

Constitutional Choices:
Political Parties, Groups, and Prohibition Politics in the United States

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Abstract: The Prohibition-Era is an exceptional period of American history spawning the only constitutional amendment ever to grant a specific police power to the federal government, as well as the first effort to repeal a constitutional amendment. Most accounts of the Eighteenth and Twenty First Amendments to the U.S. Constitution focus on the temperance movement and interest groups while largely ignoring the role played by major political parties. This is because prohibition split the electoral coalitions of both major parties and support for the amendment was thus characterized as “bipartisan” or “non-partisan” in nature. In this paper, we argue that partisan politics is an integral part of the constitutional politics of this period. The split in the parties’ political coalitions, together with the unsettled and closely divided nature of electoral politics during the transition from the third to the fourth party systems, played an important role, perhaps *the key role* in enactment of the Eighteenth Amendment, permitting its passage even as neither national party supported it. The Eighteenth Amendment thus is the only constitutional amendment since the founding period to be enacted without supported of one or both of the major political parties. The national political parties also played a role in enactment of the Twenty First Amendment, supporting tacitly or explicitly the repeal of prohibition. Because the issue continued to split both parties’ electoral coalitions, but did so differently in different regions of the country, it was critical that the amendment crafted to allow ratified through state conventions rather than state legislatures, thus allowing it to bypass certain blockage in Southern states. It thus remains the only amendment to the US Constitution ratified through the state convention process.

I. Introduction

There is likely no higher achievement in American politics than to institutionalize a policy victory through ratification of the Constitution. The amendment process can begin its course when Congress, by a two-thirds supermajority vote, sends an amendment for ratification by three-fourths of state legislatures or by state ratifying conventions (the latter method has only been used once). Alternatively, two-thirds of the states can petition to form a national convention for proposing amendments that are ratified either by three-fourths of state legislatures or by state ratifying conventions. These latter processes have never been used, but they at least demonstrate that the framers of the Constitution forged pathways for the people living under it to overcome obstructions either in the states or at the federal level. The fact that the framers laid out a blueprint for amending the Constitution means that groups seeking to effect major policy changes must strategically calculate about when and whether to pursue a constitutional strategy over ordinary legislative approaches, as well as between the various methods of amendment. The strategic choices that groups make as they are contemplating policy change has been a matter of interest to scholars (e.g, Pralle 2010; Keck 2015; Ley and Weber 2015), but the efforts of groups to constitutionalize their policy goals has gone understudied. What explains the passage of the Eighteenth Amendment to effect prohibition policy and the subsequent attempt to repeal it when the 21st Amendment was passed? And what role did the major political parties play during this period?

The period of the Prohibition Era was an exceptional period in US history. It represents the rise of the Progressive Movement and institutional reforms that transformed the relationship between the American state and its citizens (Skowronek 1982). In this paper we argue that the ratification of the Eighteenth Amendment was the product of a unique set of interest group politics coming together during a wartime emergency, but that it could only have occurred in the context of an unusual period in American partisan politics. We specifically argue that the two major parties strategically chose to resolve the question of prohibition through a constitutional amendment in order to manage fissures in their electoral coalitions and deflect pressures presented by the rise of single-issue pressure groups demanding an end to the large-scale manufacture of liquor. The electoral threat posed by these new groups was magnified by the extraordinary instability of electoral politics during this period (the transition between the third and fourth party systems, 1880-1920). Partisan elites thus used the constitutional amendment process to filter the demands of these groups. This combination of parties' ambivalence and acute interest group pressure to end the liquor trade culminated in the passage of the Eighteenth Amendment.

This paper then demonstrates how after ratification of the Eighteenth Amendment, new powerful single-issue groups counter-mobilized, especially the Association Against the Prohibition Amendment (AAPA), with the goal of repealing the amendment. The formation of this group was critically important during a period of weakening political parties at the beginning of the transition from the fourth to the fifth party systems, because it signaled that prohibition-minded groups

did not possess a monopoly on political power. Critical to this counter-mobilization and eventual passage of the Twenty First Amendment, was the decision by the AAPA, with support of the two major parties, to bypass state legislatures and utilize state ratifying conventions to approve the repeal amendment. This method of ratification was chosen because the AAPA learned from the experience of past reformers who failed to pass a constitutional amendment banning child labor through state legislatures, and partisan elites wanted to avoid forcing the issue into state legislatures where it continued to split their delegations.

II. Methods, Data and Analysis

In order to assess the position of the national-level political parties on prohibition policy and the Eighteenth and Twenty First Amendments, we analyzed how these issues were incorporated into party platforms and major presidential addresses. We analyzed every presidential inaugural address and State of the Union (SOTU) or annual message to Congress delivered by Democratic and Republican presidents, as well as party platforms of the Democratic, Republican, and Prohibition parties between 1872 and 1940. Our analysis involved a simple content analysis, searching for key terms (and variations thereof) related to alcohol prohibition, including: “sumptuary,” “alcohol,” “temperance,” “sobriety,” “prohibition.” We also analyzed the parties’ platforms for discussions of constitutional amendments during these same time periods searching for key terms such as “Constitution,” “amendment,” “income tax,” “child labor,” “Senate,” “elections,” “suffrage,” and “women.”

Remarkably, our analysis of major presidential addresses during this period found virtually no discussion regarding temperance, prohibition, or alcohol control between 1872 and 1920. The issue simply did not register as a major component of presidential rhetoric for the presidents of the two major parties during this period.

After passage of the Eighteenth Amendment, the issue came up in presidential addresses during the 1920s, but only in the context of addressing specific problems associated with enforcement. For example, in his 1925 state of the union address, President Coolidge, complained: “The enforcement of the laws enacted to give effect to the eighteenth amendment is far from satisfactory and this is in part due to the inadequate organization of the administrative agencies of the Federal Government.” He then requested that Congress should “appoint a joint committee to collaborate with executive agencies in preparation of legislation.”

Given the level of resistance to prohibition, it is not surprising that enforcement continued to register in presidential speeches. President Hoover’s 1928 inaugural address, for example, continued to complain of the problems of enforcement and called for establishing a national commission to investigate “the method of enforcement of the 18th amendment and the causes of abuse under it. Its purpose will be to make such recommendations for reorganization of the administration of Federal laws and court procedure as may be found desirable.” After 1932, however, discussion of prohibition again virtually vanished from major presidential speeches. Franklin Roosevelt became the first president to consolidate the oral SOTU with the written annual message, and moved them to January. The only time he addressed prohibition was during this first SOTU address in 1934, after

the Twenty First Amendment had already been ratified, and only to express the hope that “adoption of the Twenty-first Amendment should give material aid to the elimination of those new forms of crime which came from the illegal traffic in liquor.”

Our analysis of party platforms however is very different. The specific policies advocated in party platforms are rarely implemented verbatim after a party wins an election, but the platforms do communicate the general preferences of the major parties and the issues defining national politics during presidential elections. Scholars have found that in general, the policy preferences and positions in platforms are correlated with those taken by party members in the policymaking process (Conley 2001; Fishel 1985), and platforms are good indicators of party unity, inter-party competition, and act as sites for negotiating views about broader constitutional values and how party elites view important issues (Klingemann, Hofferbert and Budge 1994; Pomper 1980).

In general, our analysis of the platforms found that the only party to consistently address issues related to temperance and prohibition was the Prohibition Party. In addition, we found that this party shifted from a single-issue platform devoted almost entirely to alcohol regulation during its early years, to a broader ideological platform agenda after the late 1880s, especially after its electoral support began to decline after the turn of the century. Many of the other policies of the party advanced beginning in the 1890s, especially proposals for constitutional amendment (electoral reform, women’s suffrage, an income tax, and regulation of trusts and corporation), mirrored ones advanced by the Populist and

Progressive parties during this same period.

Our analysis of the Republican and Democratic platforms during this period revealed a very different pattern. Although they, too, advanced many of the policies and constitutional proposals of Populist and Progressives, they did not generally take positions on prohibition, alcohol, or amending the constitution to achieve temperance. The only period when these parties discussed alcohol regulation was during the late-1880s and 1890s when presidential elections were closely divided and the Prohibition Party, and other third parties, was at its height in electoral strength.

Our analysis of party platforms during the prohibition era sheds light on how political parties dealt with prohibition through the Eighteenth Amendment, but we are also interested in how this amendment was repealed by the Twenty First Amendment. In the second part of this manuscript we ask how groups counter-mobilized and chose venues in order to overturn the prohibition ban. To examine the reversal of the prohibition ban, we analyze the Congressional Record and the political debates during the Democratic and Republican Party National Conventions to determine which types of groups were involved in pressing for political change through the constitutional amendment process and how members of Congress and the President approached the question of ratifying prohibition and repealing the ban of alcohol in the states. The time period for this analysis begins in 1909, where members of Congress began seriously considering the idea of prohibition (there had been proposals to prohibit the distribution of alcohol since the mid-nineteenth

century). It ends in 1935, after prohibition was repealed and the issue of prohibition was no longer a topic addressed by Congress.

III. Prohibition and the Political Parties 1880-1920¹

Accounts of the politics of prohibition and the passage of the Eighteenth Amendment tend to focus on the spirit of Progressive-era reform, the importance of wartime prohibition and national sacrifice when the amendment was enacted, and the critical role played by temperance groups like the Women's Christian Temperance Union and the Anti-Saloon League (Isaac 1965; Kyvig 1979; Okrent 2010). Less attention is usually paid to the major political parties themselves and the partisan dynamics involved in enactment of the Eighteenth Amendment. Indeed, it is often noted that the amendment passed Congress with broad bipartisan support under pressure from the non-partisan Anti-Saloon League, and so political parties were only a tangential part of the story. In the Senate, Democrats voted 36-to-12 in favor, while Republicans voted 29-to-8 to pass it. In the House, the Democratic vote was 141-to-64 in favor, while Republicans voted 137-to-62 in favor. President Wilson, a temperance advocate but an opponent of prohibition, maintained absolute neutrality on the amendment as it went through Congress (Kyvig 1979). One of the leading historians of the period argued,

¹ Data on U.S. elections in this section come from Dave Leip's *Atlas of U.S. Presidential Elections* (retrieved February 29, 2016, at <http://uselectionatlas.org/>). Data and information about Prohibition Party platforms in this section comes from Donald Bruce Johnson and Kirk H. Porter (eds.), *National Party Platforms 1840-1960* (1961) (retrieved on line February 29, 2016, at http://prohibitionists.org/Background/Party_Platform/Platform_Index.htm). Data and information about the platforms of the Democratic and Republican parties and presidential speeches comes from

[p]artisanship was notably absent from congressional action on prohibition in 1917. The Anti-Saloon League had asked legislators, whatever their position on the issue, to endorse national prohibition in return for its support... More than a decade would pass before the major parties adopted distinguishable positions on the liquor question" (Kyvig 1976, p. 12).

Indeed, the parties themselves often echoed the view that prohibition was a nonpartisan issue. The 1932 Republican Platform, for example, explained:

A nation wide controversy over the Eighteenth Amendment now distracts attention from the constructive solution of many pressing national problems. The principle of national prohibition as embodied in the amendment was supported and opposed by members of both great political parties. It was submitted to the States by members of Congress of different political faith and ratified by State Legislatures of different political majorities. *It was not then and is not now a partisan political question* (emphasis added).

However, given the relative parity in the partisan composition of the 65th Congress, the Eighteenth Amendment never could have passed had it been opposed by either major party. Still more remarkable is the fact that the Eighteenth Amendment passed with such large majorities when neither of the two major parties ever voiced support for it in party platforms or major presidential addresses. Indeed, passage of the Eighteenth Amendment stands in stark contrast to the other Progressive-era inspired constitutional amendments passed during this same period: the Sixteenth Amendment authorizing an income tax, submitted in 1909 and ratified in 1913; the Seventeenth Amendment providing for direct election of the Senate, submitted in 1912 and ratified a year later in 1913; and the Nineteenth Amendment extending the franchise to women, submitted in 1919 and ratified in 1920. Each of these constitutional amendments had been supported repeatedly in the platforms of one or both of the two major parties before their introduction in Congress, but official support for a constitutional amendment providing for prohibition remained the lone exception. Republicans had briefly supported

temperance legislation in party platforms in the late-1880s and early 1890s, but never supported a constitutional amendment on prohibition and had dropped all references to alcohol and temperance by 1900. Democrats, to the extent they addressed the issue at all, had steadfastly opposed “anti-sumptuary” laws including those prohibiting alcohol.

What explains the silence of the two major political parties about one of the major political issues of the time? The nature of the divisions in the major political parties, and the dynamics of the shift from the third (1854-1896) to the fourth party systems (1896-1932), in fact played an integral part of the Eighteenth Amendment’s passage. Although the Republican Party ostensibly dominated electoral politics during most of this period, in actuality it was a time of closely contested elections, instability between and within the two major parties, and fierce competition from smaller third parties. This is especially true during the extended transition between the two party systems, from roughly 1880 to 1920. Prohibition played a crucial role in partisan politics during this period, splitting the electoral coalitions of the two major parties and producing a potent single-issue third party, the Prohibition Party. Understanding the decision to constitutionalize control of intoxicating liquors with the Eighteenth Amendment thus begins by understanding some of these party dynamics.

A. Transition from the Third to the Fourth Party System in America.

The third party system began with the formation of the new Republican Party (GOP) in 1854, which elected its first president in 1860. The party of

Abraham Lincoln prosecuted the Civil War and laid claim to saving the Union, easily winning the next three presidential elections. The GOP presided over the adoption of three major constitutional amendments, abolishing slavery, extending equal protection rights to the freed men, and allowing them to vote. The party also successfully implemented a number of modernization programs aimed at building national railroads and banks, erecting protectionist trade tariffs, homesteads, and increased social spending on things like veterans' pensions and aid to public colleges. As the debate over reconstruction in the South waned, however, the GOP's electoral dominance eventually began to give way to a more divided, unsettled period in electoral politics.

By 1876, Democratic presidential candidate Samuel Tilden was able to win the popular vote over Republican Rutherford B. Hayes by nearly a quarter million votes (3% of the total), but lost the election in the Electoral College. Eight years later, in 1884, Grover Cleveland became the first post-war Democrat to capture the presidency, winning the popular vote by a margin of 60,000 votes, or just .5 percent. The electoral volatility continued four years later in 1888, when Cleveland again won the popular vote (this time by a larger 90,000 vote margin), but lost reelection in the Electoral College to the Republican candidate Benjamin Harrison. In the next general election of 1892, Cleveland came back to win the presidency for a second time, defeating Harrison by 46 percent to 43 percent of the popular vote, yet a third party Populist candidate, James Weaver, captured fully 8.5 percent of the electorate. Moreover, partisan control over Congress was equally volatile during this period because from 1876 to 1896, Democrats dominated the House of Representatives,

holding power for sixteen of twenty years, while Republicans controlled the Senate for fourteen of those same twenty years.

Republican William McKinley's two decisive electoral victories over Democratic candidate Williams Jennings Bryan in 1896 and 1900, is usually regarded as the end of the third party system and the beginning of the fourth (Burnham 1981). The party system that emerged at this time was marked by rising economic prosperity and a restoration of business confidence after the serious economic recession of the early 1890s. The Republican Party consolidated its electoral support in the industrial northeast, the border states, and the newly admitted states in the west (while southern states continued to vote solidly Democratic). Expanding this coalition meant that party managers, especially for the Republican Party that named grassroots moralists among its base, needed to attract the growing bloc of "anti-pietist" voters that were beginning to settle in large, urban areas in the north (Kleppner 1978). Several new cleavage issues also emerged to divide the parties, including; the regulation of corporations and trusts, the protective trade tariff, the question of gold versus silver money, democratization of elections and corruption in party politics, efficiency in government, as well as new social issues like child labor, immigration, women's equality, and prohibition.

Although electoral realignment in the 1890s strengthened the GOP, instability between and within the two major parties continued during the first two decades of the twentieth century. Having dominated the White House since 1896, Republicans lost it in 1912. The Democratic candidate Woodrow Wilson won the presidency when the Republican Party split into progressive and business-oriented

factions. Theodore Roosevelt, who had been the Republican Party's president from 1901 to 1909, endorsed William Howard Taft in the 1908 election but then ran against him as a "Bull Moose" Progressive in 1912. Roosevelt took 27.4 percent of the vote to Taft's 23.2 percent, but Wilson won the election with 41.8 percent, and he was easily reelected four years later in 1916. Democrats also recaptured control of the House in 1912, and took control of the Senate two years later in 1914, holding both chambers until 1920. At the time the Eighteenth Amendment passed the 65th Congress in 1917, Democrats controlled the Senate 53-to-42, and controlled the House with a coalition of 210 Democrats and nine Progressives and Socialists, against the Republicans' 216 members. It was not until 1920, when Republican Warren G. Harding won in a landslide election against the Democratic governor of Ohio James Cox, capturing over sixty percent of the popular vote, that solid Republican domination of the White House and both chambers of Congress was finally reestablished.

The period between the 1880s and 1920s is thus one of the longest periods of electoral instability in American history, with no clearly dominant national party. Complicating the electoral picture was the important role played by third parties, like the Progressive Party and the Populists, among many others. At least three times during this period third parties posed serious challenges to the two major parties in presidential contests and made inroads in Congress.² Already mentioned

² In the 46th Congress (1879-81), fourteen of the 293 members of the House (5%) belonged to third parties. During the 55th Congress (1897-99), sixteen of the 357 members of the House (4%), and ten of the ninety members of the Senate (11%) came from third parties. During the 63rd Congress (1913-15), eighteen of the 435 members of the House (4%), and one member of the Senate still represented third parties. And, as already noted, during the 65th Congress, which passed the prohibition

above, in 1892, Populist Party candidate James Weaver captured over a million votes (8.5 percent of the electorate), while in 1912, Progressive Party candidate Theodore Roosevelt, as already noted, won more votes than Republican Taft, though he lost to Wilson. And in 1924 Robert La Follette, drawing upon what remained of Roosevelt's Progressive Party, captured 16.6 percent of the popular vote, though Republican Calvin Coolidge easily won the election with 54 percent of the vote.

While the Progressives and Populists mounted the most serious threat to the two major parties during this period, other, smaller parties, including the Prohibition Party, played important roles as well. Throughout the period the electoral margins between the major parties were so close that third parties, individually or combined, often captured a higher percentage of the vote than the difference between the Democratic and Republican candidates, and thus they had the potential to alter the outcome of national elections. Knowing this, the major parties were forced to consider and strategically counter third party candidates and their policies.

The nature of the challenge posed by third parties during this period is easily seen in Figure 1, which shows that during the four presidential elections between 1880 and 1896, the third party vote share was greater than the difference in the vote share won by the candidates of the two major parties.

[Figure 1 About Here]

Indeed, in three of those elections (1880, 1884, 1888), the Prohibition Party alone could have altered the outcome of the presidential election had their votes gone to

amendment, nine members of Congress from third parties held the balance of power, supplying Democrats the majority needed to control the chamber.

the major party candidate who lost the election. Even after 1896 the margin of victory for Republican candidates was never more than one or two percentage points over the vote cast for third party candidates, hence the leaders of the major parties could not afford to ignore third party candidates and policies. Even more important, the strategic power of the third party vote returned in the presidential elections of 1912 and 1916, and in the control of the 65th Congress, prior to adoption of the Eighteenth Amendment. The Prohibition Party at that time also enjoyed new, though relatively isolated, electoral successes. For instance, Charles H. Randall was elected to the House of Representatives to represent California's 9th congressional district between 1915 and 1921, and Sidney J. Catts of Florida, won election as Governor of Florida in 1916 on the party's ticket.

B. Third Party Prohibitionists

Although many Progressives and Populists supported the temperance movement and were sympathetic to prohibition, their national leaders eschewed taking a formal position on the issue even as their platforms advanced a growing number of other constitutional amendments. The Populist Party's platform in 1892, for instance, argued that:

While our sympathies as a party of reform are naturally upon the side of every proposition which will tend to make men intelligent, virtuous and temperate, we nevertheless regard these questions, important as they are, as secondary to the great issues now pressing for solution.

It then went on to call for a fairer distribution of the nation's wealth and for constitutional amendments to limit presidents to a single term of office, allow direct election of Senators, and to create a professional civil service. Similarly, the

Progressive Party platform in 1912 proposed amendments to authorize a federal income tax, end child labor, and alter the constitutional amendment process itself so as to make it easier, but ignored temperance issues and prohibition entirely. Other third parties also ignored the issue in their national platforms and presidential campaigns, although temperance policies were often advocated and/or opposed during campaigns by state-level parties and candidates (Kyvig 1979; Okrent 2010).

The only party to clearly and consistently address the alcohol issue throughout this period was the Prohibition Party. Founded in 1869, the party's first presidential candidate, James Black of Pennsylvania, won 6,500 votes, less than .1 percent in the election of 1872. However, the Prohibition Party, which is still active today and remains the oldest, and longest existing third-party in American political history, went on to play an important role in the transition between the third and fourth party systems. Interestingly, the party did not originally pursue a constitutional strategy to outlaw liquor trafficking and consumption, but its first party platform in 1872 instead suggested that ordinary legislation was sufficient:

the traffic in intoxicating beverages is a dishonor to Christian civilization, inimical to the best interests of society ... imperatively demanding for its suppression effective legal Prohibition by both State and National legislation.

By 1876, however, the party's line hardened and it explicitly embraced a constitutional amendment to effect prohibition. Touting the passage of prohibition laws covering the District of Columbia and new US territories, the party now proposed "an Amendment of the National Constitution to render these Prohibitory measures universal and permanent, and ...[treaties] to prevent the importation...of all alcoholic beverages."

During this early period the Prohibition Party was a single-issue party and ignored other major political issues and policies of the day. In 1884, the platform stated flatly its singular goal was: “that Congress shall submit to the States an Amendment to the Constitution forever prohibiting the importation, exportation, manufacture and sale of alcoholic drinks.” Again, in 1888, it said:

Prohibition must be secured through Amendments to our National and State Constitutions, enforced by adequate laws adequately supported by administrative authority; and to this end the organization of the Prohibition party is imperatively demanded in State and Nation.

So long as the party’s electoral appeal remained limited, however, and the margins of victory in presidential contests between the two major parties remained relatively large, the party stayed unimportant in the latter’s electoral strategies.

During the 1880s, however, the Prohibition Party’s electoral strength grew just as presidential contests between the two major parties tightened, and the party’s political leverage surged. In 1880, the party’s candidate, Neal Dow of Maine, captured only .1 percent of the national vote, but that was the same amount by which Republican James Garfield defeated Democratic opponent, Winfield Hancock, to win the presidency. In such closely contested elections even a handful of votes could make the difference. In 1884, the party’s share of the vote grew to 1.5 percent, and in 1888 to 2.2 percent of the national vote. In each of these elections the party’s vote share was more than double the vote difference cast between the candidates of the two major parties. In 1892 the party captured its largest vote share ever with 2.4 percent. During that election the Democrat Grover Cleveland defeated Benjamin Harrison by only 2.9 percent of the popular vote, while the pro-temperance Populist candidate, James Weaver, captured 8.5 percent.

With its increased electoral leverage during this period, the Prohibition Party altered its electoral strategy and demands. Whereas the party had in earlier platforms sought legislation, the demand for a constitutional amendment became more adamant. Recognizing the emergence of the powerful new Populist Party and the possibility of an alliance of sympathy, the 1892 platform for the first time tried broadening the party's ideological appeal by advocating populist positions on other issues. The platform now staked out positions supporting women's suffrage, funding veterans' pensions, support for public schools, greater government regulation of railroads and corporations, increasing the money supply, stricter enforcement of immigration laws, and opposition to polygamy, prostitution, and protective tariffs. The platform now also devoted more than a third of its space attacking the two major parties, accusing them for being,

...false to the standards reared by their founders...[and arguing there] can be no greater peril to the nation than the existing competition of the Republican and Democratic parties for the liquor vote. Experience shows that any party not openly opposed to the traffic will engage in this competition, will court the favor of the criminal classes, will barter the public morals, the purity of the ballot and every trust and object of good government for party success. Patriots and good citizens should therefore, immediately withdraw from all connection with these parties.

Although the Prohibition Party reverted back to a single-issue platform in 1896, by 1904 it was again trying to build alliances by broadening its ideological agenda to include issues of concern to Progressives and other third parties, a strategy that continued until passage of the Eighteenth Amendment. Indeed, among other constitutional amendments supported by the Prohibition Party during this period, were amendments for; direct election of the Senate, an income tax amendment, women's suffrage amendment, and a requirement that both houses of Congress ratify treaties.

In the wake of the enactment of the Eighteenth Amendment, the Prohibition Party's electoral fortunes declined sharply. After 1920, it never again captured more than .2 percent of the national vote. By 1928, the party was so alarmed by the Democrats' nomination of Al Smith, a "wet Catholic," that their platform openly proposed an alliance with the GOP to stop him. The national executive committee, however, split when it came to nominating a candidate for president; 45 members threw their support to Hoover, while 65 voted to nominate William F. Varney as their candidate, fearing that Hoover would not strongly enforce prohibition. Varney went on to capture less than .05 percent of the vote during the election, and the party became even more critical of Hoover after he was elected President. By the 1932 election, the party's chairman David Leigh Colvin was calling Hoover "the most conspicuous turncoat since Benedict Arnold" (Time 1932). Hoover lost the election to Franklin Roosevelt, who ran on a platform committed to repealing the prohibition amendment.

C. Prohibition and the Major Parties

Given the volatility and closely divided nature of the American elections between 1880 and 1920, one might have expected that the two major parties would appeal to prohibitionists by coopting the party's issue agenda like they did with the issues advanced by Populists and Progressives. Even though the dominant parties embraced in their platforms constitutional amendments for an income tax, direct election of the Senate, term limits, women's suffrage, and a ban on child labor, they did not do so with respect to a constitutional amendment on prohibition. Why?

Unlike other Progressive-era constitutional amendments, prohibition deeply split both parties' electoral coalitions and neither could afford to alienate important elements of their base by taking a clear position on the prohibition controversy. Indeed, a distinctive feature of the party coalitions during this period was the sharply drawn religious and geographic lines in and between the parties. Generally speaking, pietistic Protestants supported moralistic laws and believed the government should act to reduce social vices such as drinking. So-called "dries" in both parties advocated prohibition as a solution to many social problems; these groups included Methodists, Congregationalists, Baptists, Presbyterians, Quakers, and Scandinavian Lutherans. On the other hand, "wet" groups, such as Catholics, Episcopalians, and German Lutherans, strongly opposed prohibition, viewing it as a threat to their ethnic and social customs and personal liberties (Kleppner 1979).

In the north, the religious composition of the Republican Party generally led it to support prohibition policies, although there was a deep class divide between wealthier urban Republicans who often opposed such laws, as well as later divisions between its pro-business and the progressive-oriented wings. For instance, the party found itself split when the Webb-Kenyon Act was being considered for adoption in 1912. The law regulated the interstate transport of alcoholic beverages and was intended to provide federal support for the prohibition efforts of individual states against charges that state regulations of alcohol usurped the federal government's exclusive constitutional authority over interstate commerce. Taft vetoed the law but it was passed over his veto by a coalition of Southern Democrats and Progressive Republicans (Kyvig 1979). The Democratic Party, on the other

hand, was even more severely split over the prohibition issue. In the north the party's base of ethnic supporters strongly opposed such laws, but in the south, the large Methodist and Baptist representation in the party supported prohibition efforts (DiCanio 2007; Kleppner 1979).

Given these divides, it was difficult or impossible for national elites of either party to strongly support or oppose prohibition. Prohibitionists thus tended to focus most of their efforts at the state and local level, and supported direct democracy reforms which they hoped would enable voters to bypass political parties altogether in lawmaking (McGerr 2005). The two major national parties thus only addressed the issue in the 1880s and 1890s when they were forced to do so because of the closeness of national elections and growing strength of the Prohibition Party and its supporters.

Even though the Republican Party briefly flirted with a pro-temperance position in the late-1880s and early 1890s when the Prohibition Party's leverage over the two major parties was at its height, the GOP never supported complete prohibition of alcohol or a constitutional amendment to end its trade. After 1896, neither temperance nor prohibition appeared in the GOP's platforms, even though this silence on the prohibition issue came despite the party's explicit embrace of constitutional amendments to protect worker safety and ensure employer liability in 1908, to permit federal regulation of transportation in 1916, and to extend women's suffrage and ban child labor in 1920. In fact, in 1918, former president William Howard Taft, still active in Republican Party politics, and nominated by Harding to become Chief Justice of the Supreme Court in 1921, continued to publicly

oppose the prohibition amendment, though large numbers of progressive Republicans had voted for it the year before (Baker 1928).

After adoption of the Eighteenth Amendment in 1920, the Republican Party pledged to enforce the prohibition laws in their 1924 and 1928 platforms (the latter was mostly an effort to draw a contrast with the Democrats “wet Catholic” Al Smith). Presidents Harding, Coolidge, and Hoover all made sporadic commitments to enforce the amendment and address the problems associated with its enforcement in their annual addresses to Congress. However, by 1932 the party was adopting a more agnostic tone. Although it did not endorse a repeal of prohibition it recognized that members of “the Republican Party hold different opinions with respect to” the issue, and that “no public official or member of the party should be pledged or forced to choose between his party affiliations and his honest convictions upon this question.” The platform went on to call for a new constitutional amendment,

the provision of which, while retaining in the Federal Government power to preserve the gains already made in dealing with the evils inherent in the liquor traffic, shall allow the States to deal with the problem as their citizens may determine...

In other words, Republicans now wanted to shift the problem back to the states.

The Democratic Party also addressed the liquor issue in a strategic way, and only during the critical period between 1880 and early 1900s. Indeed, Democrats did not take a position on the alcohol issue directly but instead came out against “sumptuary laws” in general. Sumptuary laws had been used in medieval England to restrict the types of clothing persons of various ranks or incomes could wear so as to insure they did not dress above their class. In late-nineteenth century America,

however, such laws referred mainly to restriction on behaviors involving public propriety and decency. Restrictions on prostitution, public promiscuity, scandalous dress, and intoxication or drug consumption were the typical targets of sumptuary laws. Many of these restrictions were implicitly biased against the customs and cultures of working class immigrant communities, and so Democrats, who counted these communities as part of their electoral coalition, were inclined to oppose them. The 1880 Democratic platform flatly called for: “No sumptuary laws; separation of Church and State, for the good of each; common schools fostered and protected.” The 1884 and 1892 platforms said even more simply: “We are opposed to all sumptuary laws, as an interference with the individual rights of the citizen,” a position the party reiterated in 1904, when it declared support for “liberty of personal contract untrammelled by sumptuary laws.”

Other than these three short, oblique references to sumptuary laws, however, national Democrats avoided a position on prohibition and control of alcohol in their platforms and major presidential addresses prior to 1924. Like Republicans, Democrats also repeatedly called for other constitutional amendments associated with Progressive era politics, including; the income tax, direct election of the Senate, electoral reform and term limits, prohibition of child labor, and women’s suffrage. After the amendment’s passage, however, the party criticized the Republican administration for failing to enforce prohibition vigorously enough, pledging they would “respect and enforce the constitution and all laws.” Even in its 1928 platform, upon which the “wet” Al Smith campaigned, the party continued to

pledge “an honest effort to enforce the eighteenth amendment and all other provisions of the federal Constitution...”

By 1932, however, with the support and backing of prominent businessmen and under pressure from a powerful new group called the Association Against the Prohibition Amendment (AAPA), the party finally broke its silence on the issue, advocating outright “repeal of the Eighteenth Amendment” and to

effect such repeal we demand that the Congress immediately propose a Constitutional Amendment to truly represent the conventions in the states called to act solely on that proposal... to bring the liquor traffic into the open under complete supervision and control by the states... and immediate modification of the Volstead Act; to legalize the manufacture and sale of beer and other beverages of such alcoholic content as is permissible under the Constitution and to provide therefrom a proper and needed revenue.

That next year, the Democratic-dominated 72nd Congress quickly passed a joint resolution that sent a proposal for repeal to the states, where it was ratified on December 5, 1933.

D. The Eighteenth Amendment and Party Passivity

If divisions within the electoral coalitions of both major parties kept them from embracing a prohibition amendment, it also left them unable to stop one when the Congress finally considered it in 1917. The major force behind the prohibition amendment was the Anti-Saloon League (ASL), which was founded in 1893 by Howard Russell. The ASL is often credited as the first modern, single-issue pressure group and it emerged during a time when the Progressive movement was on the rise and parties were weakening. The group was nonpartisan and worked outside organized political parties and factions, which kept it from alienating and favoring one party over another. Copying the tactics of business groups, the ASL adopted a

bureaucratic approach to organizing that focused on bottom-up mobilization, merit-based promotion, and a multitiered approach to secure a dry nation through national legislation and eventually a constitutional amendment. The ASL's power in Congress came precisely because it operated outside the established political parties and could lobby and pressure members of all parties, supporting or threatening to challenge them in upcoming elections. Thus it proved far more effective than the Prohibition Party, which struggled to elect its members in a first-past-the-post electoral system, and, lacking office holders, had no way to exert direct influence on other partisans.

The ASL, led by Wayne Wheeler and financially supported by Rockefeller money (Okrent 2011), successfully lobbied members of the House to consider a constitutional amendment in 1914. The resolution, written by Richmond Hobson (D-AL), won a majority in the House but not the two-thirds required for submission to the states. Daniel Okrent (2011) wrote,

[I]f there were an antonym for Pyrrhic victory, headline writers would have plundered it hungrily. In losing this first real test of a Prohibition amendment, the dry forces had won. Dry votes came from both parties and from every part of the country. Nearly two-thirds of the affirmative voters lived in towns with fewer than ten thousand people, but that shouldn't suggest the dominance of rural conservatives; among members of the Progressive Party in the House, seventeen of the eighteen who voted went dry (p. 74).

1916, however, represented a major counter-mobilization of dry forces who elected several additional "drys" to Congress, causing greater optimism for the passage of a constitutional amendment (Kyvig 1979). Church groups joined the fray and demanded passage of a prohibition amendment, tying liquor trafficking to the nation's immigrants and a belligerent foreign menace abroad. For instance, the Methodist Episcopal Church's Board of Temperance wrote,

A blood and beer besotted Government has flung the paper scraps of its pledge into the face of an outraged America. The Philistinism of the malted men who misrule Germany is responsible, and that Philistinism is the product of beer. Devoted German patriots have foreseen the doom that lies at the bottom of Germany's beer kettles. They have pointed to the inevitable vulgarization and brutalization resulting from the constant and heavy use of beer...The German ruling class has brains, but they are porcine brains. Because the German court is awash with beer it stands knee deep in the blood of the *Lusitania* [emphasis original] (Congressional Record 1916-17, p. 776).

In addition to its church group allies, the ASL had its own printing press, offices and organizations in most states, tens of thousands of trained lecturers who delivered stump speeches on behalf of the organization's efforts, and thousands of dollars to spread their message of temperance through a prohibition amendment to the Constitution (Okrent 2011).

The rise of the ASL's influence in Congress coincided with America's entry into WWI in 1917 and the urgency of prohibition supporters to pass a constitutional amendment before Congressional lines were redrawn in lieu of the 1920 census (Okrent 2011). Knowing that the ASL had a window of opportunity to act, Wayne Wheeler was quoted as saying,

We have got to win it now because when 1920 comes and reapportionment is here, forty new wet Congressmen will come from the great wet centers with their rapidly increasing population (Odegard 1928).

The war produced an atmosphere of national sacrifice and a trust in national authority that led to the passage of the Lever Food and Fuel Control Act, temporarily conserving grain for the army, and the Wartime Prohibition Act, which banned the manufacture and sale of intoxicating drinks. In the midst of these wartime emergency measures and shifting demographics, Congress took up a permanent constitutional amendment once again, adopting the Eighteenth Amendment on August 1, 1917, by a vote of 65 to 20 in the Senate, and 282 to 128 in the House.

Democrats and Republicans supported and opposed the amendment in roughly equal proportions. In the Senate, Democrats supported it 36 to 12 in favor, while Republicans voted in favor 29 to 8. In the House, the Democratic vote was 141 to 64 in favor, while Republicans voted 137 to 62 to pass it.

Supporters of the prohibition amendment knew that ratification faced its biggest challenges in the urban areas of the north, but that passage in the 36 most rural states, with their legislatures malapportioned in favor of rural areas, presented the best opportunities for ratification. Northern and southern states alike overwhelmingly voted in favor of ratifying the Constitution, and as Daniel Okrent (2011) points out, “the more rural the state, the more arid the vote” (p. 105). All but two states, Rhode Island and Connecticut, ratified the Eighteenth Amendment by 1922, but on January 16, 1919 Nebraska became the 36th state to ratify the amendment, officially making it a part of the Constitution.

IV. The Decline of Prohibition and the Rise of the Twenty-First Amendment

By the 1930s, American social and political life had undergone profound changes that culminated in new demands to reconsider the decision to ban the sale, manufacture, and distribution of alcohol in the states. There is no question that the challenges of enforcing the Volstead Act played a major role in signaling to lawmakers that there was little respect for the law. As states began scaling back on their enforcement efforts, the burden of enforcement shifted even more to the federal government, which was increasingly defending its law enforcement tactics in

cases before the US Supreme Court. With Americans continuing to openly disobey the law, it was becoming clearer that the burden of prohibition enforcement was becoming too much to bear. In his SOTU message to Congress in 1928, Hoover pleaded:

... a large responsibility rests directly upon our citizens. There would be little traffic in illegal liquor if only criminals patronized it. We must awake to the fact that this patronage from large numbers of law-abiding citizens is supplying the rewards and stimulating crime. I have been selected by you to execute and enforce the laws of the country. I propose to do so to the extent of my own abilities, but the measure of success that the Government shall attain will depend upon the moral support which you, as citizens, extend. The duty of citizens to support the laws of the land is coequal with the duty of their Government to enforce the laws which exist.

In line with the GOP's party platform, Hoover promised to strictly enforce the prohibition laws, but the investments needed to build the brigades of prohibition agents necessary to step up enforcement began appearing to conservatives as an unwise investment and, worse, an unneeded expansion of federal power.

Additionally, liberals demanded that the expansion of the welfare and regulatory state be accompanied by additional protection of individual liberties and, as the tactics of prohibition agents were increasingly being challenged before the US Supreme Court, it became clear that bolstering enforcement of the Volstead Act would only add to the challenge of protecting individual liberties from a growing administrative state.

Still, the challenges of prohibition enforcement do not, alone, explain the movement to repeal. In fact, Figure 2 shows that members of Congress began proposing constitutional amendments to repeal or alter prohibition almost immediately after the Eighteenth Amendment was ratified.

Figure 2 Here

As the figure shows, even in the years following the ratification of the Eighteenth Amendment in 1919, efforts were already underway to reconsider it. The first joint resolution proposed to reconsider the amendment came during the 66th Congress ('19-'21) and would have permitted “manufacture, sale, and transportation of intoxicating liquors.” By 1925, eight joint resolutions were proposed, a number that grew to 102 joint resolutions during the 72nd Congress ('31-'33). What explains the effort to repeal the Eighteenth Amendment?

With the seeds of the Eighteenth Amendment being sown without strong institutional support and legitimacy from either of the dominant political parties, the challenges of governance under the Volstead Act signaled to party elites that the amendment was hastily enacted after the ASL capitalized on the unpopularity of the liquor trade in the context of a wartime emergency. It took less than a decade for elites from both parties to consider repealing the Eighteenth Amendment. The passage of the Eighteenth Amendment was also followed by the counter-mobilization of northern elites through their own single-issue advocacy groups that competed with the ASL and the church groups supporting prohibition. The most important of these groups was the AAPA, which was later joined by the Women’s Organization for National Prohibition Reform (WONPR).

Activists from these groups initially sought to repeal the Volstead Act when it became increasingly clear in the mid-1920s that national prohibition laws were ineffective and public opinion had begun to change. Even though there was growing support for repeal, these popular preferences were filtered through both federal and state legislative institutions that were not designed to accurately translate these

preferences into concrete public policies. The structure of the US Senate, the leadership rules in Congress, malapportionment, and gerrymandered legislative districts during this period worked together to advantage rural voters, especially in the south, and underrepresented voters in larger northern states and populous urban areas. Given these legislative blockages, anti-prohibitionists set out to look for alternative pathways to policy change.

A. Designing Constitutional Change: The Formation of the AAPA, a Failed Venue Strategy, and a Blueprint for Change.

When northern elites gathered in James Wadsworth's Washington D.C. mansion to form the AAPA in 1927, it was clear that Pierre du Pont and the future Chairman of the Democratic Party John Raskob would play a major role in the organization's activities (Okren 2011). Together, they plotted to seek the repeal of the prohibition amendment through the courts because a judicial strategy seemed to offer them the best opportunity of success. The AAPA secured the efforts of the New York County Lawyers' Association (NYCLA) to assist in the challenge. NYCLA lawyer Elihu Root, perhaps the most eminent litigator of his day, had earlier played a key role in challenging the Volstead Act in *Ruppert vs. Caffey* (1920). In that case, Root argued, unsuccessfully, that the Volstead Act had sought to extend wartime measures to peacetime, a power exclusive to the President, not Congress. The unanimous Court rejected the challenge and upheld the act. Now, a decade later, NYCLA lawyers brought another case, *United States v. Sprague* (1931), challenging the process by which the Eighteenth Amendment had been ratified:

[T]he choice of amendment ratification methods – state legislature or conventions of the people – ought to be determined not by congressional whim but on the basis of whether the proposal affected the functions of the state or the rights and powers of citizens. Unlimited amending power...permitted two-thirds of Congress and majorities of the legislatures in three-fourths of the states to wipe out all individual rights protected by the first eight amendments. When adopted, those amendments were assumed to be beyond federal usurpation. Only the people themselves had authority to surrender them (Kyvig 1996, p. 265).

It was especially worrisome to Root that state legislatures representing minorities would have amending power (Jessup 1938), and so the argument in *Sprague* was that, if individual rights are implicated, then state conventions should be used in ratifying constitutional amendments since they represented individual citizens in their sovereign capacities; while amendments affecting state powers had to be ratified by state legislatures, since they would alter the balance of sovereign power between the states and the national legislatures. Unanimously rejecting this argument, Justice Roberts wrote for the Court that the language of Article V “plainly and without ambiguity places the choice between these two modes in the sole discretion of Congress

Even though the Court rejected the argument raised by anti-prohibitionists in the *Sprague* case, the idea of using state conventions for ratifying constitutional amendments involving individual liberties remained an important strategy for repealing the prohibition amendment. According to the AAPA’s 1931 report,

By the end of the year the idea of submitting repeal of the Eighteenth Amendment to special conventions in the several states, which is our first major objective, had caught the imagination of politicians in many parts of the country, and that plan of procedure may be said now to have achieved pretty general recognition and acceptance among party leaders (Dobyns 1940, p.45).

From then on, state conventions would be the principal strategy for a campaign that would be the first ever to seek constitutional change by repealing an amendment

and avoiding malapportioned state legislatures, especially in the south, which were viewed as major political obstacles to repeal.

B. The Democratic and Republican Party Conventions of 1932

No longer having to compete with strong third parties siphoning votes from their coalitions, the dominant parties set out to capitalize on the increasing unpopularity of prohibition laws by taking positions on the repeal of the Eighteenth Amendment. Several states began showing support for repeal by passing referendums and when the *Washington Post* commissioned a poll to measure public sentiment about the modification of the Volstead Act, poll respondents overwhelmingly favored allowing the production and sale of beer and wine by a margin of 171,108 to 29,675 (Congressional Record 1926, p. 5309). A Literary Digest poll was also published in 1932 showing widespread public support for modifying or repealing the eighteenth amendment (Neal 2005). Even if the science of polling during this time was crude, the results communicated a powerful message to party elites that public opinion was shifting overwhelmingly against strict controls on the liquor traffic. For the first time, both dominant parties took strong positions on the question of repealing the prohibition amendment.

At its 1932 convention, which re-nominated Herbert Hoover, the Republican Party made the critical mistake of equivocating on prohibition. A plank advocating outright repeal of the Eighteenth Amendment was considered at the convention but was not adopted (Bain and Parris 1973, 236). When Senator Bingham (R-CT) read a minority plank in support of repealing the Eighteenth Amendment, he was

interrupted by applause and cries from delegates of “We want beer!” (Republican National Convention 1932, p. 127). Rather than adopting the minority plank, the party continued to pledge that it would enforce the amendment and prohibition laws, and urged passage of a new amendment to “allow the States to deal with the problem as their citizens may determine,” stating that “such an amendment should be promptly submitted to the States by Congress, to be acted upon by State conventions called for that sole purpose in accordance with the provisions of Article V of the Constitution and adequately safeguarded so as to be truly representative of the people.”

The Democratic Party, however, had designed a strategy to expand the party beyond its current state to guarantee long-term governing and policy prominence. If the Eighteenth Amendment was a hastily passed wartime measure initially designed to promote temperance among the Catholics, Jews, and African-Americans that were populating urban areas, then party elites knew that competition for these growing blocs of voters meant that prohibition should be repealed. For Democrats, repealing the Eighteenth Amendment would shift the regulation of liquor back down to the states where southerners would remain free to regulate it in accordance with state law, while also allowing the party to claim credit for repealing an amendment that many ethnic immigrants considered an attack on their traditions. The only obstacle standing in their way was a method for ratifying the amendment without disrupting the political power structure that was already in place in state legislatures around the country.

When the Democratic Party selected AAPA member John Raskob to become chairman of the party, Raskob knew that a Democratic Party plank supporting passage of a repeal amendment avoided the problem of malapportionment with state conventions as the method of ratification. Despite opposition from the southern delegation, the front-runner for the Democratic Party's endorsement, Franklin D. Roosevelt, skillfully managed the factions supporting repeal and reinforcement of the Eighteenth Amendment. The candidacy of Al Smith, a fellow New Yorker, complicated Roosevelt's efforts and path to the nomination. The possibility of a divisive battle over the issue of prohibition meant that Roosevelt's campaign operatives sought to delay any action on the prohibition until after a presidential candidate was endorsed, even though some party elites, including some prominent Southerners like John Garner, the Speaker of the House from Texas and Roosevelt's future running mate, declared that, "I have never believed [prohibition] sound or workable, and it should be repealed" (Neal 2005, 93).

Although a number of previous supporters of the Eighteenth Amendment began expressing views that were consistent with public opinion, Roosevelt still needed to articulate his ambiguous position on repeal of prohibition and so he turned to his campaign surrogates. A prominent former prohibitionist, Governor Harry Byrd (D-VA), recognizing the need to gloss over the fissure in the party over prohibition while simultaneously using it as a wedge issue against the GOP, argued that a constitutional amendment was a way in which the issue could be "removed from party politics and submitted directly to the people themselves for decision" (Neal 2005, 105-106). Another former prohibitionist and Roosevelt supporter,

Alben Barkley (D-KY), gave a two-hour speech on the convention floor, chiding Republicans:

Two weeks ago in this place, the Republican party promulgated what it called a plank on the Eighteenth Amendment...It is not a plank. It is a promiscuous agglomeration of scrap-lumber...This convention should recommend the passage by Congress of a resolution repealing the Eighteenth Amendment of the Constitution (Neal 2005, 243-44).

After Barkley's speech, the convention adopted a plank declaring the party's position on national prohibition in unambiguous terms:

We advocate the repeal of the Eighteenth Amendment. To effect such repeal we demand that the Congress immediately propose a Constitutional Amendment to truly represent the conventions in the states called to act solely on that proposal; we urge the enactment of such measures by the several states as will actually promote temperance, effectively prevent the return of the saloon, and bring the liquor traffic into the open under complete supervision and control by the states.

The only states that refused to support the party's position on repeal were the southern and border states of Alabama, Arkansas, Georgia, Kansas, Mississippi, and Oklahoma (Oulahan 1971), many of which now considered the nomination of Roosevelt "a matter of supreme importance" after having lost on the prohibition plank (Dobyns 1940, p.156)

C. Ratifying Conventions in the States and the Passage of a Joint Resolution to Repeal the Prohibition Amendment.

After the 1932 elections, and with the AAPA continuing its pressure of both dominant parties, joint resolutions were proposed in both houses of Congress to move repeal forward. One of the first efforts to amend the Constitution occurred in the House of Representatives, but that effort failed by six votes after several members of the House complained that the bill was not studied in the Judiciary Committee and that not enough time was allotted to debate. Of particular concern to

some members of Congress was confusion over the procedures for ratifying an amendment through state conventions. They knew well that the effort to amend the Constitution in 1924 to prohibit the use of child labor in manufacturing failed to attain the required approval from enough state legislatures to ratify the amendment. This was especially true in the southern states of Virginia, Tennessee, North Carolina, South Carolina, Georgia, Louisiana, and Texas, whose state legislatures rejected the amendment. Furthermore, those supporting repeal of prohibition could not ignore that nearly ten years had passed since the child labor amendment had been sent to the state legislatures for ratification. The failure of this amendment was an important lesson to supporters of repeal as to how the state legislative mode of ratification, especially in the rural south, offered the most time-consuming and the least likely chance at passage.

For members of Congress the fact that there was no historical precedent for ratification through state conventions only added more confusion. One of the first details to be addressed by Congress was its role in overseeing the state conventions. Rep. Emanuel Celler (D-NY) concluded that states were responsible for establishing their own requirements for creation of Article V conventions:

There seems to be much pother about the convention procedure. There should be none. I may be wrong, but I incline to the belief that by reasonable interpretation the word 'convention' as used in Article V of the Constitution precludes and repels the idea that the convention shall be called, elected, organized, or governed by congressional fiat. I incline to the belief that that must and shall be a State matter exclusively....In doing so Congress would irritate the States; it would stand in the role of interfering with the liberty of the States....Ratification might thereby be imperiled. Each State shall set up its own procedure. There may be 48 different types of machinery. That is unfortunate, but can not be helped. I would prefer to say that Congress compel each State to elect its delegates to a convention at large. But I do not dare advocate this for fear that I would again be imperiling ratification. The States would resent even this dictation from above. The election of delegates at large would prevent gerrymandering by the drys. It may be necessary, however, to blink [at] the possibility of gerrymandering and refrain from exercising compulsion

of any sort upon the States, in order to get the amendment ratified expeditiously (Congressional Record 1933, 4515).

Southern Democrats were especially hostile to the role of the federal government in overseeing conventions in the states and declared that once the federal government had passed a joint resolution to amend the Constitution, the federal role ceased. Rep. John McSwain (D-SC) expressed his support for the repeal amendment, but argued that Congress could not interfere with how states designed convention procedures:

To talk about sovereign States, and yet say that the Federal Government could call a convention within such sovereign States, and tell the people of the sovereign States who could vote, and where they could vote, and for what classes of delegates they might vote, and where the delegates should assemble, and within what they should act, would be to assert that States' sovereignty is a hollow mockery (Congressional Record 1932, p. 30).

If states were responsible for designing their state conventions, then state legislatures not supporting repeal would have opportunities to sabotage the process by gerrymandering the delegate selection process or delaying the design of convention procedures until the clock ran out. In short, if the selection of the state convention route was designed to diminish the role of state legislatures in the process of ratification, then it would have been a miscalculation for proponents of repeal to select this method of ratification.

If state legislatures still possessed power to design conventions so that a repeal amendment would fail, then there must be another reason why this mode of selection seemed so attractive to dominant partisan elites at both of their conventions. The selection of this mode of ratification was critical for managing the political tensions within the parties' respective electoral coalitions in light of the pressure created by single-issue pressure groups that placed demands on legislators

outside of the traditional party structure. William Clark, a US District Court Judge in New Jersey, alluded to this point in a letter he wrote to Senator Warren Barbour (R-NJ). In it, he argued that state conventions were superior to the state legislative route of ratification because voters are allowed to choose delegates for the purposes of voting on a single issue and minimized the power of single-issue interest groups:

The delegates are chosen on that issue and that alone and there is no opportunity for confusion of the voters. The single act of ratification or rejection is not appropriate for the application of any checks and balances. The convention will be, therefore, single chambered. That one chamber, being freshly created, will have no historical handicap tending to a recognition of acres rather than masses. In fact, the very essence of a convention, its character as the people assembled, should effectually prescribe its election on a 'truly representative' basis. Nine out of the eleven original ratifying conventions were so elected.... A convention affords no opportunity for reelection. There is then no office to which to cling. The influence of the lobby is at once emasculated and judgment restored to its intended independence (US Congress 1933, p. 5).

There is no question that members of Congress were thus beginning to adapt to the growing role of interest groups politics in legislative processes. Furthermore, the state convention route shielded elected state legislators from taking a position on an issue that did not fall neatly along partisan lines, but fell instead along geographical or urban/rural lines. By having delegates weigh in on the ratification question, state legislators were not being asked to risk their political futures on the prohibition question. One critic argued that "[i]n state-wide elections of delegates to these conventions, the city, with its wealth, daily newspapers, political machines, underworld and other resources, could overwhelm the rest of the state" (Dobyns 1940, p. 46).

Congress, thus, for the first time, formally proposed a constitutional amendment to be ratified through state conventions. Rep. John O'Connor (D-NY) explained the significance of the moment, declaring:

... to my mind this day is not only an historical day in this country and throughout the world, but to those people who are interested in a democratic form of government it points a new way and inaugurates a new era in the conduct of our democratic form of government, because for the first time the Congress of the United States is recognizing that we are made up, not of States, not of State legislatures, but that all Federal powers come from the people of the States, and we are sending this resolution back to conventions in the States for the nearest thing to a direct referendum that was ever had in this entire country. [Applause]. I have always favored the convention system of ratifying constitutional amendments. I tried to have the convention system incorporated in the child-labor amendment and in the lame-duck amendment (Congressional Record 1933, p. 4516).

The vote on the resolution passed 289-121 in the House and 63-23 in the US Senate, with opposition to it forming mostly along sectional lines. In the Senate, all but one of the nine Democrats that voted against the resolution came from southern or border states, while over half of the fourteen Republicans voting against it came from the Western or Midwestern states. The House vote tells a very similar story of southern Democratic opposition to the resolution because, even though only 32 Democrats voted against the resolution, 27 of those Democrats came from border or Southern states. When the amendment was finally sent to the states for ratification, they acted quickly to ratify it. Michigan was the first state to do so on April 10, 1933, and ratification was completed six months later when Utah became the 36th state to ratify the amendment on December 5, 1933. While the first states to ratify it were predominately northern ones, Arkansas, Tennessee, and Alabama all voted to support ratification of the repeal amendment, while South Carolina was the only state to reject it. Other states chose not to act on the amendment at all, including North Carolina, whose legislature voted against holding a convention, and Georgia, Kansas, Louisiana, Mississippi, and Oklahoma not voting at all.

V. Conclusion

Although the Progressive era in American history resulted in several amendments to the Constitution, the two involving prohibition are unique in many ways. The Eighteenth Amendment is not only the only amendment to embed a specific social policy in the Constitution; it is probably the only amendment (after the adoption of original Bill of Rights in 1789) to succeed without formal support of either major political party. The Twenty First Amendment, on the other hand, is the only amendment to ever be ratified by state ratifying conventions, rather than state legislatures. What explains the constitutionalization of prohibition policy despite its lack of formal political support, and the choice of conventions for ratifying an amendment to repeal it?

While conventional accounts of prohibition era politics tend to focus on the role played by social movements, interest groups, and non-party actors, we have argued in this paper that the partisan dynamics and concerns were in fact at the heart of the process for enacting these two amendments. The tumultuous electoral dynamics during the transition from the third to the fourth party regimes produced closely contested elections and divided electoral coalitions in both parties. This in turn magnified the role of third parties like the Prohibition Party, but also left the two major parties divided, vulnerable and unable to protect their members from the power of single issue interest groups like the Anti-Saloon League who sought to constitutionalize prohibition policy. Subsequently, the shift in politics during the end of the fourth party system and the emergence of a New Deal Democratic electoral coalition cleaved between its southern conservative and northern wings, goes a long way toward explaining why state conventions were the preferred

method for ratifying the Twenty First Amendment. With Southern Democrats united in opposition to repealing prohibition, the logical step for overcoming the party's fissures on the issue was shifting the ratification process to conventions and sidestepping elected elites. The strategy not only secured ratification of the repeal amendment and put to rest a policy issue that divided Democrats, but provided elected officials everywhere political cover by allowing them to claim the issue was one to be decided by "the people."

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Figure 1: The Third Party Challenge 1872-1940

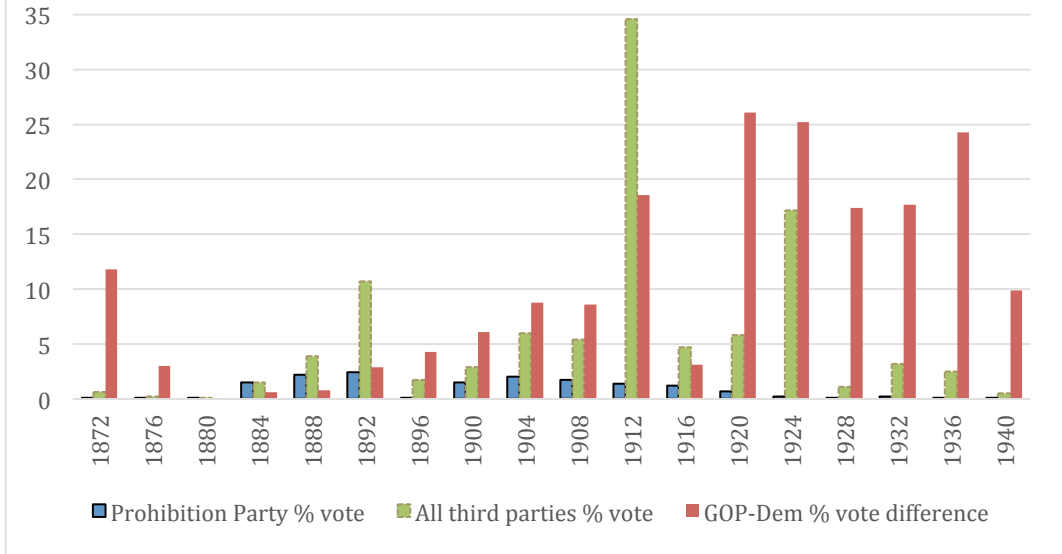


Figure 2: Resolutions Proposed to Amend Constitution Relative to Liquor Traffic

