

The Twenty-First Amendment and the End of Prohibition, Part 2: The Wickersham Commission and the Repeal Movement

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This Legal Sidebar is the second in a six-part series that discusses the [Twenty-First Amendment to the Constitution](#). The Twenty-First Amendment repealed the [Eighteenth Amendment](#), which prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United States. As interpreted by the Supreme Court, Section 2 of the Twenty-First Amendment [recognizes](#) that states may regulate or prohibit alcoholic beverages within their jurisdictions for legitimate, nonprotectionist purposes, such as health or safety.

Since the Twenty-First Amendment’s ratification in 1933, the Supreme Court has grappled with difficult questions about how the Constitution allocates the power to regulate alcoholic beverages between the federal and state governments. Such questions implicate the concept of [federalism](#), which refers to the division and sharing of power between the national and state governments. Accordingly, understanding how the Twenty-First Amendment interplays with other constitutional provisions may assist Congress in its legislative activities. Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Wickersham Commission’s Inquiry into the Problems with the Enforcement of the Eighteenth Amendment and Prohibition

From their inception, the Eighteenth Amendment and its implementing law, the National Prohibition Act, popularly known as the Volstead Act, were controversial in part because they empowered the federal government to [police activities](#) that implicated individual social habits and morality—a role traditionally filled by state and local governments. By the end of the “dry decade” of the 1920s, the Eighteenth Amendment had failed to eliminate the illegal manufacture and sale of alcoholic beverages within the United States. Shortly after entering office in 1929, President Herbert Hoover established an investigatory committee to identify obstacles to Prohibition’s enforcement. Two years later, the “Wickersham Commission”—named for its chair, former Attorney General George W. Wickersham—released a report identifying a number of these obstacles.

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Observing that “[s]ettled habits and social customs do not yield readily to legislative fiats,” the [Wickersham Report](#) detailed the American public’s widespread defiance of Prohibition. Americans patronized clandestine retail liquor establishments, such as “speakeasies”; exploited loopholes in the Volstead Act to obtain medicinal liquor and sacramental wine for recreational purposes; and brewed alcoholic beverages at home, often without significant legal consequences.

The Wickersham Report also referred to significant problems with the federal and state governments’ efforts to enforce Prohibition. Federal agencies responsible for investigating Volstead Act violations lacked the funds necessary for a serious enforcement effort. Many federal Prohibition agents received low salaries and had little formal training. This contributed to widespread corruption, as some agents ignored violations of the law in exchange for bribes from criminal organizations.

Although the Eighteenth Amendment granted the states “concurrent power” to enforce Prohibition, fewer than half of the states funded their own enforcement efforts. Instead, many states sought to preserve their limited fiscal resources for other priorities by relying on the federal government to enforce laws that were unpopular with a large number of state residents. During the 1920s, public support for Prohibition enforcement declined further as federal and state authorities employed harsh enforcement techniques, such as conducting violent police raids and [wiretapping suspects’ telephone lines](#), when investigating some alleged Volstead Act violations.

Public defiance of Prohibition and ineffective law enforcement [fostered](#) an illicit liquor traffic known as “bootlegging.” Bootleggers smuggled alcoholic beverages into the United States through its expansive international borders, shore lines, and inland waterways. Bootleggers also produced and distributed alcoholic beverages within the United States. Organized criminal gangs, attracted by the illegal liquor trade’s profitability, fought violent turf battles in Chicago, Detroit, and other major American cities.

Although the Wickersham Commission identified significant problems with Prohibition, it [opposed](#) the Eighteenth Amendment’s repeal. However, a few individual commissioners [wrote separately](#) to advocate for the Eighteenth Amendment’s revision or elimination.

The Repeal Movement and the 1932 Presidential Elections

The Wickersham Commission’s 1931 [report](#), which identified numerous problems with Prohibition, helped to encourage public support for the Eighteenth Amendment’s repeal. Various social reform groups advocated for an end to Prohibition, including the Association Against the Prohibition Amendment and the Women’s Organization for National Prohibition Reform. Pro-repeal advocates maintained that Prohibition intruded upon individual liberty, interfered with state sovereignty, and encouraged the growth of crime, among other objections.

Several influential business leaders also supported the Eighteenth Amendment’s repeal in the late 1920s and early 1930s. These included newspaper publisher William Randolph Hearst, who [viewed](#) Prohibition as a failure, and philanthropist John D. Rockefeller Jr. Rockefeller revealed his opposition to Prohibition in a [June 1932 letter](#) to educator and philosopher Nicholas Murray Butler. Rockefeller wrote that Prohibition’s benefits were “more than outweighed by the evils that have developed and flourished since its adoption, evils which, unless promptly checked, are likely to lead to conditions unspeakably worse than those which prevailed before.”

Despite growing public opposition to the Eighteenth Amendment, incumbent President Herbert Hoover and the Republican Party adopted an equivocal approach toward Prohibition during the 1932 presidential campaign. The [Republican Party platform attempted](#) to appease both “dry” and “wet” supporters by opposing the Eighteenth Amendment’s repeal while supporting Congress’s proposal of a new amendment to the Constitution that would allow each state to decide whether to prohibit liquor or saloons within its jurisdiction.

By contrast, President Hoover’s challenger, Democratic Party candidate Franklin D. Roosevelt, [openly supported](#) the Eighteenth Amendment’s repeal. Speaking at a campaign event in August 1932, Roosevelt referred to Prohibition as a “complete and tragic failure” in many parts of the country that encouraged corruption and crime. He argued that vesting the state governments with primary regulatory authority over alcoholic beverages would better promote temperance goals if federal law protected dry states from illegal liquor imports. Campaigning during the depths of the Great Depression, Roosevelt contended that repealing the Eighteenth Amendment would also provide a much-needed source of tax revenue to the federal government. On November 8, 1932, Roosevelt [won a landslide victory](#) in the presidential election, signaling a potential end to Prohibition.

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