:

In the beginnings of the federal government it was believed that state officials and state tribunals could be made regularly available as the means of enforcing federal laws. It was soon necessary to set up a separate system of federal magistrates and federal enforcing agencies. We had no traditions of concerted action between independent governmental activities and it was not until the World War that we succeeded in developing a spirit of cooperation at least for the time being. In spite of that experience, the Eighteenth Amendment reverted to the policy of state enforcement of federal law, and again there has been not a little falling down of enforcement between concurrent agencies with diffused responsibility. The result was disappointing. Too frequently there has been a feeling, even in states, which had prohibition laws before the National prohibition Act, that enforcement of prohibition was now a federal concern with which the state need no longer trouble itself. Thus, there has often been apathy or inaction on the part of the state agencies, even where local sentiment is strong for the law. (House Document no. 722, 71<sup>st</sup> Cong, 3d sess, p.53)

The Commission goes on to show that the federal response to state nullification is to also free ride:

It seems now to be the policy of federal enforcement to make its own motion a partition of the field, leaving interstate combinations and commercial manufacture to the state. This relinquishing of much of the field of concurrent jurisdiction, to be taken on by the states or not as they see fit, is a departure from the program of the Eighteenth Amendment (House Document no. 722, 71<sup>st</sup> Cong, 3d sess, p.54).

With the failure of National prohibition, the Wickersham Commission recommended allowing states to determine for themselves whether to enforce the Eighteenth

Amendment, and to give the federal government power to aid states where prohibition existed by state law. In addition, the federal government was to maintain enforcement in certain jurisdictions, such as importation from outside the U.S., interstate organization of illicit traffic, and interstate conspiracies to violate the law.

When it convened on March 30, 1930, however, Congress was considering seven joint resolutions for the repeal or amendment of the Eighteenth Amendment. La Guardia (R-NY) and Adolph Sabath (D-Ill) made two of the more interesting proposals. La Guardia's plan reserved to Congress the same power guaranteed under the Eighteenth Amendment, but the states were left to determine the level of intoxication at which the federal government could enforce prohibition within the state. Representative Sabath submitted a bill proposing to establish a national monopoly system, which would allow intoxicating beverages to be permitted in states without enforcement acts, subject to the monopoly power of Congress over such beverages.

Neither one of the proposals were adopted. In the end, a proposal to repeal the Eighteenth Amendment was adopted. After 14 years of sharing police powers within the states, the federal government was about to hand those powers back over to the states. The Twenty-first Amendment repealed the Eighteenth Amendment, while forbidding the transportation of intoxicating liquors into any state against its laws. The law was proposed on February 20, 1933. Michigan was the first state to ratify the Twenty-first amendment and Utah was the last, on December 5, 1933.

**Table 1: Turnover in the Federal Prohibition Agency (in Percentage) 1920-1930**

	Enforcement group	Clerical group	Administrative group	Total all groups
1920	15.9	12.7	7.69	14.8
1921	96.2	30.0	43.7	76.1
1922	50.2	25.4	27.7	42.4
1923	47.5	26.2	37.5	43.7
1924	27.6	19.8	15.7	25.7
1925	24.1	24.4	18.0	26.4
1926	49.5	36.0	58.7	45.3
1927	38.0	23.1	47.3	33.3
1928	34.1	19.3	29.8	31.0
1929	31.2	19.3	22.0	27.1
1930	22.7	17.9	14.7	21.0

Source: House Document no. 722 71<sup>st</sup> Congress, 3d Session p.16

**Table 2: Appropriations for Prohibition Enforcement**

<b>Year</b>	<b>Total appropriations (in millions)</b>
<b>1920</b>	<b>2.79</b>
<b>1921</b>	<b>6.39</b>
<b>1922</b>	<b>6.75</b>
<b>1923</b>	<b>8.32</b>
<b>1924</b>	<b>8.10</b>
<b>1925</b>	<b>10.20</b>
<b>1926</b>	<b>9.94</b>
<b>1927</b>	<b>11.98</b>
<b>1928</b>	<b>11.98</b>
<b>1929</b>	<b>12.37</b>
<b>1930</b>	<b>13.48</b>

Source: House Document no. 722 71<sup>st</sup> Congress, 3d Session p.18  
 These numbers includes allocations for the Coast Guard.

**Table 3: State Nullification of Prohibition, 1923-1932**

Year	State	Mode of Repeal	For Repeal	Against Repeal
--	Maryland	Never adopted		
1923	New York	State Legislature		
1923	Nevada	State Supreme Court		
1926	Montana	Referendum	83,231	72,982
1929	Wisconsin	Referendum on enforcement Act	339,337	196,402
1930	Massachusetts	Referendum on Enforcement Act	641,932	367,804
1930	Illinois	State Legislature		
1930	Rhode Island	State Legislature		
1932	Arizona	Referendum	63,850	36,218
1932	California	Referendum	1,458,835	658,351
1932	Louisiana	Referendum	188,597	38,098
1932	Michigan	Referendum	1,022,508	475,265
1932	New Jersey	Referendum	1,012,526	223,855
1932	North Dakota	Referendum	134,742	99,316
1932	Oregon	Referendum	206,619	138,775
1932	Washington	Referendum	341,450	208,211

**Table 4 Share of Enforcement Burden in New York**

<b>Indictments</b>	<b>Federal</b>	<b>New York</b>	<b>Total</b>
<b>1921</b>	<b>36%</b>	<b>64%</b>	<b>10,529</b>
<b>1922</b>	<b>35%</b>	<b>65%</b>	<b>11,230</b>
<b>1929</b>	<b>100%</b>	<b>0%</b>	<b>13,201</b>
<b>Judges</b>	<b>2%</b>	<b>98%</b>	<b>304</b>
<b>Officers</b>	<b>1%</b>	<b>99%</b>	<b>23,512</b>

Source: *State Cooperation in Enforcement of Prohibition Laws, 1930*, p.52-3.

**Table 5: Number of Federal and State Judges, 1926**

State	Federal District Judges	State and County Judges
Alabama	3	88
Arizona	2	10
Arkansas	2	93
California	6	132
Colorado	1	69
Connecticut	2	85
Delaware	1	5
Florida	4	50
Georgia	8	117
Idaho	1	21
Illinois	6	143
Indiana	2	123
Iowa	3	86
Kansas	2	76
Kentucky	2	47
Louisiana	2	58
Maine	2	20
Maryland	2	103
Massachusetts	3	127
Michigan	5	74
Minnesota	3	50
Mississippi	2	83
Missouri	4	152
Montana	2	31
Nebraska	2	35
Nevada	1	14
New Hampshire	1	114
New Jersey	5	123
New Mexico	1	31
New York	18	165
North Carolina	4	25
North Dakota	2	24
Ohio	6	135
Oklahoma	3	42
Oregon	2	40
Pennsylvania	9	135
Rhode Island	1	21
South Carolina	4	34
South Dakota	2	69
Tennessee	3	29
Texas	7	60
Utah	1	30
Vermont	1	35
Virginia	2	62
Washington	3	65
West Virginia	2	29
Wisconsin	2	72
Wyoming	1	18

From *State Cooperation in the Enforcement of National prohibition Laws*, 1930, p. 9

**Table 6: Against: Per Capita Federal Prohibition Arrests Rates, 1924-1931**

Variable	Coefficient (in 1,000's)	Standard Errors	Z-Score	Probability > Z
<b>Constant</b>	0.092	0.244	0.37	0.70
<b>Nullify</b>	0.51	0.10	4.97	0.00
<b>Cooperate</b>	-0.34	0.13	-0.265	0.79
<b>Police</b>	1.84	2.23	0.82	0.40
<b>Urban</b>	-0.92	0.28	-3.22	0.00
<b>Catholic</b>	0.62	0.26	2.33	0.02

$$\sigma_v = 0.32$$

$$r^2: \text{ within } = 0.04$$

$$\sigma_e = 0.31$$

$$\text{ between } = 0.36$$

$$\rho = 0.51$$

$$\text{ overall } = 0.25$$

$$X^2(7) = 37$$

$$\text{ Prob } > X^2(7) = 0.0000$$

$$N=384 \text{ Groups} = 48 \text{ Observations per group} = 8$$

**Table 6B: Per Capita Federal Prohibition Court Cases, 1925-1932**

Variable	Coefficient (in 1,000's)	Standard Errors	Z-Score	Probability > Z
<b>Constant</b>	0.40	0.20	1.97	0.04
<b>Nullify</b>	0.09	0.05	1.77	0.07
<b>Cooperate</b>	-0.21	0.12	-0.17	0.85
<b>Police</b>	0.17	1.74	0.10	0.91
<b>Urban</b>	-1.27	0.25	-4.92	0.00
<b>Catholic</b>	1.03	0.25	4.10	0.00

$$\sigma_U = 0.33$$

$$r^2: \text{ within } = 0.08$$

$$\sigma_e = 0.21$$

$$\text{ between } = 0.17$$

$$\rho = 0.69$$

$$\text{ overall } = 0.14$$

$$X^2(5) = 31.63$$

$$\text{ Prob } > X^2(5) = 0.0000$$

$$N=384 \text{ Groups} = 48 \text{ Observations per group} = 8$$

**Table 6C: Per Capita Federal Prohibition Efforts,\* 1924-1933**

Variable	Coefficient (in 1,000's)	Standard Errors	Z-Score	Probability > Z
<b>Constant</b>	0.52	0.26	2.82	0.00
<b>Nullify</b>	0.17	0.08	2.03	0.04
<b>Cooperate</b>	-0.10	0.15	-0.69	0.48
<b>Police</b>	1.49	2.33	0.64	0.52
<b>Urban</b>	-0.91	0.32	-2.80	0.00
<b>Catholic</b>	0.52	0.30	1.69	0.09

$\sigma_U = 0.38$        $r^2$ : within = 0.00

$\sigma_e = 0.42$       between = 0.14

$\rho = 0.45$       overall = 0.09

$X^2(5) = 11.9$       Prob >  $X^2(5) = 0.03$

N=479 Groups = 48 Observations per group = 10

\* This variable equals persons arrested by federal prohibition officers plus persons arrested by state officers assisted by federal officers, on a per capita basis.

## Specification Test for GLS Regressions

### Breusch Pagan Lagrangian Multiplier Tests

$$\text{Per Capita Arrest} = XB + u[\text{State}] + e[\text{State},t] \quad X^2 = 268.85$$

	Variance	Sqrt(Variance)
Per-Capita Arrest	.311	.557
Noise e(error)	.102	.319
State u(error)	.107	.326

$$\text{Per Capita Docket} = XB + u[\text{State}] + e[\text{State},t] \quad X^2 = 514.05$$

	Variance	Sqrt(Variance)
Per-Capita Arrest	.203	.45
Noise e(error)	.046	.215
State u(error)	.104	.323

$$\text{Per Capita Effort} = XB + u[\text{State}] + e[\text{State},t] \quad X^2 = 366.58$$

	Variance	Sqrt(Variance)
Per-Capita Arrest	.412	.642
Noise e(error)	.178	.422
State u(error)	.147	.383

As mentioned earlier, there is a state specific error that is constant across time periods and there is noise.

### Hausman Specification Test

<b>Per capita Arrest</b>	Fixed Effects	Random Effects	Difference
Nullify	.191	0.513	-0.322
Police	5.878	1.844	3.99
Catholic	4.096	-0.926	0.328
Urban	-0.592	0.625	3.426

<b>Per capita Docket</b>	Fixed Effects	Random Effects	Difference
Nullify	.094	0.097	-0.057
Police	5.390	0.177	0.029
Catholic	2.992	-1.275	-0.782
Urban	-3.16	1.030	2.438

<b>Per capita Efforts</b>	Fixed Effects	Random Effects	Difference
Nullify	.0027	0.170	-0.121
Police	-.0287	1.497	3.648
Catholic	.2557	-0.913	0.604
Urban	-.3360	0.521	2.471

**Test: Ho: Difference in coefficients not systematic**

$$\text{Chi2}(5) = (b-B)'[S^{(-1)}](b-B), S = (s_{fe} - s_{re}) \quad : \quad \begin{array}{ccc} \text{Arrest} & \text{Docket} & \text{Effort} \\ 40.84 & 110.31 & 43.24 \end{array}$$

Prob >chi2 = 0.000

(s<sub>fe</sub> - s<sub>re</sub>): Is the difference between the standard errors of the fixed effects and the random effects specifications.

## Data Appendix

### Construction of State's Major Cities Police Expenditure

#### Measures

These data were obtained from the *Financial Statistics of Cities*, which published the percent of city budget spent on law enforcement and police department overhead for the 248 largest cities in America. The available years were from 1924 to 1931. The information was taken from table 14. *—Percent Distribution of the Payments for Operation and Maintenance of General Departments, by Principal Divisions of the General Departmental Services: 1924-31.*

The 248 cities were grouped into five groups based on population. Within each group, the cities were rank ordered. The five groups are as follows:

Group I: population 500,000 and over

Group II: population 300,000 to 500,000

Group III: population 100,000 to 300,000

Group IV: population 50,000 to 100,000

Group V: population 30,000 to 50,000

Not all states had observations. Roughly nine states (the ones not included in the list below) had all of its cities smaller than 30,000 between the years 1924-1931. For these states, the missing data was assumed Missing At Random (MAR), and the STATA imputation routine was used to impute value for the missing data. The variables used to

impute values for these small states were state population, percent Catholic, and percent urban.

I then developed a weighting scheme that gave greater weights to very large cities and less weight to small cities. Groups I through III comprised the 79 largest cities. Group IV comprised the range 80 to 160, and group V, the rest. The purpose was to make a set of consistent criteria that did not overweight smaller cities, nor overweight larger cities.

Criteria:

- 1) Use Group I
- 2) Average Group I and Group II
- 3) Average Group II and Group III
- 4) Average Group IV and Group IV
- 5) Average Group V and Group V

- 1) Average Group I with Group III or less

- 2) Average Group II with Group IV or less

For example, state with a very large major city with a population over 500,000 (i.e. New Orleans) would not be averaged with Shreveport, which had a population under 50,000.

## **Data Sources**

### **Per Capita Docket**

These data were obtained from the Report of the Commissioner of Prohibition Table 63. Table 63-Prosecutions under the National prohibition Act in Federal Courts, fiscal year 1925-31.

The number of new cases for each state and year were aggregated from federal judicial districts into a state measure. This number was then divided by the census population estimate for the year. The resultant per capita number was divided again by the number of federal judges within a state, to get the per capita number of new cases facing each federal judge by state-year. The years available were 1925 to 1932.

### **Per Capita Arrest and Efforts**

The arrest data was obtained from the Report of the Commissioner of Internal Revenue. The table used was table 63. Table 63- Statement of number of arrests, seizures, etc., by federal prohibition directors, and by general prohibition agents, during the fiscal year ended, 1924-33.

The variables of interest were: Persons arrested by Federal Prohibition Officers, persons arrested by State officers assisted by federal officers, and persons arrested by State officers on information furnished by federal officers. The variables were combined into a

total federal arrest effort measure for the years 1924 to 1933. The variables with separate measures could only be obtained for 1924 to 1931.

## Notes

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<sup>1</sup> The rule decided on for the vote on the Hobson Resolution stipulated that each section would be open for amendment under a five-minute rule. The preamble determined the means of the ratification of the amendment. An amendment presented by Mann (D-III) called for the adoption of prohibition by state convention. This amendment received a roll call vote, but failed passage. Section 1 defined what was to be prohibited. Morrison (D-Ind), offered an amendment to ban all intoxicating liquors not just for sale but for use. His amendment gave Congress the power to ban intoxicating liquors in interstate commerce, thus leaving to the states the rights to decide what form of prohibition they wanted to have. Section 2 was the section that defined at which level of government should the power to enforce the amendment reside.

<sup>2</sup> Although Rhode Island was a wet state prior to national prohibition, they were under a wartime restriction on intoxicating beverages. The passage of a four percent manufacture law was the result of the legislature defining its own law on what constituted an intoxicating beverage.

<sup>3</sup> In 1935, under the leadership of J. Edgar Hoover, the bureau changed its name to the Federal Bureau of Investigation (FBI).

<sup>4</sup> Some of the budgets of the Coast Guard and Custom Services were also allocated to prohibition enforcement.

<sup>5</sup> The Volstead Act defined premises used for the manufacture or sale of intoxicating liquor a nuisance to the community. This usually led to civil suits in which the U.S. government imposed injunctions on the property deemed a nuisance.

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## Chapter 5 Conclusion

The swiftness of the spread of the state prohibition and the subsequent adoption and repeal of national prohibition certainly represent anomalies in public policy adoption. Historians and social scientist have sought to explain these anomalies. Social Scientists have developed a research agenda that seeks to explain prohibition policy adoption through the theory of collective action or the economic theory of regulation. They have found that the relative strength of interest groups has indeed played a role in the adoption of prohibition policy at the state and national level. I have chosen to take a different approach to the study of the prohibition era. In this thesis, I have chosen to make the state and federal constitutions the primary focus in determining what shaped prohibition policy outcomes at both the state and national levels.

I have sought to show three things. First, state institutions played a key role in the spread of prohibition policy. Second, the state's ability to enforce prohibition was compromised by the conflict between state police powers and the federal interstate commerce powers. Third, the ambiguous wording of the Eighteenth Amendment was a major factor in the failure of national prohibition enforcement.

In chapter 2, I showed that pro-prohibition forces preferred constitutional amendments to statutory laws. The ability to adopt state constitutional amendments, however, was hampered in some states by high institutional barriers at both the initiation stage and

ratification stage. Through regression analysis and subsequent counterfactual analysis, I showed that if all of the states had low barriers to constitutional amendment adoptions, prohibition would have not only spread much more quickly, but just about every state would have adopted prohibition, controlling for demographic characteristics.

In chapter 3, I showed that prohibition states had limited success in prohibiting alcohol sales because their police powers conflicted with federal interstate commerce powers. In order for state prohibition to be enforced affectively in the presence of externalities generated from alcohol markets in neighboring states, congress had to redefine the limits of federal interstate commerce powers.

In chapter 4, I showed three things. First, the ambiguous wording of the Eighteenth Amendment was the result of a compromise, which caused confusion. Second, the Supreme Court's interpretation gave states incentives a free ride on the federal effort. Third, the asymmetry in enforcement capabilities was a chief cause in the failure of enforcement of the Eighteenth Amendment.

It is my belief that prohibition, studied from a federalism and institutionalist perspective, may help state policy scholars refocus their research agenda as regards to social policy in general. First, from this perspective, prohibition policy might shed some light on the current direction of research on how policies, particularly moral policies, diffuse across states. Second, the federalism perspective I have adopted may shed some light on the likely life cycle of moral policies, e.g., the "war on drugs," that are tending toward prohibition today.

Social scientists have defined moral policies as those that seek to regulate social norms which invoke strong moral responses from citizens for some reason. This occurs when the policy impinges on citizens' core values. This usually means that for some groups compromise is difficult or next to impossible. Lowi (1998) distinguishes these policy types from economic policies because of the uncompromising radicalism with which these policies so often are pursued. Money and Lee (1997), not surprisingly, classify alcohol prohibition as a moral policy.

According to Mooney (1995), research on interstate policy variation can be characterized by the study of three distinct dimensions or patterns of policy adoption across the states. First, there is the study of geographic and temporal diffusion, i.e., how policy spread across states and over time. The study of policy modification deals with how policies change across states given the experience of other states. Third, research on state characteristics measures how socioeconomic characteristics, public opinion, and the resources of opposing interest groups affect the likelihood of policy adoption. It is the first and third dimensions that my thesis addresses. Among other policies, tobacco and gun control policies can also be understood in this fashion.

Tobacco and gun control advocates face problems similar to those faced by prohibitionists. First, both tobacco and firearms markets have third-party effects. In 1993, the EPA published a report on second-hand smoke, which found that airborne cigarette smoke was a serious, and substantial, health risk. The report also attributed seven percent of the nation's annual health bill directly to the consequences of cigarette smoking. The externality effects of the proliferation of handguns yield similarly appealing statistics. Roughly 40,000 Americans are killed each year at the hands of guns.

Americans wielding guns wound another 100,000 Americans each year and intimidate and threaten millions more.

Interestingly, though, interest groups first formed in response to the sale of cigarettes during the Progressive Era. A schoolteacher from Illinois, Lucy Gaston, raised the fight against cigarette consumption because she saw the effects of cigarette consumption on her students. She believed that the “cheap little smokes” injured the little boys in her class, physically and mentally. Beginning with church and school meetings, she was able to build a formidable coalition. By 1898, the National Anti-Cigarette League was established with state affiliates. The ACL, like the ASL, had the goal of securing state prohibition. By 1900, Iowa, Tennessee, and North Dakota all had outlawed the sale of cigarettes. By 1901, a dozen more states were weighing a ban on cigarette sales.

The early success of state prohibition even led Lucy Gaston to run for president in 1920. After the adoption of National Prohibition of alcohol, the WCTU and other reformers such as the Reverend Billy Sunday turned their attentions from Demon Rum toward what they referred to as Demon Weed. The movement to prohibit cigarettes, however, faded after the repeal of cigarette prohibition by Kansas in 1927.

The prohibition of cigarettes thus went the same way as the prohibition of alcohol. The state regulation movement was revived when the environmental protection movement emerged during the 1970's. Environmentalists viewed cigarette smoke as an indoor pollutant, an imposition by self-indulgent smokers on the ability of non-smokers to enjoy clean air. The primary group pushing state legislation was the Group Against Smoke Pollution (GASP). GASP pressed for state clean air acts. These acts would ban smoking

in public places or limit where a person could smoke cigarettes. By 1980, Arizona, Minnesota, Utah, Nebraska, and Montana had pressed clean air acts and thirteen states had raised their excise taxes on cigarette sales.

Compared to anti-tobacco groups, pro-gun control advocates were late arrivals onto the regulatory scene. This is mainly due to state constitutions concurring with the federal constitution in securing a citizen's right to bear arms. According to Spitzer (1998), 39 states make some mention of a right to bear arms in their constitutions. Much of the recent push for tougher gun control laws is due to the pro-gun control group Handgun Control Incorporated (HCI). Violence in Stockton California in 1989, in which a lunatic wielding an assault rifle murdered school children, prompted President Bush to give an executive order banning imported assault rifles. Recent violence in Jonesboro, Arkansas, Springfield, Oregon, Pearl, Mississippi, Fayetteville, Tennessee, and West Paducah, Kentucky, has led interest groups to press for tougher legislation by the federal government in order to protect citizen's from gun violence.

Policy scholars also seek to understand the rate at which policies diffuse across the states. Many researchers have found a geographic pattern of policy diffusion, in which a few leader states will adopt a policy innovation, while other states wait to see if the policy will work or not. If the policy works, other states will join with ever increasing frequency. Walker (1969) found that after a certain number of states have adopted a new policy, a "take-off" point is reached, where the rate of adoption increases at an increasing rate and, after a certain point, this rate again declines. Subsequent scholarship has documented this phenomenon, which exhibits the s-shaped pattern similar to social learning curves. For policy adoption, this curve would represent slow adoption in the

first stage, swift spread of the policy in the middle stage, and those most resistant states adopting the policy in the last stage over extended periods.

Figure 1 and 4 of appendix II best illustrates this. Figure 1 shows a clear geographic pattern of policy diffusion, which corroborates the theories of state policy diffusion. The regional pattern is clearly correlated with the type of policy adopted. With the exception of California, Washington and Nevada, the entire western U.S. adopted constitutional amendments, to prohibit the sale of alcohol. Nevertheless, it is also the case that none of these states, including the five eastern states, had two-legislature approval requirements at the initiation stage. Figure 4 shows that no states requiring an absolute majority of the electorate had Catholic proportions over 50%. Thus, states that might be thought of as being resistant to a policy can adopt a policy quickly if the institutional hurdle is low. On the other hand, states that have socioeconomic characteristics favorable to a policy may not adopt because the institutional hurdles are too high.

In chapter 3 I showed how the inherent problems of federalism led to federal involvement in state prohibition. Externalities from neighboring states were making enforcement of state prohibition impossible. There are already indications that the same state conflicts are occurring with gun control policy. Interest groups that are fighting to protect the markets for firearms, such as the NRA, appeal to the Second Amendment of the Constitution as a means of protection against the threat of prohibition. According to Spitzer (1997), the states with the toughest gun control laws are located in heavily urban and high population states. Spitzer also reports that states such as New York have a tough time policing their strict handgun control laws because rural southern and western states are exporting guns to New York. If the problems in urban states become worse we might

see an increasing pressure for Congress to exercise interstate commerce powers in order to help protect states' Tenth Amendment rights to place tough restrictions on gun markets.

In closing, prohibition is clearly an important case study in the conduct of public policy. There are clear implications for state policy studies when prohibition is studied from an institutional and federalism perspective. The goal of this thesis was to help broaden the perspective of the empirical study of state policy adoption by challenging scholars to consider modeling state legislation adoption, as well as the role federalism plays in the spread of state policy. Hopefully, I have had at least some success in this endeavor.

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## **Appendix I**

### **State Prohibition Legislation, 1834-1934**

This appendix tracks prohibition legislation in each state from 1834 until 1934. These data are used in the event history analysis of chapter 2 and the panel data regressions in chapter 4. These state histories document all of the political institutional developments relevant to this dissertation such as prohibition votes, adoption and repeals of state laws.

## **Data Sources on State Prohibition Legislation**

Andrews, B.W. (Ed.) 1930. *Summary of State Laws Relating to Traffic in Intoxicating Liquor*: U.S. Bureau of Prohibition.

State Law Index. 1929-1941. *An Index and Digest to The Legislation of the States of the United States Enacted during the Biennium*. Vol.1-vol.8 U.S. G.P.O.

Lindley, Laura (Ed.) 1930. *Statewide Referenda in the United States on the Liquor Question*: The American Issue Publishing Company Westerville, Ohio.

## ALABAMA

- 1857 First prohibition laws passed.
- 1881 Women's Christian Temperance Union begins work.
- 1905 The Anti-Saloon League organized.
- 1907 First County unit local option law enacted.
- 1907 Passage of statutory prohibition law.
- 1909 First submission of Constitutional Prohibition, rejected by voters.  
Against: 76,272 For: 49,093.
- 1911 Whiskey -option law allows counties to vote themselves wet.
- 1915 Passage of statewide statutory prohibition.
- 1919 Passage of bone-dry law.
- 1919 Act passed legislature making it a misdemeanor to drive a motor vehicle while intoxicated.
- 1919 The legislature passed three laws tightening up the prohibition code, the most important of which made the transportation of five gallons or more of intoxicating liquor a felony.
- 1931 An attempt was made to weaken the State enforcement laws by repealing the portion of the statute that prohibits the manufacture or sale of anything that "looks like" or "taste like" malt. The so-called Edge Near-beer bills were defeated in the senate.

## ARIZONA

- 1907 First statewide license fee legislation
- 1909 County-Option Act was passed
- 1910 ASL organized.
- 1912 Arizona admitted to state-hood
- 1914 Prohibitory amendment to state constitution was submitted to the people. For: 25,887 against: 22,743.
- 1915 Statewide Prohibition adopted
- 1916 Amended to outlaw personal alcohol use. For: 28,443 against: 17,379.
- 1919 Search and seizure added to amendment.
- 1923 Imprisonment for first offense, of person who drives a motor vehicle while intoxicated.
- 1927 The Association Against the Prohibition Amendment (AAPA) introduced a bill to abolish the search and seizure provisions, but the measure was defeated by a vote of 31 to 19.
- 1932 Vote to repeal the state constitutional amendment For: 63,850 Against: 36,218.

## ARKANSAS

- 1854 First steps toward local option. A majority petition was needed in any town to get a license.
- 1875 Liquor sale was prohibited within three miles of any institution of learning
- 1888 Local-option elections held.
- 1912 Statewide prohibition submitted to the people, rejected by a wet majority of 15,968. Against: 85,358 For: 69,390.
- 1913 Goings law adopted making it illegal to give any license without consent of the majority of the white-male population.
- 1915 Statewide statutory prohibition enacted.
- 1916 A bill submitted to the people to repeal the statewide law, was defeated by a majority of 51,633. Against: 109,697 for: 58,064.
- 1917 Bone-dry law enacted.
- 1921 Law passed to harmonize state with Volstead Act.
- 1923 Several measures were passed to strengthen the prohibition laws of the state.
- 1925 Legislature passed a bill making the possession of any alcoholic, vinous, malt, spirituous or fermented liquor or compound unlawful, and providing a fine from fifty to one thousand dollars.

1927 Bill introduced by wholesale druggist to amend the bone-dry law was not reported out of committee.

## **CALIFORNIA**

1879 WCTU begins work.

1898 Supreme Court rule in the "Pasadena Case, "counties and cities have the right to restrict licenses.

1898 ASL organized.

1909 Attempt at uniform local option law failed passage.

1911 Wylie local option law adopted.

1914 Statewide prohibition was rejected by a majority of 169,245. Against: 524,781 and For: 355,536.

1916 Two prohibition Amendments were defeated by a majority 101,561 and 44,744, one to prohibit manufacture, the other to close existing drinking places.

1918 Prohibition amendments defeated by the majority of voters. Against: 306,488 for: 275,643.

1918 Prohibition amendment to prohibit distilled spirits only. Against: 341,897 For: 256,778.

1920 Harris bill to enforce national prohibition was defeated by a majority of voters. Against: 465,537 For: 400,475.

1921 Wright Act, an enforcement measure was adopted without submission to the people for vote.

- 1921 The California Grape Protective Association secured the necessary signatures to submit "Wright" to popular vote.
- 1922 Wright Act approved by a majority of the popular vote.
- 1926 Another referendum was taken on the Wright Act. The margin of victory for the dries had increased to 62,623 over 33,943 in 1922.
- 1932 State prohibition enforcement Act referendum vote for repeal. For: 1,458,835  
Against: 658,351.

## **COLORADO**

- 1880 WCTU organized.
- 1897 ASL organized.
- 1907 State Local option adopted.
- 1912 Statewide prohibition defeated. Against: 116,774 For: 75,877.
- 1914 Statewide Prohibition adopted by a majority of the people. For: 129,589 Against:  
118,017.
- 1915 Stringent enforcement law adopted.
- 1916 Amendment allowing sale of beer defeated. Against: 163,134 For: 77,345  
Majority: 85,789.
- 1917 Permit law allowed householders to import alcohol for medicinal purposes.
- 1918 Bone-dry law was carried by voters. For: 113,636 Against: 64,740 Majority:  
48,896.

- 1923 Colorado law prohibiting the transportation of liquor was sustained by the state supreme court.
- 1926 Amendment to provide for manufacture and sale for personal and domestic use, to be inoperative as long as in conflict with federal law. Against: 154,672 For: 107,749 Majority: 46,923.
- 1927 By a vote of 33 to 30, the House defeated a measure known as the “pint of liquor” bill, which would have authorized physicians to prescribe a pint of liquor instead of the four ounces maximum permitted.
- 1931 All three wet measures introduced in the legislature were defeated.

## CONNECTICUT

- 1839 Local option law enacted.
- 1842 Local option law repealed.
- 1854 Passage of Statewide prohibition law
- 1872 Prohibition law repealed in favor of license. County commissioners were authorized to license with majority consent.
- 1874 WCTU organized.
- 1887 Attempt was made to re-establish prohibition.
- 1889 Failed attempt by elements in state-legislature to re-establish prohibition.
- 1917 No new licenses would be granted, only renewal licenses.

- 1921 Passage of prohibition enforcement Act.
- 1924 Congressman O'Sullivan declared spokesman for the liquor interest in the state, was overwhelmingly defeated by a dry candidate in the 1924 elections.
- 1925 The Wheeler bill, intended to provide a much stronger state prohibition enforcement code, was introduced, but failed passage.
- 1929 An attempt was made to defeat the prohibition laws in the legislature, but was defeated in the Judiciary Committee.

## **DELAWARE**

- 1847 Local option enacted.
- 1847 Law declared unconstitutional in *Rice v. Foster*.
- 1881 Local option law passed in lower house defeated in state senate.
- 1911 Constitutional convention adopted local option.
- 1913 Hazel Anti-Shipment law prohibited shipment of liquors by citizens of Delaware into dry territory.
- 1915 Hazel law repealed.
- 1917 Loose Anti-liquor Shipment Law enacted. Prevented common carriers from bringing shipments into dry towns.
- 1919 State Prohibition Enforcement Act enacted to take affect in 1920 with National law.

- 1922 Measure introduced in legislature to nullify all state prohibition laws received only four votes.
- 1922 Movement was made to repeal the Delaware enforcement code in 1926 known as the Klair and loose laws. The argument was made that the laws were so stringent that physicians could not properly prescribe alcohol to ailing patients. The vote was 25 to 6 against repeal.
- 1932 A former Senator and member of the board of directors of the AAPA was a candidate for election to the United States Senate, but was defeated by Senator Hastings a dry.
- 1932 A bill introduced in the House calling for a statewide referendum on the Eighteenth Amendment at the 1932 elections was defeated by an overwhelming vote .

## **FLORIDA**

- 1880 WCTU organized.
- 1885 Local option enacted.
- 1901 Act gave localities power to adopt laws more stringent than state laws.
- 1908 ASL organized.
- 1910 Statewide prohibition amendment passed by legislature defeated by popular vote.  
Against: 29,271 For: 24,506.
- 1913 Blind Tiger law passed to decrease illicit shipment of liquor within dry territory.
- 1918 Statewide prohibition amendment passed by popular vote. For: 21,851 Against:  
13,609.

- 1923 Strengthened the enforcement code.
- 1923 The legislature enacted a search and seizure law.
- 1930 Every candidate who announced as an advocate of the repeal measure was defeated in the primaries.

## **GEORGIA**

- 1833 First state to adopt local option.
- 1880 WCTU organized.
- 1885 Local option enacted.
- 1905 ASL organized.
- 1907 Statewide Prohibition passed.
- 1908 State legislature enacted measure to license near beer and locker clubs.
- 1915 Bone-dry law enacted.
- 1923 Attempt to repeal the state prohibition law of Georgia was defeated by vote in the house.

## **IDAHO**

- 1886 WCTU organized.
- 1909 County-option law enacted.
- 1913 Haight bill to regulate the sale of liquor by druggist enacted.

- 1916 Statewide Constitutional prohibition adopted by popular vote with a majority of 55,120. For: 90,576 Against: 35,456.
- 1916 Statewide statutory prohibition enacted.
- 1917 Law empowers the sheriff or peace officers to search and seize without warrant.

## **ILLINOIS**

- 1839 Local option adopted.
- 1841 Local option repealed.
- 1851 Statewide statutory prohibition enacted.
- 1853 Supreme Court of the state rules law unconstitutional.
- 1855 Statewide statutory advisory referendum prohibition rejected by popular vote.  
Against: 93,059 For: 79,913.
- 1874 WCTU organized.
- 1898 ASL organized.
- 1901 Local option bill rejected.
- 1903 Local option bill rejected again.
- 1907 Township-local option enacted.
- 1917 A bill failed to pass state legislature calling for a referendum vote on prohibition.
- 1919 State enforcement Act passed.
- 1921 Dry forces wage war for more stringent enforcement Act.
- 1922 Advisory referendum to allow for 4 percent wine and beer. For: 1,065,242 Against:  
512,111.

- 1923 O'Grady bill provided for the repeal of the Illinois Prohibition Act (never made it to roll call).
- 1923 Igoe-Dailey bill provided for the automatic harmonization with any future changes in the National Amendment. Fifteen wet bills and resolutions were introduced and defeated.
- 1923 Lee O'Neil Browne, a democratic wet leader of the state, was defeated in his campaign for governor on a wine and beer platform. Dry candidate for senate, beat the wet candidate for senate by more than 700,000 votes.
- 1926 In the legislature the drys made a gain of six members, and retained control of the senate. Anton Cermak a wet candidate for senate was defeated. Of the 25 candidates for Congress 18 of the candidates were dry.
- 1930 November 4, general elections regarding the repeal of the Eighteenth Amendment of the Illinois State Prohibition Act. The vote was 1,060,004 in favor to 523,130 against. The dry forces abandoned Republican candidates for offices announcing they would switch from dry to wet as a result of referendum votes. As a result of the referendum, the O'Grady bill to repeal the Illinois Prohibition Act was passed by both Houses (91 to 56) and the Senate (26 to 24). The governor vetoed the bill. The Supreme Court stopped an attempt to put the bill to a referendum vote of the people.

## INDIANA

- 1853 Township-local option enacted.
- 1855 Statewide prohibition law.
- 1857 Statewide prohibition law repealed.
- 1857 Township-local option enacted.
- 1873 Baxter law required a citizen desiring to engage in liquor traffic secure majority town approval.
- 1874 WCTU organized.
- 1898 ASL organized.
- 1907 Blind Tiger Law enacted.
- 1908 County-option law enacted.
- 1911 County option repealed.
- 1917 Statewide prohibition enacted.
- 1923 Three additional acts more stringent in enforcement. Buchanan-Drake, Buchanan-Ogden and Dunn-Holman bills.
- 1927 Anti-prohibition forces introduced two measures in the legislature to weaken prohibition laws; both measures were defeated.

1931 A joint resolution calling Congress to repeal the Eighteenth Amendment was defeated. A bill to repeal the state prohibition law was defeated in the public morals committee.

## **IOWA**

1846 Local option enacted.

1855 Main Law prohibition (Advisory referendum). For: 25,555 Against: 22,645.

1857 Main Law prohibition declared unconstitutional.

1874 WCTU organized.

1882 Statewide constitution prohibition vote For: 155,436 Against: 125,677.

1884 Statewide statutory amendment enacted after state supreme court invalidates constitutional amendment.

1894 Mulct law nullifies prohibition because dealers who complied with certain regulations are allowed to sell in state.

1896 ASL organized.

1907 Five year limit law required all cities to obtain vote of a majority of people to operate saloons.

1915 Legislature repealed Mulct law, leaving prohibition statutes of 1884.

1917 Bone-dry law enacted.

1917 Statewide Constitutional prohibition rejected by popular vote. Against: 215,625  
For: 214,693.

1923 Seven tougher prohibition bills enacted.

- 1924 First time in state history, 110% dry delegation was elected to Congress. Dry's are also in complete control of legislature.
- 1927 State legislature passed three prohibition enforcement bills.
- 1931 A bill attempting to repeal all state prohibition laws was defeated in the House by a vote of 95 to 6. A bill was adopted that made bringing intoxicating liquor into the state a felony.

## **KANSAS**

- 1859 Dram shop law requires a majority vote to get a license.
- 1868 Amendment to make Dram Shop Act more stringent.
- 1878 WCTU organized.
- 1880 Statewide constitutional prohibition enacted. For: 92,302 Against: 84,304.
- 1890 Whiskey war occurred, as the result of court decisions with regard to the "Original Package" cases.
- 1901 Search and seizure laws provide severe penalties for violations of the prohibition law.
- 1909 Prohibition laws were strengthened to prohibit the sale of intoxicating liquors for any purpose other than sacrament.
- 1917 Bone-dry law enacted.
- 1917 Anti-Saloon League organized, merges with Kansas state Temperance Union.
- 1923 Anti-moonshine law six months in prison or fine \$500 for being found with a still on one's possession.
- 1930 Kansas increased its prohibition appropriations.

## **KENTUCKY**

- 1864 Local option law enacted.
- 1881 WCTU organized.
- 1904 ASL organized.
- 1918 Kentucky becomes the third state to ratify the Eighteenth Amendment and the first wet state to do so.
- 1919 Statewide constitutional prohibition enacted For: 208,755 Against: 198,038.
- 1922 Legislature enacted laws that increase fines up to \$10,000 for violations of liquor laws.
- 1924 Wet Senator Stanley, who had been leader of the wets throughout his career, was defeated for re-election to the United States Senate by Fred Sackett, a dry.

## **LOUISIANA**

- 1852 Local option law enacted.
- 1883 WCTU organized.
- 1905 ASL organized.
- 1916 Johnson Near-beer Act, prohibiting the sale of malt liquor in prohibition territory.

- 1921 Wood-Jordan Act passed, authorizing the courts of Louisiana to exercise concurrent power in enforcement.
- 1924 The "Hood" Act amended enforcement code, to bring the definition of intoxicating liquor into conformity with Volstead.
- 1930 Resolutions were introduced in the Senate to call on Congress to repeal the Eighteenth Amendment and call a referendum on the repeal of the state law. Both measures were defeated.
- 1932 State enforcement Act referendum vote for repeal For: 188,597 Against: 38,098.

## **MAINE**

- 1851 Maine law designed to close the liquor shops.
- 1855 Militia fires on mob protest of prohibition law.
- 1856 Governor Sam Wells calls for the repeal of prohibition.
- 1857 Parties take-sides on license v. Maine law, Republicans for Maine law and Democrats for license.
- 1858 Prohibitory law re-instituted. For:28,864 Against: 5,912.
- 1867 State law strengthened with advisory referendum For: 19,358 Against: 5,536.
- 1875 WCTU organized.
- 1884 Statewide constitutional prohibition enacted.
- 1905 Sturgis Act passed to increase enforcement power of police.
- 1910 Democratic legislature repeal "Sturgis" law.
- 1911 Repeal of Prohibition Amendment to state constitution Against: 60,853 For: 60,095.
- 1919 Maine law brought into harmony with Eighteenth Amendment.

- 1923 Strengthened penalties for transporting intoxicants.
- 1925 Change laws on transportation of intoxicating liquors, which placed the burden of proof on the possessor.

## **MARYLAND**

- 1874 WCTU organized.
- 1900 ASL organized.
- 1909 First attempt to enact statewide local option failed.
- 1910 High license goes into affect.
- 1913 Statewide prohibition amendment defeated.
- 1918 Passage of the Eighteenth Amendment. Maryland became the sixth state to ratify.
- 1918 Failure to enact an enforcement measure.
- 1922 Failed attempt to pass a law to enforce the federal amendment.
- 1924 Statewide prohibition amendment defeated.
- 1924 Legislature refuses to pass a law-enforcement bill for the state.
- 1927 Wet's introduced several measure memorializing Congress to amend and repeal the Eighteenth Amendment. Every wet effort was defeated.

## **MASSACHUSETTS**

- 1852 Maine law designed to close the liquor shops.
- 1868 Maine law repealed.
- 1874 WCTU organized.

- 1875 License Act adopted providing for fees from \$100-\$1,000.
- 1881 Local option law enacted.
- 1888 Statewide constitutional prohibition defeated.
- 1902 ASL organized.
- 1917 Express Permit law gave local authorities the right to refuse to give liquor licenses.
- 1918 The legislature ratified the Eighteenth Amendment becoming the eleventh state to do so.
- 1920 A number of bills introduced in legislature seeking to define beer as non-intoxicating. Vetoed by Governor.
- 1920 Temperance forces introduce bill that would harmonize liquor laws of Massachusetts with National laws.
- 1921 Referendum was taken on 2.75 beer and passed by a majority.
- 1922 Legislature passed enforcement code, which was signed by the governor May 17, 1922. The wet organization, the constitutional Liberty League, filed a petition asking for a referendum at the November 7, 1922, elections. A majority voted to repeal enforcement Act. Governor refused to Act given referendum.
- 1922 A series of wet measures were defeated.
- 1924 Another referendum taken on liquor question showed a majority for modification, but not as much as the 1922 vote. For: 454,656 Against: 446,473.
- 1925 A bill to repeal enforcement code was defeated.
- 1928 During the 1928 session of the legislature, the pad-lock law was enacted by a vote of 116 to 88 in the House and 26 to 11 in the Senate. The measure closed the

place of habitual violators for a year. Two wet measures for referendums on Eighteenth Amendment repeals were defeated, one by a vote 114 to 96; the other was rejected by the state supreme court.

1930 Both houses defeated a bill to repeal the baby Volstead Act. The bill was placed on the ballot as a referendum; the Act was repealed by referendum.

## **MICHIGAN**

1845 Local option law enacted.

1850 No license law passed, enacted to state constitution.

1851 No license law nullified.

1853 Statewide statutory prohibition enacted. Advisory referendum For: 40,449  
Against: 23,054.

1853 Supreme Court invalidates prohibition law.

1855 Statewide statutory prohibition enacted.

1874 WCTU organized.

1876 Amendment removing the prohibitory clause from constitution was approved by the electorate. For: 60,639 Against: 52,561.

1887 County option enacted .

1896 ASL organized.

1915 The Pray law, prohibiting shipment of liquor into dry territory enacted.

1915 Statutory prohibition failed passage.

1916 Statewide constitutional prohibition enacted For: 353,378 Against: 284,754.

- 1916 Home rule failed passage as a substitute for statewide prohibition Against: 378,871 For: 256,272.
- 1919 Amendment to state constitution to allow sale of malt liquors. Against: 530,123 For: 322,603.
- 1926 Houses of the legislature split on adoption of advanced prohibition measures. AAPA introduced anti-prohibition measures that were defeated.
- 1929 AAPA circulates petitions to place on the ballot an amendment to the Constitution a measure to tax beer. After the secretary of state had filed the petition, the Anti-Saloon League raised the question of the legality of the measure. The State Supreme Court refused even to issue an order to show cause.
- 1930 Both dry congressmen up for re-election were defeated by wet candidates.
- 1931 A bill provided for the taxation of illicit malt and wort passed the legislature. The revenues were to be used to build a hospital in northern Michigan.
- 1932 Referendum vote for state prohibition repeal For: 1,022,508 Against: 475,265.

## **MINNESOTA**

- 1877 WCTU organized.
- 1897 ASL organized.
- 1910 Local-option law enacted.
- 1913 Municipal local option law applies to all cities and towns with less than 10,000 people.
- 1915 County-option law enacted.

- 1917 Statewide constitutional prohibition failed passage although had a majority vote on amendment. For: 189,614 Against:173,665.
- 1921 State prohibition enforcement code strengthened.
- 1923 State prohibition code strengthened beyond Volstead.
- 1925 Three wet measures were defeated. Laws were enacted making certain sells of liquor a felony.
- 1926 An attempt was made to provide a referendum on the Eighteenth Amendment. The measure was defeated by a vote of 77 to 51 in the lower house.
- 1926 One of the two dry senators, Senator Shipstead, was re-elected to the U.S. Senate. The other was not up for election. The wets were able to elect a wet congressmen over a dry incumbent.
- 1931 The "If" bill passed, requiring the state to change its intoxication limit if Congress should raise the allowable percentage of intoxication at a later date.

## **MISSISSIPPI**

- 1842 Gallon law passed, stipulating that one could not sell intoxicating liquors in quantities less than a gallon.
- 1883 WCTU organized.
- 1886 Local option law enacted.
- 1904 Statewide constitutional prohibition failed passage.
- 1909 Statewide statutory prohibition enacted.
- 1911 ASL organized.

- 1914 Strict enforcement laws passed with interstate shipment features.
- 1918 Mississippi moved to bone dry prohibition.
- 1921 Merriwether v. State-Supreme Court rules that Federal prohibition laws do not nullify State Prohibition laws.
- 1922 The legislature strengthened the state prohibition laws, as regards to possession.

## **MISSOURI**

- 1840 Law prohibits slaves from selling liquor on pain of 39 lashes.
- 1851 Local option law enacted.
- 1879 Act prohibits dram-shop keepers from selling more than 10 gallons of liquor and prohibits selling without license.
- 1882 WCTU organized.
- 1887 The County-option law exempts cities with a population more than 2,500.
- 1901 ASL organized.
- 1910 Statewide constitutional amendment rejected Against: 425,406 For:207,281
- 1911 A County-option law, much stronger than original fails passage.
- 1913 A County-option law that does not exempt cities of 2,500 was voted down by popular vote.
- 1916 Statewide constitutional prohibition defeated.
- 1918 Statewide constitutional prohibition defeated.
- 1920 Statewide Prohibition With Advisory Referendum For: 481, 880 Against: 420, 581.

- 1921 State enforcement code for Volstead Act strengthened.
- 1923 Missouri adopted most drastic enforcement code of any state.
- 1926 The AAPA brought about a referendum vote on the proposition to repeal enforcement. The proposition, #4, was defeated by a vote of 275,543.
- 1930 Several bills were introduced to either repeal or modify prohibition statutes. All were defeated in committee or killed on the House floor.
- 1931 Ten measures for repeal or modification of the national prohibition amendment were all unsuccessful. They were either defeated or abandoned.

## **MONTANA**

- 1883 WCTU organized.
- 1906 ASL organized.
- 1916 Statewide constitutional prohibition enacted For: 102,776 Against: 73,890.
- 1921 Sigfreid Act permits physicians to prescribe spirituous liquors for medicinal purposes. The legislative assembly adopted a law known as the Sigfreid Act permitting physicians to prescribe spirituous liquors for medicinal purposes, repealing a part of the law adopted by referendum of the people.
- 1923 Prohibition laws were strengthened around search and seizure and possession.
- 1926 Anti-Prohibition Society of Montana initiated a petition providing for repeal of all laws relating to intoxicating liquors with exception to the laws related to minors. The measure was adopted by a vote of 83,231 for repeal and 72,982 against repeal.

- 1928 Drys try to repeal the repeal during the 1928 election but lost. The vote for prohibition was 64,079; vote for maintaining the status quo was 97,752.
- 1930 The candidates for U.S. Congress defeated their wet opponents.

## **NEBRASKA**

- 1855 Nebraska territorial law passed prohibitory law against the sell of intoxicants.
- 1858 Prohibitory law repealed.
- 1875 WCTU organized.
- 1881 High license goes into affect.
- 1883 Republican legislature defeats statewide prohibition proposal.
- 1884 Mass withdrawal from Republican Party leads to formation of the Prohibition Party.
- 1890 To amendments submitted to the people and voted on separately; one for prohibition and one for license.
- 1890 Farmer's accused of pro-liquor propaganda.
- 1890 Prohibition amendment defeated.
- 1898 ASL organized.
- 1911 A County-option law fails passage.
- 1913 County-option law enacted.
- 1916 Statewide constitutional prohibition enacted.

- 1925 The legislature passed stringent legislation making jail sentences mandatory for the first offense.
- 1928 Anti-Prohibition forces sought to force a vote on the repeal of the state prohibition amendment, and also a repeal of the state enforcement Act. The Women's Christian Temperance Union was able to muster 80,000 protest voters.
- 1931 Several measures were added to prohibition laws to make them more stringent. A bill introduced to repeal the state prohibition law was defeated.

## **NEVADA**

- 1883 WCTU organized.
- 1909 ASL organized.
- 1916 Voter petition for statewide prohibition rejected by the legislature.
- 1918 Statewide statutory prohibition enacted with advisory For: 13,248 Against: 9,060.
- 1922 An attempt to replace prohibition law with an enforcement code declared unconstitutional by state supreme court.
- 1922 An attempt to amend the constitution to divert funds from fines toward prohibition enforcement declared unconstitutional.
- 1923 Nevada's prohibition law was repealed.
- 1923 Taxes increased to pay for the cost of conviction of liquor violations.

- 1926 A referendum vote was taken by AAPA, which called for Congress to call a convention for proposing an amendment to the Eighteenth Amendment. For: 12,436 Against: 3,283.
- 1927 Mayor Roberts returns red-light district to Reno.

## **NEW HAMPSHIRE**

- 1848 Local option law enacted.
- 1852 Prohibition law failed passage.
- 1855 Statewide statutory prohibition enacted.
- 1874 WCTU organized.
- 1889 Vote on constitutional prohibition failed passage.
- 1899 ASL organized.
- 1903 Local option law enacted. Nullifying prohibition.
- 1915 Prohibition law failed passage.
- 1917 Statewide statutory prohibition enacted.
- 1919 State enforcement code stipulated that violation of federal law was violation of state law.
- 1924 The dries defeat a wet candidate for governor, and elected John G. Winant on a dry platform. They returned a dry Senator and a bone-dry delegation to Congress.

**NEW JERSEY**

- 1847 Local option law enacted
- 1848 Local option law repealed.
- 1874 WCTU organized.
- 1888 County-option law enacted.
- 1900 ASL organized.
- 1918 Local option law enacted.
- 1919 Municipalities grant liquor licenses during wartime prohibition. Enforcement left entirely to federal authorities.
- 1920 New Jersey Attorney General claimed the Eighteenth Amendment unconstitutional, appeals to Supreme Court.
- 1920 Governor claimed to make New Jersey as wet as the Atlantic Ocean.
- 1920 Governor Edwards "Pro-beer" law defines intoxicating liquor as containing more than 3.50 percent alcohol.
- 1921 Assembly repeals the Edwards "Pro-beer" law.
- 1921 The Van Ness Act a bone-dry enforcement Act enacted.

- 1922 Republican majority legislature enact a new enforcement Act, the Hobart Act, over Governor's veto.
- 1922 New Jersey ratified the Eighteenth Amendment.
- 1924 The Democratic state convention called for repeal of the prohibition law and the Eighteenth Amendment. The Republican convention called for a strict enforcement. The result of the election was the replacement of three wet congressmen with three dry ones.
- 1929 A bill calling for a referendum to repeal the Hobart Act was not reported out of committee.
- 1930 Dwight W. Morrow was elected U.S. Senator on a platform calling for repeal of the Eighteenth Amendment. Twelve congressmen were returned only three whom were dry. Two wet senators were elected to state legislators and nine in the lower house.
- 1931 A special session of the legislature was called memorializing Congress to amend the Volstead Act to bring back beer and wine. The resolution passed both houses.

## **NEW MEXICO**

- 1885 WCTU organized.
- 1905 ASL organized.
- 1914 Prohibition law failed passage.
- 1914 Municipal option passed.

- 1917 Statewide constitutional prohibition enacted. For: 28,732 Against:12,147.
- 1923 Law enforcement code enacted making it a felony to give liquor to minors.
- 1923 Enforcement code attack because it violates state bi-lingual language code.
- 1923 The state Supreme Court declared the enforcement code unconstitutional.
- 1926 Militant prohibitionist Senator R.C. Dillon wins state governors race over a wet incumbent.
- 1928 A strong dry enforcement code was introduced by the ASL and passed the legislature.
- 1931 A bill introduced by the wet's calling for the establishment of state dispensaries was defeated by a vote of 14 to 8 in the Senate.

## **NEW YORK**

- 1846 Local option enacted.
- 1854 Prohibitory law enacted, lasted 2 years.
- 1873 Local option law re-enacted.
- 1874 WCTU organized.
- 1890 New York legislature passed a prohibitory amendment.
- 1890 Bill to submit the prohibition amendment to the people was defeated in the legislature.
- 1899 ASL organized.

- 1914 County-option law enacted.
- 1919 New York ratified the Eighteenth Amendment.
- 1920 2.75 beer bill designed to allow drinking at hotels, restaurants and clubs.
- 1921 State enforcement code becomes operative.
- 1923 Mulligan-Gage enforcement Act repealed, ending all prohibition and temperance legislation in New York.
- 1925 Two long-term wet congressmen lost their seats to drys.
- 1926 A dry candidate defeated wet senator James Wadworth. Wet resolution memorializing Congress to modify the Volstead Act passed.
- 1931 Wet resolution passed asking Congress to convene a national constitutional convention to consider repeal of the National prohibition amendment was adopted.

## **NORTH CAROLINA**

- 1881 Prohibition of manufacture and sale of intoxicating liquors was submitted to the people and defeated. Against: 166,325 For: 48,370.
- 1883 WCTU organized.
- 1903 Watts law prohibited the sell of liquors to rural sections, without first referring the matter to a vote. Provided local option.
- 1908 Statewide statutory prohibition enacted. For: 113,612 Against: 69,416.

- 1911 Anti-near-beer law passed. Prohibited the sale of near beer and other similar drink containing alcohol or cocaine.
- 1917 Bone dry law passed.
- 1923 Turlington Act makes the state law conform to the national law in respect to intoxicating liquors.

## **NORTH DAKOTA**

- 1882 WCTU organized.
- 1887 County-option law enacted.
- 1889 Statewide constitutional prohibition enacted For: 18,552 Against: 17,393.
- 1903 Druggist law. Druggist needed signatures of 70% of women of a ward before a permit could be issued to sell liquor.
- 1909 A number of legislative acts passed, making enforcement more stringent.
- 1916 Law enacted against bootlegging with advisory vote.
- 1917 Bone dry law passed.
- 1921 State prohibition brought into harmony with federal laws.
- 1923 State laws amended so as to be in conformity with federal laws, giving the state the right to prosecute liquor law.
- 1926 Wets introduce bills in legislature to modify dry laws. Bills defeated.
- 1926 ASL organized.

- 1928 Repeal of state prohibition law Against: 103,696 For: 96,837. Referendum called to repeal prohibition clause in the state constitution. Prohibition section of the Constitution was set to a referendum vote
- 1930 A petition was circulated to repeal the prohibition laws, the secretary of state rejected the petitions as insufficient, the actions were upheld by the Supreme Court of North Dakota.
- 1932 State referendum vote for repeal. For: 134,742 Against: 99,316.
- 1932 State Prohibition law repealed.

## **OHIO**

- 1846 Local option law enacted.
- 1851 Amendment to state constitution to prohibit further license For: 113,237 Against: 104,255.
- 1874 National formation of the WCTU in Cleveland, Ohio.
- 1874 License amendment to the State constitution Against: 179,538 For: 172,252.
- 1883 Prohibition amendment to the state constitution For: 323,129 Against: 226,595.  
failed because constitution requires a majority of voters.
- 1883 License amendment to state constitution Against: 268,605 For: 99,238.
- 1888 Stronger local option law enacted.
- 1893 National formation of the Anti-Saloon League, in Oberlin, Ohio.
- 1902 Beal law, gave municipalities local option.

- 1908 County-option law enacted.
- 1911 State law makes the sell of near beer unlawful in dry territories.
- 1912 License Amendment to the State Constitution For: 273,361 Against 188,825.
- 1914 Statewide constitutional prohibition defeated For: 559, 872 Against: 547,254.
- 1914 Home rule amendment adopted, which allowed counties and municipalities to repeal prohibition laws.
- 1915 The County-option law was repealed Against: 540,377 For: 484,969.
- 1915 Statewide constitutional prohibition defeated.
- 1917 Statewide constitutional prohibition defeated Against: 523,727 For: 522,590.
- 1918 Statewide prohibition passed For: 463,654 Against: 437,895.
- 1919 Amendment to repeal statewide prohibition defeated Against: 496,786 For: 454,933.
- 1921 State bureau of enforcement established.
- 1922 Amendment to state constitution Against: 908,522 For: 719,050.
- 1923 Considered murder in the second degree to furnish death-dealing alcohol.
- 1925 The leader of the Wet's general Isaac Sherwood was defeated by a dry in the Congressional election.
- 1926 A bill to remedy the defects in enforcement passed the Senate and was forced to a referendum vote by opponents of the bill. The bill was defeated by a vote of 916,016 to 438,458.
- 1928 Liquor forces made more gains in state electoral offices, giving a set back for the dries.
- 1931 Several wet measures were introduced for repeal, but were defeated.

## **OKLAHOMA**

- 1834 Indian territory prohibition law enacted under federal guidelines.
- 1888 WCTU organized.
- 1889 Part of Indian Territory opened for White settlement opened for license.
- 1907 Indian Territory and Oklahoma territory become one state.
- 1907 Oklahoma admitted as a prohibition state.
- 1910 Repeal of the state prohibition amendment by initiative petition providing for license Against: 126,118 For: 105,041.
- 1921 Law enacted to prohibit ownership of still.
- 1921 Laws making it murder to sell poisonous liquor that causes death were passed.
- 1924 Oklahoma elected all dry candidates to Congress.
- 1931 A bill was introduced to repeal the state prohibition laws, but was indefinitely postponed.

## **OREGON**

- 1844 Territorial prohibition amendment enacted.
- 1849 Legislature allows licensing of grocers.
- 1881 WCTU organized.
- 1885 Statutory prohibition adopted by legislature.
- 1887 Statewide prohibition amendment rejected by popular vote..

- 1903 ASL organized.
- 1904 Local option submitted to vote of people and passed.
- 1906 Wets submit bill in an attempt to undo local option.
- 1908 Redy bill to exempt cities from local option defeated.
- 1910 Prohibition amendment defeated, home rule bill adopted Against: 61,221 For: 43,540.
- 1914 Statewide constitutional prohibition enacted For:136,842 Against: 100,362.
- 1915 Anderson enforcement Act made operative.
- 1916 Bone-dry prohibition For: 114,932 Against: 109,671.
- 1925 Legislature passed laws strengthening existing prohibition enforcement laws.
- 1926 The prohibition law was materially strengthened. All members elected to Congress were dry.
- 1931 Bills introduced to repeal or modify the state laws were defeated.
- 1932 State prohibition repeal referendum vote For: 206,619 Against: 138,775.

## **PENNSYLVANIA**

- 1854 Statewide prohibition referendum lost by 5,000 votes.
- 1871 Township-local option introduced legislature and failed passage.
- 1872 County-option law enacted.
- 1875 The County-option law was repealed.
- 1875 WCTU organized.

- 1887 "Brooks" high license law enacted.
- 1889 Prohibition amendment to state constitution Against: 484,644 For: 296,617.
- 1896 ASL organized.
- 1907 A Local option bill defeated.
- 1909 A Local option bill defeated.
- 1911 A Local option bill defeated.
- 1913 A Local option bill defeated.
- 1915 A Local option bill defeated.
- 1917 A Local option bill defeated.
- 1919 State legislature ratified Eighteenth Amendment.
- 1921 Woner Act, providing for enforcement of Prohibition. Snyder-Armstrong Act harmonized state law with federal law. Governor elect member of the ASL.
- 1922 The ASL elected twenty-one congressmen on a dry platform.
- 1922 Alcohol control bill was introduced into the legislature, this bill passed by a vote of 31 to 15 in the Senate and 124 to 82 in the House.

## **RHODE ISLAND**

- 1839 Local option enacted.
- 1852 Rhode Island adopted the "Maine law" and institutes statewide prohibition.
- 1863 Because of poor enforcement a license law was substituted for the "Maine" law.
- 1874 Prohibition law passed repealing license provisions.

- 1874 WCTU organized.
- 1875 This prohibition law was repealed; and the license law of 1863 was re-enacted.
- 1881 Effort to enact prohibition failed, but law prohibiting the sale of liquor within 400 feet of any public school passed.
- 1886 Statewide constitutional prohibition enacted For: 15,113 Against: 9,230.
- 1889 Statewide prohibition repealed and license system adopted For: 28,315 Against: 9,956.
- 1889 Local option law enacted.
- 1898 ASL organized.
- 1919 Saugy bills pass legislature arranging for license of saloons for sale of liquors less than four percent alcohol.
- 1922 Sherwood Enforcement Act adopted to enforce the Eighteenth Amendment.
- 1923 Kiernan bill-a bill that would repeal Sherwood failed passage two-years in a row. U.S. Supreme Court renders bills inoperative.
- 1924 A wet bill to repeal state enforcement law failed to pass the senate.
- 1931 A dozen bills were introduced to weaken or repeal state prohibition laws. Al twelve died in committee.

## **SOUTH CAROLINA**

- 1880 The legislature passed a law forbidding the sell of alcohol outside of incorporated towns.
- 1880 WCTU organized.

- 1893 Dispensary system went into effect, providing for the sale of all alcoholic beverages by the state.
- 1903 There was agitation for prohibition, due to corruption in dispensatory system.
- 1906 State Dispensary system abolished on the account of corruption; county dispensatory system untouched.
- 1908 South Carolina under both county-option and county dispensatory system simultaneously.
- 1908 ASL organized.
- 1909 Statewide prohibition bill failed because house refused to submit to the people for vote.
- 1915 Statewide constitutional prohibition enacted.
- 1924 A solid dry delegation was sent to Congress.

## **SOUTH DAKOTA**

- 1883 WCTU organized.
- 1887 Local option territorial law
- 1889 South Dakota admitted as a prohibition state.
- 1896 Voter's struck prohibition from the constitution For: 31,901 Against: 24,910.
- 1896 ASL organized.
- 1900 High license law enacted.

- 1900 Repeal of amendment which provided for state control of liquor For: 48,673  
Against: 33,927.
- 1908 A County-option law was defeated..
- 1910 A County-option law was defeated..
- 1916 Statewide constitutional prohibition enacted For: 64,867 Against: 53, 362.
- 1917 Legislature passed laws strengthening existing prohibition enforcement laws.
- 1927 Unsuccessful attempt to secure a referendum on the repeal of South Dakota's Prohibition statutes.
- 1931 Three bills were introduced in the senate to weaken the prohibition laws. The measures were all defeated in the senate.

## **TENNESSEE**

- 1876 WCTU organized.
- 1877 Four-mile law makes it illegal to sell intoxicants within four miles of small towns.
- 1887 Prohibition amendment to the state constitution Against:145,237 For:117,504.
- 1899 ASL organized.
- 1909 Statewide statutory prohibition enacted.
- 1917 Bone dry law passed.
- 1923 Legislature raised many prohibition violations to a felony charge.

- 1924 In the elections of 1924, a dry was elected to succeed Senator Shields a wet. The entire congressional delegation was dry.
- 1927 A bill authorizing the prescription of whiskey was defeated.

## **TEXAS**

- 1875 Local option law enacted.
- 1883 WCTU organized.
- 1887 Statewide prohibition referendum was defeated Against: 220, 627 For: 129,270.
- 1902 First attempt to introduce the ASL failed.
- 1907 ASL organized.
- 1911 Statewide prohibition referendum was defeated Against: 237, 393 For: 231, 096.
- 1919 Statewide constitutional prohibition enacted For: 159,723 Against: 140,099.
- 1920 Dean Act law enacted to enforce prohibition.
- 1922 The legislature passed several bills amending and strengthening the state prohibition law commonly known as the Dean Act.

## **UTAH**

- 1888 WCTU organized.
- 1907 ASL organized.
- 1909 Governor vetoed legislative prohibition measure.
- 1911 Local option law enacted.

- 1913 Booth-startup law makes owners responsible for liquor and vice nuisance committed on their premises.
- 1915 Governor vetoed legislative prohibition measure.
- 1918 Prohibition amendment to the state constitution For: 42,691 Against: 15,780.

## VERMONT

- 1844 Local option law enacted.
- 1852 Prohibition law passed repealing license provisions.
- 1875 WCTU organized.
- 1898 ASL organized.
- 1902 Prohibitory law was repealed For: 29,711 Against: 28,982.
- 1902 High license law enacted.
- 1916 Statewide prohibition referendum was defeated Against: 32,142 For: 18,653.
- 1919 Vermont became the forty-third state to ratify the Eighteenth Amendment.
- 1921 State enforcement code passed, which was stronger than federal code.
- 1924 A dry governor, a thoroughly dry state legislature, and two dry congressmen were elected.
- 1927 Vermont re-elected its totally bone-dry delegation to the U.S. Congress as well as governor.
- 1929 Two dry congressmen elected to Congress.
- 1931 A number of wet measures were introduced in the legislature but were defeated.

## **VIRGINIA**

- 1877 Local option law enacted.
- 1883 WCTU organized.
- 1901 ASL organized.
- 1903 Mann law eliminated saloons in towns without police protection.
- 1908 Bryd-mann law abolished small distilleries.
- 1914 Statewide statutory prohibition enacted For: 94,251 Against: 63,886.
- 1916 State enforcement code passed, which was stronger than federal code.
- 1920 The law enforcement code was weakened and the enforcement department abolished.
- 1922 The enforcement department was re-established.

## **WASHINGTON**

- 1909 Local option law enacted.
- 1914 Statewide statutory referendum vote For: 189,840 Against: 171, 208.
- 1916 Statewide constitutional prohibition enacted.
- 1918 Bone dry law enacted For: 96,100 Against: 54,332.
- 1921 Wets in state legislature attempt to repeal state prohibition laws.
- 1930 Two bills were introduced to provide for a better enforcement by amending the state laws. Both of the bills were defeated

## WEST VIRGINIA

- 1874 WCTU organized.
- 1888 Constitutional amendment for statewide prohibition was defeated Against: 75,555  
For: 41,668.
- 1896 ASL organized.
- 1903 Measure passed to make illegal shipment of alcohol to dry parts of state.
- 1908 State prohibition bill failed passage.
- 1912 Statewide constitutional prohibition enacted For: 164,945 Against: 73,603.
- 1913 Yost law was enacted to enforce the prohibition amendment.
- 1920 Bone dry law passed.
- 1927 The appropriations for the state prohibition department were doubled.

## WISCONSIN

- 1874 WCTU organized.
- 1897 ASL organized.
- 1908 Local option law enacted.
- 1917 Governor vetoed legislative prohibition measure.
- 1921 Bone dry law passed both houses but vetoed by the governor.
- 1922 Severs Act enacted to enforce Volstead.

- 1927 A resolution was adopted memorializing Congress to provide for a national referendum on prohibition. The Duncan bill was adopted which repealed the penalties provided in the state enforcement code for possession of 2.75% beer.
- 1929 Wisconsin repeals its' state prohibition laws by vote of the people f: 321,688  
Against: 200,545.
- 1931 The prohibition forces introduced two bills that were defeated.

## WYOMING

- 1883 WCTU organized.
- 1907 ASL organized.
- 1918 Statewide constitutional prohibition enacted For: 31,439 Against: 10,200 .
- 1921 State enforcement code passed.
- 1927 Penalties increased to felony for some measures.
- .

## **Appendix II**

Appendix II contains policy diffusion maps of both adoption and repeal of state prohibition. The maps contain some of the variables controlled for in chapter's 2 and 4.

Figure 1: Constitutional Adoption Requirement and Policy Adoption Date

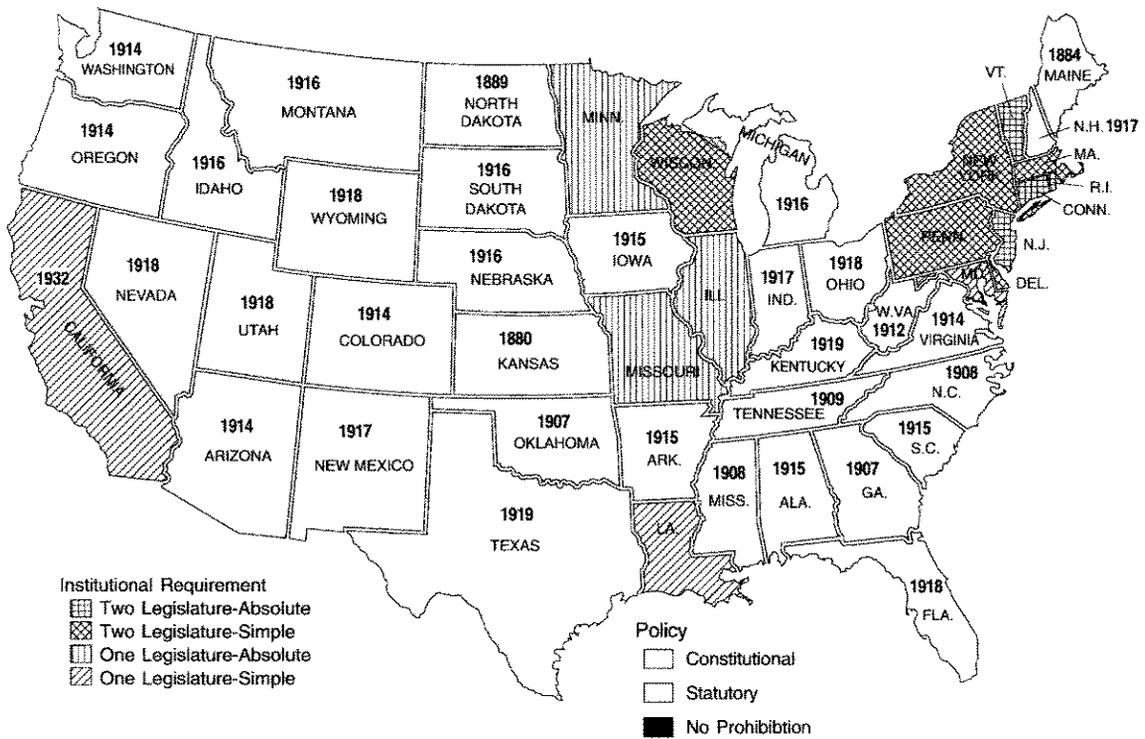




Figure 3: Percent Catholic 1920

