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Rekindling the Spirits: From National Prohibition To Local Option In Florida: 1928-1935

by JOHN J. GUTHRIE, JR.

Historians long overlooked the repeal of national prohibition "as a subject for serious research," for at least two major reasons.[1] First, the Great Depression and the coming of Franklin D. Roosevelt's New Deal over-shadowed the ratification of the Twenty-First Amendment. Second, repeal as a research topic presents problems for historians, because it raises questions in disparate fields--including constitutional law, public policy, pressure politics, and federalism.[2]

Despite the complexity of the subject, in 1972 Clement E. Vose provided an early scholarly analysis of repeal. Noting the multifarious composition of the anti-prohibition crusade, Vose refuted the notion of a simple rural-dry versus urban-wet dichotomy.[3] Instead, he argued that old stock White Anglo-Saxon Protestant members of interest groups, such as the Voluntary Committee of Lawyers (VCL) and the Association Against the Prohibition Amendment (AAPA), formed an unlikely alliance with the newly arrived Catholic urban dwellers and successfully collaborated to end prohibition.[4]

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1. Mark Edward Lender, "The Historian and Repeal: A Survey of The Literature and Research Opportunities," in David E. Kyvig, ed., *Law, Alcohol and Order* (Westport, Conn., 1983), 177-205.
2. Clement E. Vose, *Constitutional Change: Amendment Politics and Supreme Court Litigation Since 1900* (Lexington, 1972), 101-102)
3. Until the late 1960s historical inquiry into repeal had reached a tenuous consensus founded upon interpretations that focused primarily on the Eighteenth Amendment. According to that consensus, repeal marked the ascendancy of cosmopolitanism, in that the old order of the rural American countryside had finally yielded to the new order of the cities. Charles W. Eagles, "Urban-Rural Conflict in the 1920's: A Historiographic Assessment," *Historian* 49 (Nov. 1986), 26-48.
4. Vose, *Constitutional Change*, 137. David E. Kyvig has expanded upon Vose's conceptual foundation and examined repeal through the lens of the AAPA. See David E. Kyvig, *Repealing National Prohibition* (Chicago, 1979); Fletcher Dobyns *The Amazing Story of Repeal: An expose of the Power of Propaganda* (Chicago, 1940).

Yet unlike Vose, most historians who have dealt with the repeal-movement, have viewed it as a contest between two opposing monolithic forces without considering the serious divisions that sundered both sides of the liquor issue.[5] Taking Vose's cue, this article draws on a variety of sources, including court reports, constitutional convention proceedings, and newspaper accounts to explore the repeal movement in Florida. The result lends substantial support to Vose's thesis by showing that a plurality of diverse interests collaborated successfully to turn back prohibition in Florida.

Moreover, the findings suggest that Florida's path from national prohibition to local option unfolded in four separate, but often overlapping stages. Between 1928 and 1932, during the first and longest phase of the repeal movement in Florida, a wet constituency consisting of judges, newspaper editors, lawyers, brewers, retailers, workers, hoteliers, state legislators, and many ordinary Floridians, coalesced around the idea of repeal. Disillusioned with the federal liquor law, these Floridians began agitating for change. In the political debate that ensued, advocates for repeal generally couched their arguments in terms of states' rights or economic principles. Besides encroaching upon state and local jurisdictions, wets said that the federal government had grown too expansive and posed a serious threat to liberty. Additionally, they claimed that prohibition caused economic hardship for both the public and the private sectors. As they saw it, repeal would provide profits for business, incomes for households, and tax revenue for government.

Over time, such rhetoric gradually began undermining the intellectual and constitutional foundations of prohibition. The repeal crusade was advancing on several fronts. In 1932, to illustrate, wets provided crucial support that enabled Democratic candidates to gain control of both the Congress and the White House. Soon after taking office the winning candidates rewarded the wets by making good on a major campaign pledge. In April 1933, Congress

5. Recently, Eagles has reexamined the 1920s in terms of an urban-rural dichotomy. While remaining skeptical of any simple monocausal explanation for the decade's social political disputes, Eagles concluded that the "urban-rural conflict may still remain an important part of American life, even if it is not the whole story." *Democracy Delayed: Congressional Reapportionment and Urban-Rural Conflict in the 1920s* (Athens, 1990).

revised the Volstead Act and near beer became legal under federal law. This measure helped launch stage two of the repeal movement in Florida. During this phase, Florida wets and their dry opponents clashed over a proposed legislative package that would ultimately legalize near beer and light wine throughout the state. As it turned out, the wets prevailed. On May 8, 1933, Governor David Sholtz signed the bills into law and brought stage two to a close.

Following this victory, Florida wets joined in the national campaign to repeal the Eighteenth Amendment and thus commenced stage three of the repeal movement in Florida. This brief phase ended in December 1933, when Utah became the thirty-sixth (and requisite) state to ratify the Twenty-First Amendment. This wet milestone induced stage four by returning the liquor issue to state and local governments for resolution. Since Florida's constitutional ban on liquor remained intact, wet reformers confronted a seemingly major obstacle to their cause. But as it turned out, less than a year later, in November 1934, Florida's "bone dry" prohibition amendment went down in defeat at the polls.

As noted above, the first stage of the repeal movement in Florida began in 1928. Due in part to the massive amount of federal prohibition litigation, that year's presidential campaign became a major battle in the war on "demon run."[6] The Anti-Saloon League, at the pinnacle of its national power, "Mustered all its resources to elect the dry Republican, Herbert Hoover, over the wet Democrat, [and Roman Catholic] Al Smith." The same contest reached Florida. There the Women's Christian Temperance Union (WCTU)

6. Florida's overloaded federal dockets during the 1920s represented a microcosm of the national judicial logjam that stemmed from prohibition enforcement. In 1921, for example, the courts of the Southern District closed 551 criminal prosecutions, 463 of those concerned federal liquor violations. The Northern District settled 164 criminal prosecutions, including 121 liquor cases. Seven years later 85 percent of the 1319 criminal prosecutions disposed of in the southern courts concerned federal liquor law. Figures for the Northern District in the same year had increased to 210 and 191 respectively. See John J. Guthrie, Jr., "Hard Times, Hard Liquor, and Hard Luck: Selective Prohibition Enforcement in North Florida, 1928-1933," *Florida Historical Quarterly* 73 (April 1994), 435-452, 438. For prohibition's impact on the federal courts, see John F. Padgett, "Plea Bargaining and Prohibition in the Federal Courts, 1908-1934," *Law and Society Review* 24 (1990), 413-450; Kermit L. Hall and Eric W. Rise, *From Local Courts to National Tribunals: The Federal District Courts of Florida, 1881-1990* (Brooklyn, 1991), 62, 74-77.

joined by the Anti-Saloon League, organized a conference of the state's leading prohibitionists to discuss a strategy for the forthcoming election. Under Bishop James Cannon's prompting, the conference quit the Democratic Party and endorsed Herbert Hoover for president.[7]

Meanwhile, on October 11, 1928, Florida Chief Justice William Ellis embroiled himself in the political controversy. Speaking before a Miami audience, he asked Florida and other Southern Democrats "to rally to the support of Governor Alfred E. Smith for President." Claiming that prohibition was not an issue, Ellis assured his audience that Smith would "enforce [it] as well as other parts of the Constitution." He asked rhetorically: "[I]s Mr. Hoover a prohibitionist?" He answered: "Not so anyone could notice." In comparing the two candidates, Florida's chief justice had created a distinction without illustrating any differences. Skirting prohibition, he redirected the election's focus to other issues by appealing to the emotions of his audience. Waving the bloody shirt of the Civil War and pandering to sectional politics, Ellis thundered: "Our political hereditary enemy is before us again. For 50 years, he has tried in vain to overturn the traditional South [and] to destroy its political integrity."[8]

Ellis's effort to drum up support for Smith by attempting to exploit sectionalism, proved no match for militant prohibitionism and its concomitant anti-Catholicism. In the end, Protestant fears that Smith's candidacy represented a papist plot to seize the White House, coupled with white anxiety that a Democratic victory "would put liquor into the hands of the negro" prevailed. Hoover carried the state because most Floridians had voted against Smith, rather than for the Republican candidate.[9]

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7. Jack S. Blocker, *American Temperance Movements: Cycles of Reform* (Boston, 1989), 125; Frank W. Alduino, "The 'Noble Experiment' in Tampa: A Study of Prohibition in Urban America," (Ph. D. diss., Florida State University, 1989) 205-208; Herbert J. Doherty, Jr., "Florida and the Presidential Election of 1928," *Florida Historical Quarterly* 26 (October 1947), 179-181; Edward M. Hughes, "Florida Preachers and the Election of 1928," *Florida Historical Quarterly* 67 (October 1988), 131-146; Ida DeGarmo, *Life Story of Minnie E. Neal: President of Florida Woman's Christian Temperance Union,* (Jacksonville, 1936), 8.
8. *Miami Herald,* October 11, 1928.
9. The "Hoovercrats" ultimately realized a pyrrhic victory, in that the dry cause became contingent upon the fortunes of the Republican Party. And just as prohibition depended partially upon the success of Hoover's presidency, so too did

Since Hoover's dry victory in 1928 fell short of a public mandate on prohibition, the controversy continued to burn. Eventually empirical evidence against the drys mounted and public support for national prohibition waned. By 1929, for example, the concurrent power to enforce the law shared by the states and the federal government proved at best impracticable and at worst "a costly failure."[10] The drys, aware of the changing political climate, thus began devising plans to shore up national prohibition. Florida Chief Justice Rivers Buford, for one, proposed what he considered the most practicable plan to make the Eighteenth Amendment more effective. First, Buford recommended that the states set the alcoholic content of intoxicating liquors. Then, those states that authorized the sale of liquor--containing between 1 percent and 5 percent alcohol by volume--could sell spirits only in containers filled and sealed under government supervision. Finally, he advised bestowing the enforcement responsibility to the U.S. Justice Department.[11]

In Florida, Buford's call to reform prohibition in order to save it, fell upon a divided audience. By 1930 the state's former dry consensus had come undone. The electorate split almost evenly between those who favored repeal, or at least a modification of the existing prohibition laws, and those who wanted the law to remain in effect.[12] According to a *Literary Digest* poll, out of 560 Tallahassee residents surveyed, 232 wanted the Eighteenth Amendment repealed, 172 supported modification, and 156 endorsed continued federal enforcement of prohibition. The poll went on to relate that

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the fate of Florida's revived Republican Party. As Herbert J. Doherty, Jr. has speculated, had the depression not come during Hoover's term, the Grand Old Party might have shown some success in Florida in 1932. Doherty, "Florida and the Presidential Election of 1928."

10. Kermit L. Hall, *The Magic Mirror Law in American History* (NewYork, 1989), 251. According to the AAPA, prohibition eliminated roughly $900 million in state and federal excise taxes on spirits, wine, and beer. This sum, added to the $40 million spent on enforcement, nearly equalled the $1 billion in federal income tax collected by the government in 1929. See David E. Kyvig, "Women Against Prohibition," *American Quarterly* 28 (Fall 1976), 465-482, 474-75.
11. Rivers Buford, "Let State Fix Alcoholic Content," in *Law Observance: Shall the People of the United States Uphold the Constitution,* ed. W. C. Durant (New York, 1929), 103-105.
12. Before state prohibition went into effect, all but two counties had passed local option ordinances. And when Florida placed the prohibition article before the electorate, every county voted in favor of statewide prohibition. See Frank Buckley, "Prohibition Survey of Florida," in U.S. Senate, *National Commission on Law Observance and Enforcement,* 71st Cong., 3rd sess. Washington, D.C. 1931), 109.

out of Florida's twenty-three cities surveyed that had a population of 5,000 or more, twelve voted wet and eleven dry.[13] The poll suggests that posing "the wet-dry" conflict as a simple urban-rural dichotomy fails to capture the pluralistic nature of the liquor controversy.

In 1929, prompted in part by the public's growing aversion to national prohibition (as illustrated in the *Literary Digest* poll and other social barometers), President Hoover appointed a task force to investigate the entire structure of the federal criminal justice system. He ordered the commission "to make such recommendations for reorganization of the administration of federal laws and court procedure as may be found desirable."[14] On January 20, 1931, the National Commission on Law Observance and Enforcement, better known as the Wickersham Commission, published its findings.

Though filled with facts and statistics, the report remained open to interpretation and ended in a "welter of ambivalence." Finding the existing enforcement unsatisfactory, the Commission opposed repeal of the Eighteenth Amendment but offered no alternatives to implement a dry national policy. Perhaps even more significant, all eleven commissioners who had collectively opposed repeal issued individual statements that underscored the coalition's underlying weakness. Nine members emphasized the public's failure to support the law, six demanded immediate change, while only one commissioner, Federal Judge William I. Grubb, unequivocally endorsed continued pursuit of prohibition "in the hope of achieving better enforcement and public support." The controversy shrouding the report thus "ended any hopes that the Wickersham Commission could resolve the national prohibition issue."[15]

While the debate over the future of prohibition heated, organizations such as the VCL began successfully agitating for repeal. An elitist national organization led by some of New York's finest le-

13. *Daily Document*, June 2, 1930; Alduino, "The 'Noble Experiment' in Tampa," 213; *Tampa* Tribune, June 1, 1930.

14. Quoted in Vose, *Constitutional Change, 106.*

15. Ibid., 105-107; Kyvig, *Repealing National Prohibition*, 113-115. Grubb, a Democrat, and one of the itinerant justices who had occasionally sojourned to Florida to help alleviate the state's federal judicial backlog, sat on the bench in the Northern District of Alabama from 1904 to 1935. Harold Chase, et al., Biographical Dictionary of the Federal Judiciary (Detroit, 1976), 110.

gal minds, the VCL had associates in virtually every state. "The committee formed upon an impulse to overcome a constitutional amendment [that] offended the members' sense of a sane society." Their perspective, of the political-legal order, in the age of Hoover, "was one of laissez-faire and of state responsibility, which national prohibition, enforced from Washington, violated." They sought repeal and contributed significantly to that achievement.[16]

At the state level, Florida's chapter of the VCL also played a large role in shaping both public and legal opinion. One member in particular, Robert H. Anderson, had labored many hours "for the restoration of the states' rights in the management of the morals of the people."[17] By 1932 his investment in time began to pay some handsome dividends. In the process, Anderson had helped engender a puissant force to counter the well-organized opposition to repeal. For example, a Florida State Bar Association poll revealed that members of the state's legal profession favored repeal by "nearly six to one." The attorneys assumed their anti-prohibition position because the "Noble Experiment," they claimed, had resulted in smaller government revenues, spawned disrespect for law, facilitated the growth of syndicate crime, and nearly crippled the judicial system.[18]

However, the true measure of the VCL's influence became manifest in that year's hectic congressional races. To be sure, pressure by the VCL coupled with shock waves that emanated from the Great Depression, contributed to a fundamental shift that transformed Florida's political topography and turned a minority into a majority. Out of thirteen candidates who sought four contested congressional seats, eleven advocated repeal or at least a prohibition referendum. Perhaps most surprising, the daughter of the late William Jennings Bryan, Ruth Bryan Owen, an incumbent up for renomination and erstwhile champion of prohibition, promised to vote for the resubmission of the liquor question to the states for a referendum. Denying that she had capitulated to the liquor inter-

16. Vose, *Constitutional Change,* 133.
17. Everett Somerville Brown, ed., *Ratification of the Twenty-First Amendment to the Constitution of the United States: State Convention Records and Laws* (Ann Arbor, 1938), 72.
18. Alduino, "The 'Noble Experiment' in Tampa," 214; *Tampa Tribune,* June 4, 1932; *Florida Times Union,* June *4, 1932;* Vose, *Constitutional Change,* 119.

ests, Owen maintained that "she was upholding the principles of her father--the Great Commoner--who ardently supported the referendum right of the people."[19]

In April 1933, in a special session under Franklin D. Roosevelt's prodding, Congress passed a bill that changed "the Volstead Act's standard of 'intoxicating' to 3.2 percent alcohol."[20] As it happened, Congress had inadvertently ushered in the second stage of the repeal movement in Florida, and prompted the wet and dry camps to vie for the most advantageous positions from which to influence the state's liquor policy. With the onset of this phase, four legislators from the lower house, R. K. Lewis, Ervin Bass, Frank J. Booth, and A. O. Kanner, combined forces and introduced an important taxation bill premised on the legalization of 3.2 percent beer. The measure proposed a $3.50 tax per barrel of beer and suggested charging $500 for brewery licenses, $100 for wholesale permits, and $15.00 for retail licenses. If passed, the bill's sponsors estimated that it would annually raise over $1,000,000 in tax revenue.[21]

The next day, following a favorable report by the Committee on Prohibition, the house introduced a compromise Beer-Wine Bill. Led by S. Pierre Robineau of Dade County, fourteen representatives launched the revised bill with a proposal that called for the repeal of the state's "bone dry" prohibition amendment and its substitution with local option. Governor David Sholtz endorsed the proposal in his biennial message to the legislature and requested its passage. To weaken the opposition and ease the bill's enactment, Sholtz recommended that all revenue generated by the beer and wine tax should go to schools.[22]

Finding little merit in taxing sin to support public education, the WCTU adamantly opposed the near beer bill. Anticipating the repeal of the Eighteenth Amendment as a major blow to their cause, the WCTU rallied to stop the legalization of near beer in

19. *Daily Democrat*, June 6, 7, 1932.
20. Blocker, *American Temperance Movements*, 128.
21. *Florida Times Union*, April 7, 1933.
22. Ibid, April 9, 1933. Unlike the house, the senate remained unreceptive to the bill. Some upper chamber members argued that the money raised from beer sales should go into a general revenue account instead of going directly to a school fund. See Alduino, "The 'Noble Experiment' in Tampa," 219.

Florida. To stem the wet tide, they pressed for an amendment to the state constitution that they considered requisite before the legislature could pass the beer measure. Realizing the inherent difficulty posed by constitutional reform, the WCTU probably wanted to buy time to muster additional dry opposition. Then, the anti-liquor forces could exert sufficient influence to make certain that the new state constitution proved at least as restrictive of intoxicating spirits as the old. Apparently, the WCTU hoped that victories won in Florida would help offset the losses suffered by the drys nationally.[23]

The WCTU faced a formidable task. Besides countering the appealing notion that a tax on near beer would produce substantial revenue for the state's hard-pressed coffers, the WCTU had to confront economic reality in the shape of national depression. Small wonder the proponents who favored revising the Volstead Act and ultimately repealing the Eighteenth Amendment, "added to their arsenal of arguments, the number of jobs lost by prohibition, the amounts of grain which could be consumed after repeal, [and] the costs of enforcement, which might be used for public relief."[24]

Such arguments fell on receptive ears in Florida. Since the Great Depression had lingered far too long in the Sunshine State, Floridians found the employment opportunities that legalized beer promised to deliver a compelling reason to approve the near beer bill. A *Florida Times Union* report estimated that the opening of the Jacksonville Brewing Company alone would provide employment for seventy additional workers. Also, the distribution and sale of near beer in Florida, accordingly, would create jobs for 6,000 more persons throughout the state. Even those people that the beer industry did not hire stood to gain. While the bill's passage remained pending, the Jacksonville Brewing Company had granted conditional contracts for improvements and supplies valued at $100,000.[25] Theoretically, once the bill passed, the increased investment's multiplied effect guaranteed to provide even more employment opportunity by trickling down to brewing-related businesses.

23. *Florida Times Union,* April 7, 1933.
24. Robert James Maddox, "The War Against Demon Run," *American History Illustrated,* (June 1979), 10-18, 17-18.
25. *Florida Times Union,* April 11, 1933.

For the 85,000 Floridians seeking work in 1933, legalization of near beer made good economic sense.[26]

On May 8, 1933, Sholtz signed five bills that legalized near beer, light wine, and similar beverages. The bills also permitted the manufacture, distribution, sale, and advertising of the same. Hoping to capitalize on legislative reform, Florida newspapers leaped at the opportunity and almost immediately readers throughout the state found "alluring beer advertisements glaring at them from printed pages."[27]

Clearly the newspapers had a pecuniary interest in wet reform. Legalized beer and wine broadened a paper's advertising market by including businesses engaged in manufacturing, wholesaling, and retailing of alcoholic beverages. Because newspaper revenue depends largely on paid advertising, many Florida editors agitated for repeal from its inception.[28] At Florida's ratifying convention in 1933, for instance, one delegate claimed that the convention owed a real debt to "those newspapers of the state and their editors, who long before repeal became popular, fought the good fight against the evils of prohibition." Persuasive editorials by "Mr. Lambright of the *Tampa Tribune* and Mr. Stoneman of the *Miami Herald,"* he asserted, "helped to open the eyes of the people and crystallize the sentiment that gave repeal its tremendous majority in this state." With that in mind, he asked the convention to extend its thanks "to these newspapers for their efforts in this cause." Another delegate claimed: "I am unwilling to let this opportunity pass without paying a tribute to the *Jacksonville Journal* for its constant and consistent fight in the behalf of repeal." The delegates then adopted a motion that extended the convention's warmest appreciation "to the newspapers of this state whose efforts have contributed so much to the success of the repeal movement in Florida."[29]

26. Wayne Flynt, *Duncan Upshaw Fletcher: Dixie's Reluctant Progressive* (Tallahassee, 1971), 184.
27. *Florida Times Union,* May 9, 1933.
28. In fairness, some editors remained firmly opposed to repeal. Lillian C. West of the *Panama City Pilot* equated whiskey with crime. "Overdoses of bad liquor," she claimed, served as the root cause of every homicide that had been committed in Panama City. As she put it, "the repeal movement sprang from aliens and anarchists." See Bernadette K. Loftin, "A Woman Liberated: Lillian C. West, Editor," *Florida Historical Quarterly* 52 (April 1974), 396-405.
29. Brown, *Ratification of the Twenty-First Amendment,* 93-94.

Meanwhile, rumors circulated that drys had planned to test the new law in the state's supreme court. The gossip proved unfounded. After a full day of legal beer, the drys had not yet filed a petition with the court contesting the beer measure.[30] And according to the interpretation of Attorney General Cary D. Landis, a dry county could "in no way" prevent individuals from partaking of near beer or light wine within its boundaries.[31]

Nonetheless, Florida wets could not rest assured. Neither the sales receipts nor the promised additional tax revenue materialized. Apparently, illicit brewers retained customer loyalty and initially managed to stave off the competition offered by licensed breweries. According to one wholesaler, thousands of people accustomed to making their beer continued to do so for two reasons. "[T] hey said it [was] cheaper and that it [had] a bigger kick." Eventually, however, economies of scale set in, legitimate supplies increased, prices dropped, and major brewers garnered the larger portion of the beer trade. Since smaller illicit producers left the market, the tax revenue generated by beer sales began to grow.[32]

Encouraged by the beer bill's success, Florida's anti-prohibitionists then joined in the national crusade to amend the federal constitution and initiated the third stage of the "wet crusade." Governor Sholtz summoned a special election to choose "67 delegates-at-large to a ratification convention" scheduled to meet in the fall of 1933. In October, Florida residents voted two-to-one for an all-wet delegation to represent them in the upcoming convention.[33] The next month, when the meeting convened in Tallahassee, orators clothed their speeches in republican garb. One delegate, "jealous of the blessings of local and personal liberty," exclaimed: "The tragic error we are engaged in correcting . . . came from a misconception of the very essence of the federal principle." Another representative compared the liquor laws to the four Intolerable Acts that helped spawn the American Revolution. "It was not so much the practical enforcement and results of those Acts that made them odious to the point of exciting revolt, for they were . . . evaded as

30. *Florida Times Union*, May 9, 1933.
31. *Biennial Report of the Attorney General*, (1933); Ch. 15884, 1933 Florida Acts.
32. Alduino, "The 'Noble Experiment' in Tampa," 221, 222; *Tampa Tribune*, May 9, 10, 21, 1933.
33. Alduino, "The 'Noble Experiment' in Tampa," 222, 224.

has been our famous Volstead Law; but it was the outrage of having them made and their enforcement attempted by a distant tyranny with no regard to colonial interests or wishes. Such, too has been the Eighteenth Amendment."[34]

Echoing the same republican ethos, Anderson of the VCL bellowed: "As the yoke of British tyranny was cast off them, so now we rid ourselves of the shackles of organized minorities, which have falsely claimed to represent public sentiment. . . . [Our] victory is a tribute . . . to the deep-rooted faith in the American ideals of our Fathers concerning the Constitutional Government of the United States. It is a declaration that the people of the United States disapprove of the Federal transgression of state's rights and that it will oppose and resist that transgression."[35]

With little opposition, all sixty-three delegates then present voted for the repeal of the Eighteenth Amendment making Florida the 33rd state to ratify the Twenty-First, and the prohibition amendment became the first to be repealed.[36]

In the early months of 1934, federal judges began issuing general orders to dispose of any cases pending that involved violations of national prohibition. For the most part, they agreed that the federal courts retained no power to impose judgment in prohibition cases.[37] Yet, in the wake of repeal, one federal judge, A. V. Long, warned Florida moonshiners and bootleggers that they could expect harsh treatment in the district courts. Although he did not say why, Long considered liquor law transgression under repeal more serious than those that had occurred under prohibition. Long then announced that he would treat any cases involving the failure to pay the liquor tax "more severely" than previous infractions against the Volstead Act. Scolding a man who had pleaded guilty to manufacturing moonshine shortly after repeal, Long stated, "there

34. Brown, *Ratification of the Twenty-First Amendment,* 69-71.
35. Ibid.
36. Blocker, *American Temperance Movements, 128.*
37. United States v. Samuel Kilpatrick, Livingston Jarvis, et al., found in United States v. Leo G. Carraway, Box No. 7, U.S. District Court, Northern District of Florida, Tallahassee, July term, 1932, Federal Records Center, East Point, Ga. (hereinafter, FRC). Likewise, in another Florida case, a federal circuit court ruled that the repeal of the Eighteenth Amendment by the Twenty-First, invalidated all convictions for unlawfully transporting intoxicating liquor. Clark v. United States, 69 F.2d 258 (1934).

is no prohibition law any more and it is just as unfair for a man to operate a liquor still and not pay the tax as it is for a man to sell shoes in a licensed business on one side of the street while a man sells shoes across the street in an unlicensed business . . . [such] business must be stopped."[38]

Despite Long's bluster, ratification of the Twenty-First Amendment removed the preponderance of liquor control from federal courts and placed it under the jurisdiction of state and local tribunals. Prohibition, therefore, remained a significant political issue in Florida. Unless intended for medical, scientific, or mechanical purposes, the manufacture, sale, and/or transportation of liquor violated state law. As Attorney General Landis put it, "[R]epeal of the Eighteenth Amendment, had nothing to do with . . . Florida's 'bone dry' prohibition amendment, still in effect."[39]

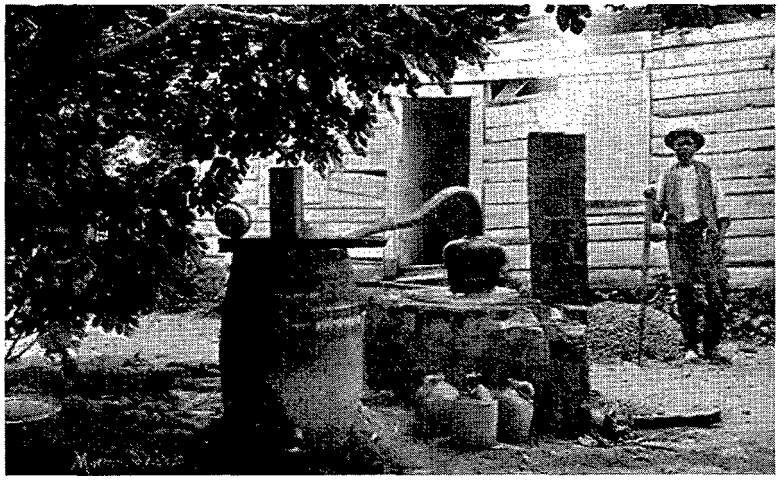
Perhaps accepting Landis's words as a challenge, Florida wets then embarked on the fourth stage of their movement and began agitating for the proposed resolution that would repeal the state's constitutional ban on liquor. As drafted, the bill stipulated that "the status of all territory in the State of Florida . . . whether the sale [of intoxicants] is permitted [would become] . . . the same as it was on December 31, 1918." If passed, this meant that the old local option laws would be revived and the importation, transportation, or manufacturing of ardent spirits would then remain unlawful only in those erstwhile dry counties.[40]

On November 6, 1934, in a record turn-out for an off-year election, Florida voters decided the fate of the state's constitutional

38. *Tallahassee Democrat*, November 9, 1934. Long's tocsin far outdistanced judicial action. In one of the first post-repeal cases instituted in the northern district, the defendants sought the return of their personal property--twenty five sacks containing 245 pints and 179 quarts of various liquors--which federal agents had seized from them on July 12, 1933, for violating the Prohibition Act. The petitioners contended that the repeal of the Eighteenth Amendment had made it impossible to convict them under the indictment as filed. In short, they claimed title to the property and demanded its return. To strengthen their cause and demonstrate their respect for the law, the claimants informed the court that they would pay whatever amount in revenue taxes that the court deemed proper, upon the return of the property. Judge Alexander Akerman complied with their petition and ordered the collector of customs to return the property pending payment of all taxes due. United States v. William G. Shotwell, and Sidney C. Shotwell, Box No. 78, U.S. District Court, Southern District of Florida, Tampa, May term, 1935, FRC.

39. *Tallahassee Democrat*, December 12, 1933.

40. *Biennial Report of the Attorney General* (1933), 313.



A moonshine still near Tallahassee in the 1930s. Photograph courtesy Special Collections Department, University of South Florida Library.

ban on liquor. As it turned out, the wets carried the election by a more than two-to-one margin. In so doing, they passed the liquor issue back to the counties that had held local option referendums concurrent with the statewide repeal ballot. Out of Florida's sixty-seven counties, forty-two rejected local option, twenty-four went dry, and one remained undecided.[41]

When viewed through a lens of liquor litigation, it appears that Florida's wets won a somewhat hollow victory in the battle for repeal. With the liquor issue returned to the state, wets soon discovered, perhaps to their dismay, that provincial government, coupled with diverse popular and strong institutional support, could still restrict alcohol in their jurisdictions. No longer having to contend with issues relating to federalism or similar constitutional concerns, Florida's state and local governments managed to ban liquor in a way seemingly more effective than that which was attained by national prohibition.[42]

41. *Tallahassee Democrat,* November 6, 7, 8, 9, 1934.

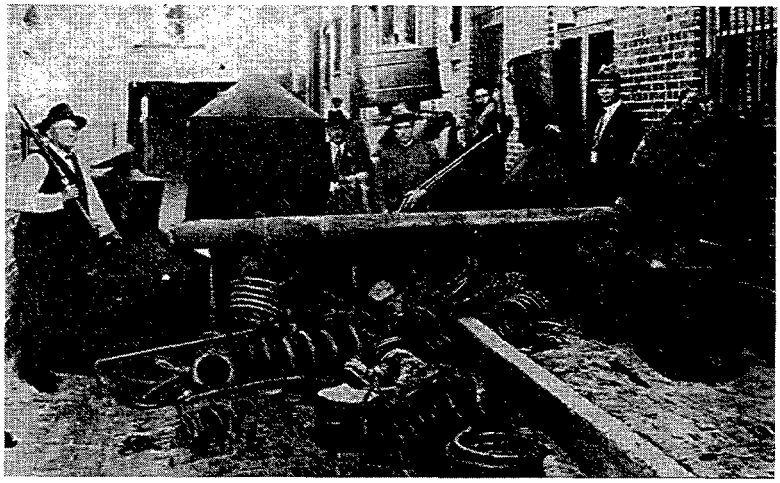
42. For similar analyses, see Clyde Wilson, "The Statist Drug War," *The Free Market* 12 (February 1994), 1, 7; Harry G. Levine and Craig Reinarman, "From Prohibition to Regulation: Lessons from Alcohol Policy for Drug Policy," *Milbank Quarterly* 69 (1992): 461-494.

By 1935, for example, the Florida Supreme Court had reached an apparent consensus concerning the revised liquor laws. Local jurisdictions such as counties and municipalities could exercise prohibitive control over liquor without fear of judicial intervention. In *State ex rel Atlantic Ice & Co. v. Weems* (1935), to further illustrate, the court validated a local community's power to ban alcohol absolutely. This case arose after Alachua County had denied the Atlantic Ice & Co. a license to construct a brewery for making near beer. The controlling statute then in effect, as Landis had noted, permitted sales of near beer statewide, including those counties that had voted dry. By that, the legislature had essentially classified near beer as non-intoxicating. The law seemed clear; neither Alachua nor any other county in the state could prohibit such sales.[43]

Those conditions notwithstanding, the Florida Supreme Court voted five-to-one and upheld Alachua County's refusal to grant the Atlantic Ice & Co. a permit to build the brewery. Justice Whitfield, speaking for the court's majority, wrote: "There is no inherent right in anyone to manufacture alcoholic beverages." Since the Constitution did not prohibit or regulate the manufacture of alcoholic beverages, he insisted "it [was] within the power of the legislature to prohibit or to regulate such manufacture by general or by local laws."[44]

Justice Armstead Brown challenged Whitfield's position. "Why should the Legislature prohibit the manufacture of a beverage which it definitely permits to be sold even in dry counties," Brown asked, "on the manifest ground that it is non-intoxicating?" Or, for that matter, "Why should Jacksonville or Tampa or Miami brewers be permitted to sell 3.2 percent beer in Alachua County, and yet the citizens of Alachua County be prevented from brewing the same kind of beer in their own county?" Put simply: "Why allow the sale, but deny the manufacture of a non-intoxicating beverage in certain counties merely because they have prohibited the sale of intoxicating liquors therein?" To Brown, the sale of near beer to the consumer posed no greater threat to the public than its manufacture. "It would seem that the legislative classification," Brown wrote, "makes a distinction between counties based upon differ-

43. *State ex rel Atlantic Ice & Co. v. Weems,* 106 So. 453 (Fla. 1935).
44. Ibid., 455.



Hillsborough County sheriff's deputies posing at the county jail with distillery equipment seized during a successful raid on an illicit still at Riverview. Reproduced with permission from Hampton Dunn, *Yesterday's Tampa.*

ences in their local laws relating to intoxicating liquors which, as regards 3.2 percent beer, is a distinction without a difference."[45]

Since the controlling statute treated near beer as a non-intoxicant legally marketable anywhere in the state, Brown found the act "arbitrary and unreasonable." It denied "equal protection of the laws to those citizens of the so-called dry counties who desire[d] to manufacture this presumably harmless and non-intoxicating beverage on the same terms which the statute grant[ed] to the citizens of the so-called wet counties which have no local prohibitory laws."[46] Noting a vast difference between regulation and prohibition, Brown apparently wanted to know where to draw a line of demarcation beyond which the courts could say constitutionally, "thus far shalt thou go and no further."[47]

45. Ibid., 455-456.
46. Ibid., 455-456.
47. *Ex parte* Pricha, 70 Fla. 265 (1915). Quote taken from Judge William H. Ellis's dissenting opinion. The answer to this question, apparently depended on where the courts decided to draw that line. That is, "the police power [became] essentially what the courts declared it to be." See Melvin I. Urofsky, "State Courts and Protective Legislation During the Progressive Era: A Reevaluation," *Journal of American History* 72 *(June* 1985), 67, 63-91.

Ironically, since many drys in Florida never grasped that repeal could actually benefit their cause, they continued to clamor for the good old days of prohibition. Indeed, in 1937 at the 54th meeting of the WCTU of Florida, delegate Dr. Ella A. Boole insisted that repeal had failed miserably. "Unemployment has not been eliminated. Many on relief spend their money for liquor while their families go without necessities." Consequently she asserted that "our girls and women are serving as bar maids in saloons of disrepute." She therefore encouraged the WCTU to continue the good fight of temperance and to keep the public's eye focused on the needless toll on human lives caused by the consumption of alcohol. Reminding her audience that "wets did not keep still when prohibition was law," Boole implored her sisters to "buy dry, patronize those who sell dry and if we have to buy where alcohol is sold, to stand by our principles."[48] Deaf to the inherent contradictions in her words, Boole's closing comment suggests that the WCTU would henceforth base its actions more on expediency than on principle. So like the organizations that comprised the repeal movement in Florida, by 1937 the WCTU had too become sundered by a plurality of diverse interests.

48. *Fifty-Fourth Annual Meeting of the Woman's Christian Temperance Union of Florida*, (Bartow, 1937), 14.