

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Foundations/Sources/Constitutions and Amendments

The Twenty-First Amendment (1933)¹

Americans continued to debate the merits of Prohibition after the passage of the Eighteenth Amendment in 1919. Some controversies reprised the individual rights and federalism concerns that had historically structured debates over temperance in the United States. New issues arose as many Americans from all walks of life flagrantly violated federal and state laws against drinking. The speakeasy entered American folklore as numerous Americans sought to indulge their taste for alcohol. Crimes and official corruption seemed rampant. Inspired by such interest groups as the Association Against the Prohibition Amendment, popular sentiment soon shifted away from a national ban on drinking. The oil magnate, John D. Rockefeller, was one of many Americans who had a change of heart. Rockefeller had been a strong supporter of the Anti-Saloon League. In an 1932 letter to the *New York Times*, Rockefeller recanted. He wrote,

When the Eighteenth Amendment was passed I earnestly hoped—with a host of advocates of temperance—that it would be generally supported by public opinion and thus the day be hastened when the value to society of men with minds and bodies free from the undermining effects of alcohol would be generally realized. That this has not been the result, but rather that drinking has generally increased; that the speakeasy has replaced the saloon, not only unit for unit, but probably two-fold if not three-fold; that a vast array of lawbreakers has been recruited and financed on a colossal scale; that many of our best citizens, piqued at what they regarded as an infringement of their private rights, have openly and unabashedly disregarded the Eighteenth Amendment; that as an inevitable result respect for all law has been greatly lessened; that crime has increased to an unprecedented degree—I have slowly and reluctantly come to believe.²

Democrats, the party of choice for most immigrants, increasingly supported the “wet” position. The party platform in 1932 asserted,

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.

When Democrats gained an overwhelming victory in the 1932 national elections, Prohibition was doomed. Congress proposed the Twenty-First Amendment on February 20, 1933. The Amendment was approved by three-quarters of the states and became law on December 5, 1933.

The following excerpts are taken from the state convention debates on the repeal of the Prohibition Amendment. The Twenty-First Amendment is the only amendment to be ratified by state conventions rather than state legislatures. Why do you believe Congress specified that method of ratification? What are the vices and virtues of ratification by state conventions? The repeal of Prohibition was the first constitutional accomplishment of the

¹ Excerpt taken from Everett Somerville Brown, ed., *Ratification of the Twenty-First Amendment to the Constitution of the United States: State Convention Records and Laws* (Ann Arbor: University of Michigan Press, 1938).

² “John D. Rockefeller Out for Repeal; Says Dry Law Evils Outweigh Benefits,” *The New York Times*, June 7, 1932, 1.

New Deal/Great Society Era. To what extent was the repeal based on principles that would underlie the constitutional politics of the mid-nineteenth century? To what extent was repeal more rooted in the constitutional understandings of the Republican Era?

EMERSON RICHARDS (New Jersey)

...
The evils brought about by the Eighteenth Amendment were too many to recite here—its revival of intemperance—the spread of the use of liquor among people who had heretofore been abstainers—the change of viewpoint of society toward the consumption of liquor—the loss of prestige of the Federal Government are but some of the grievous damages done to ourselves. . . .

...
The Eighteenth Amendment failed because it did not respect the principle that morality is not a matter of law, but a matter of eternal justice.

GOVERNOR HERBERT LEHMAN (New York)

...
The adoption of the Eighteenth Amendment by the legislatures of the different states demonstrated the ruthless and almost unlimited power of militant minorities which, unfortunately, all too frequently have the means of influencing timid self-seeking legislators. The imminent repeal of the Eighteenth Amendment, on the other hand, shows the force of intelligent and well-considered public opinion, aroused by the abuses and failures of a statute that never commended itself to the reasoned judgment of the people.

...
It is fitting at this time, when victory is in sight, that we should pause and give credit to at least some of those who for years courageously led the fight to regain that balance between state and nation which is guaranteed by the Constitution of the United States, and to substitute temperance for hypocrisy and unenforceable prohibition.

...
The fact that in this state and in other commonwealths there are being held conventions composed of delegates elected by the people for the sole and single purpose of acting on the question of the repeal of the 18th Amendment is to me one of the most encouraging recent developments in Democracy. The method pursued is unquestionably the right and fair one—the only means by which people can directly vote on and express their sentiments with regard to important constitutional issues.

ALFRED SMITH (New York)

...
[I]t was not the original intent of the framers of our Constitution that amendments like the 18th Amendment were to be passed upon by the Legislatures. The first ten amendments, which is really the Bill of Rights, under which there could not under any possible stretch of the human imagination, be any argument, it was all right to take them to the Legislatures; when it comes to an amendment, like the 18th Amendment which seeks to regulate the ordinary, everyday life of a citizen, or take away some privilege, or some liberty that he enjoyed, that is an entirely different question. For all time to come these conventions that are being held around the country should be a lesson and a warning not to permit submission by the National Congress through legislative branches, of such a matter.

...
Now there may be some reason for acreage representation in legislative bodies as against square blocks of tenement houses in the city when it comes to the ordinary conduct of the business of government, but it is an entirely different thing when an unfair basis of representation can speak not the

will of the people, not the desire of the majority, but what appears to be the politically expedient thing to do.

General Wickersham, in his report to the President of the United States, made the statement that state legislatures were not organized to pass upon amendments such as the 18th Amendment, and that there was a large volume, and a large body of people, that were not therein represented. We have another lesson to learn, and that is to keep our eye on organized minorities.

ELIHU ROOT (New York)

...
... [V]ery soon the American people will have learned two vital lessons, and learned them forever. One is that our constitution government rests upon two bases, national strength and local self-government, and that both are essential to the continuance of our free democracy.

The 18th Amendment was a departure from the great principle of local self-government in local affairs.

The other lesson is of higher and broader importance, that human progress, that advance along the long road of civilization from brutish animalism to the conceptions of justice and charity, of kindness and beauty, of this latter century, every step has been made not by compulsion, but by the development of higher standards of conduct and nobler emotions among the people; a lesson that advance in all that is noble and good comes from without, but from within. And if we have learned as a people those two great lessons, all the humiliations and the injuries that have elapsed since the 18th Amendment took effect will be but slight payment for a great and permanent reward.

JAMES W. WADSWORTH (New York)

I think it is a healthy thing for the future of this country and the development of its government, that the repeal of the 18th Amendment was submitted by the Congress to conventions of the people in the several states. The original amendment should have been submitted direct to conventions of people in the several states, for it was a proposal which invited the states to surrender a very important part of their police power, and invited every citizen in the country to surrender over to the Federal Government, an important element in his personal liberty.

I can see that the founders of our government conceived that from time to time, as the years went along, amendments might be proposed to the Constitution of the United States, having to do with the liberty of the individual, and the reserve power of the states, and that they intended that this alternative method of ratification by convention of the people should be resorted to in all cases of that kind, and that ratification by Legislatures should be resorted to when the proposed amendments did nothing more than propose to change the mechanism of government. . . .

LOUIS WALDMAN (New York)

...
Our Constitution is being amended every day without convention and without formal amendment. But as far as the 18th Amendment is concerned, it was originally given to us as a result of the forces let loose by the World War, one of the greatest world tragedies known in modern times.

There was a natural predisposition to restrain liberty, to deny people their rights of their normal habits of free thinking and speaking, and it was easy for an organized minority to impose its will upon a nation that abandoned a balanced form of living under the Constitution. The 18th Amendment was an outgrowth of the war; it took a second great tragedy, the world crisis, to bring America back to the position where it wants to repeal the 18th Amendment.

...

[T]hose of us who come from the Greater City know, the outlawing of the saloon where the worst abuses of alcoholism take place, and where the people in the saloons find an outlet for their activities and life, is not enough. We have the saloon and its abuses not because the law permits them, but because we have poverty and slums in our cities. We do not give to those people the opportunities of living a life of security and decency.

I have not parted with my philosophy when I entered here with all of you. We are repealing the 18th Amendment, but that is not all. The great question is: How shall we observe and establish temperance? If we abolish the saloon, if we are to destroy the curse of alcoholism, we must alleviate the social condition in the lives of men and women which will make it unnecessary for them to use the saloons as the center of the social activity.

W.W. MONTGOMERY (Pennsylvania)

. . . [T]his fight . . . has not been permitted to become a question of whether or not we shall have something to drink; but it has been a question of whether the Constitution of the United States should be preserved as it is written in this essential respect of the reservation to the States of its police power. . . .

GOVERNOR THEODORE F. GREEN (Rhode Island)

. . .
. . . Our Constitutions, both Federal and State, are limitations upon the liberties of the people voluntarily imposed upon them by themselves. It seems both logical and just, therefore, that when other liberties are to be given up and other rights of the people are to be limited by the Constitutions, such limitations should be made in the same manner that the original Constitution was adopted, through the medium of conventions. . . .

. . .
The Eighteenth Amendment . . . affected the liberties of the people and was essentially new matter in the Constitution. Though its ratification was by the action of the State Legislatures, it is still a question whether State Legislatures are the agents of the people to the extent of being authorized to deprive them of rights and privileges which they enjoyed at the time of the adoption of the original Constitution, and which they reserved to themselves when they adopted the Constitution. . . .

PETER GERRY (Rhode Island)

. . . [S]umptuary legislation has no place in the Constitution of the United States. . . .

WALTER SUNDLUN (Rhode Island)

. . .
Rhode Island has always maintained that a constitutional provision of a sumptuary nature which is not self-enforceable cannot remain effective without the approval and support of citizens of this country.

. . .
During the years of Federal prohibition, there has been more law-breaking, more corruption in public offices, more intemperate use of intoxicating liquors than in all of our previous national history. Men and women who in every other respect are law abiding citizens of our great country have, during the years that prohibition has been in force, gradually adopted a philosophy that to conspire with and aid the bootlegger in his illegal sale of liquors was not contrary to good morals or ethical conduct. These same men and women, who represent the backbone of our nation, treated indeed lightly their constant interference with the enforcement of the Eighteenth Amendment.

. . .
When a people become lawless, corruption creeps into government. Only an innate sense of honor, honesty and loyalty can compel the governed to support the laws of our country, and when a law

is of such a character that our citizens adopt a philosophy that it is not dishonorable, dishonest, or disloyal to violate it, there is then something fundamentally wrong with the law.

The Eighteenth Amendment has to a marked degree destroyed the teachings of the value of true temperance. Our nation is a temperate nation. During prohibition alcoholism greatly increased. The very benefits which it was hoped would be accomplished by prohibition, have been destroyed by prohibition itself.

...

The Eighteenth Amendment and its enforcement acts are radical departures from the legitimate functions of our Federal Government.

This amendment has greatly encroached upon State rights. Many of our citizens still hold to the belief that it is a serious invasion of the sovereign powers of the States. It is also still maintained by many that the Eighteenth Amendment has greatly lessened the protection intended for all citizens by the Bill of Rights.

...

RAY L. OLSON (Utah)

...

The Eighteenth Amendment to the Constitution ventured into an entirely new field in constitutional government. It was actually a prohibition against the manufacture and use of intoxicating liquors. Its sponsors were sanguine that this piece of constitutional legislation would solve an age-old problem while the then minority loudly protested that the new amendment denied a certain element of personal liberty. The Eighteenth Amendment from its inception precipitated controversy, and open defiance on the part of individual citizens developed an indifference toward prohibition.

...

The devastating results of prohibition are not confined to the use of, or abstinence from the use of, intoxicating liquors. The by-products of prohibition have shocked the sensibilities of our national life. Nullification, graft, corruption, racketeering, debauchery, murder and gang rule have become terms synonymous with prohibition. It would be absurd to charge the Eighteenth Amendment with responsibility for all of them, but we have a right to assume that they took root in the fertile soil of lawlessness afforded by prohibition. . . .

During the political campaign which preceded our glorious victory on November 7th, our opponents, in their desperation for want of sound issues, sought to give the impression that the fight was one of liquor verses no liquor, or saloons against no saloons. Those of us who assumed leadership in the repeal movement repeat now that we were as earnestly in favor of temperance in the use of intoxicating beverages as our opponents. We have discovered that governmental restrictions failed to regulate, or in the least bit influence, the appetites of men, hence our energies were in the direction of better government. . . .

FRANKLIN RITTER (Utah)

Contrast the Eighteenth Amendment with other amendments. Its anomalous position is self-evidence even to the most casual student. It puzzles us to discover why its friends did not sense that it represented an attempted change in the individual's political philosophy. It may be surmised that had they comprehended that it would produce among great masses of the citizens an antagonistic reaction because of its departure from our established ideas of the individual's rights, they would have possessed sufficient political sagacity to have secured its adoption through a vote of the people. Therefore, they would have used the convention system of submission instead of the legislative. . . . In matters involving the individuals' rights, powers and prerogatives, the convention system of amending the Constitution is the only sound and honest method, and is the only method consistent with our theory of government.

When we pass beyond a consideration of the mechanism employed to secure its ratification and reflect upon the intrinsic merits of the Eighteenth Amendment we find that it flagrantly opposed the established philosophy of our form of social organization, and was repugnant to one of our fundamental

conceptions of the purposes and functions of the Federal Constitution. The United States of America, as a governmental agency, is and was intended to be one of granted powers, and its sphere of action is limited. . . .

...

Within the long acknowledge political sphere of the state was the control of the subject matter of the Eighteenth Amendment. . . . Due to the fact that forty-eight sovereign powers exist within the federation which is sovereign within its own field of action, divergent policies in the matter of control or prohibition resulted. In the minds of the proponents of the Eighteenth Amendment this was a defect which must be eliminated, no matter what the cost or how radical or revolutionary the treatment. Here is the genesis of the Eighteenth Amendment, and it is here that the primary reason for its failure is found.

The amendment transferred from the states to the federal government police power in regard to control and prohibition of personal conduct of citizens in a matter which per se was not wrong. . . . Except within an extremely narrow limit, it was never intended that the federal government should exercise police control over the citizen; it is a function and duty of the state, but a penal code provision was inserted into the basic framework of government—the Federal Constitution. . . . The repeal of the Eighteenth Amendment is a positive declaration by the citizens that hereafter this foundation stone of their government structure must not be dislocated nor its position changed.

...

A discussion of the involvement of personal, individual rights of the citizen under the operation of the Eighteenth Amendment sequentially leads us to deliberate on our fundamental political philosophy concerning the individual. It is most fitting and proper at this time and on this occasion to re-examine our creed and re-announce our allegiance to the same. . . . I have sought a modern pronouncement, and one of the best is found in that memorable address delivered by the Honorable James M. Beck, former solicitor general of the United States. . . . : [T]here is in the hearts of all generations of Americans a profound instinct that, whether safe-guarded by constitutional limitations or not, there is a moral limit to the power of government to regulate private conduct.”

C. O’CONOR GOODRICK (Virginia)

...

The dramatic failure of prohibition cannot be laid at the door of government, either National or State. The explanation of this failure may be found in the fact that it was violative of sound Constitutional principles; destructive of the balance of power which should exist between the Federal and State governments, and restrictive of the individual rights and privileges of the people.

If it be concede that under impulse of great national emotion it rested for a time upon majority public sentiment it must be admitted that this support vanished in the calmer aftermath which followed the World War and once withdrawn its end was inevitable. If it be asked why was this support withdrawn, the answer is that prohibition retarded rather than promoted temperance; broke down rather than built up respect for law; gave birth to nation-wide racketeering; adding to rather than subtracting from the original element; provided a fertile source of official graft and corruption and was responsible for more humiliating political hypocrisy than any other public question in the history of the country. . . .

WILLIAM BANE SNIDOW (Virginia)

Mr. President: In this historic hall, where have occurred so many historical events in the more than a century and a quarter of its existence, where the doctrine of States Rights has had a most prominent part, for here it was that the Virginia Resolutions of 1798 were adopted, which sprang from the brain of our Madison, the father of the Constitution—the best qualified to construe it, and to define its limitations; here it was that the immortal hero, to whose name new luster is added with the passing of the years, Jefferson Davis, President of our short-lived, but glorious republic, dedicated to the principle of States Rights, communicated his messages to the Congress of our vanished but not forgotten Confederacy.

The principles of States Rights have ever been a part of the political creed of Virginians. . . .

...

JAMES BARRON (Virginia)

...

Sir, the history of man is a record of strange desires and a mind struggling to be free. Always are those who would crush the urge of man and cast him into a mould of their making. They made prohibition a religion and the Eighteenth Amendment a creed. We accept no such thing and tear down the rude hut of prohibition to build the temple of temperance.

The profound significance of this hour lies in setting free the will and mind of man from those who would enslave it. He does not grasp its full importance who sees merely the ebb and flow of a social experiment. It means more than that. This day marks another escape from the embrace of the moral constrictor, another triumph in the long warfare of the human mind against its oppressor.

...

ERNEST HUTCHINSON (Washington)

...

On August 29th, Washington stood in the very middle of this National stream and definitely turned it towards the old Democratic doctrine of States Rights and the new Democratic doctrine of Repeal of Prohibition!

...

... [R]emember that Washington is a Temperance State. Her demand to be rid of the narrow restrictions of Prohibition is only one phase of her determination to re-establish the broad teaching of temperance and restore that companion of education, discipline, that makes teaching effective.

GOVERNOR H.G. KUMP (West Virginia)

...

This assemblage of distinguished citizens of our State will expect me to speak of the great and devoted effort of His Excellency, President Roosevelt, to stabilize industry, reduce unemployment, and to restore comfort and prosperity among our people. . . .

I appeal to all patriotic citizens, and all those who love their country and their fellowman, to support the National Recovery Administration to the fullest extent. . . .

PRESIDENT CLARENCE E. MARTIN (West Virginia)

. . . We are here merely for the purpose of restoring to this State the old constitutional government that we once had, and to rectify the mistake that was made some years ago, when we granted to the National Government the power that should never have been given to it, and by reason of that fact, we are here for the purpose of registering the will of the people of West Virginia—they desire to recall that grant that has been made to the National Government, and again look after and carry out the powers of local government in West Virginia.

GOVERNOR ALBERT SCHMEDEMAN (Wisconsin)

...

Your convent is important, politically, morally and historically. It is important politically, that is, from the standpoint of the body politic. The subject matter of your deliberations involves matters of grave consequence not only to this state, but also to the United States. It goes to the very root and fiber of our

entire government. It calls for a consideration of the very fundamentals upon which the several states are grounded. In you is vested perhaps the most sovereign power the state possesses. . . .

. . .

MR. HOFFMANN (Wyoming)

. . . For my part I have been a wet since the day Prohibition went into effect, and as I stand on the floor here I want to say to you, our duty is not finished, we must not let the business we condemned in 1919 get into the same rut, we want to see it carried on in a clean and honorable manner, and you will never be able to do this if you have the Government, the States, or the Cities mixing whiskey with beer. Whiskey should be divorced from beer, take it home to your family and teach your children to use it in the proper way, and that is not standing against a bar drinking all day and having your wife waiting supper. It was the women of this country who voted it dry and it will be the women who vote it wet again, they have found out their mistake, but it wouldn't have taken near as long to get the country wet again if it had not been for the efforts of our politicians.



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