



The Rebirth of Brewing and Distilling in the United States in 1933: Government Policy and Industry Structure

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Brewing and distilling were large industries, banished under American prohibition laws, which were reborn with the repeal of Prohibition in 1933. Government policy, however, shaped the structure of those industries. After rejecting government ownership of the distilling industry, Franklin Roosevelt's New Deal used the National Industrial Recovery Act of 1933 to impose a three-tiered distribution system of manufacturing, wholesaling, and retailing for alcoholic beverages, a system that persisted into the twenty-first century. The three-tiered system answered the need to have some control over the marketing of alcoholic beverages (all modern societies exercise such controls) without being overly intrusive. In this paper, I explain the considerations behind the establishment of this three-tiered distribution system.

Just after the stroke of midnight on April 7, 1933, a shiny new beer truck drove in a light rain to the White House in Washington, D.C., where a crowd of eight hundred people cheered the arrival of two cases of beer, one light and one dark. President Franklin D. Roosevelt, who had campaigned the previous year in support of the repeal of Prohibition, apparently did not awaken from his sleep to receive these gifts. However, a Marine guard "happily guzzled" one of the freshly brewed bottles, while six Hawaiians strummed guitars. Later that morning, more beer arrived in Washington for delivery to the White House, including a special 5-foot bottle from Milwaukee. Meanwhile, in New York City an Anheuser Busch beer wagon drawn by a team of six horses pulled up to the Empire State Building where the company ceremoniously gave a case of beer to Al Smith, whose opposition to prohibition was notorious. Brewing industry executives estimated that Americans swilled well over a million gallons of beer that spring day.¹

¹ *New York Times*, 7 April 1933; *Time*, 17 April 1933.

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The excitement over the return of beer was part of a larger optimism about the repeal of Prohibition and the rebirth of two major industries: distilling and brewing. Advocates of repeal waxed rhapsodic over the creation of new jobs, the flow of tax dollars to public treasuries, and new markets for American farmers. Part of the appeal of Prohibition had rested on the proposition that abstinence led to savings, and hence to prosperity, a view that had carried great weight as late as 1930. However, as the onset of the Great Depression darkened the American economy in 1931 and 1932, the prosperity argument was turned on its head to support the repeal of Prohibition. The national Democratic Party stood for repeal in 1932, and part of its promise of a “new deal” was drastic change in the national alcohol laws.²

The optimism extended to hardheaded business executives and investors. “Smart money” was going into the stocks of new and reorganized distilling companies, while the breweries, which were more often privately held than distilleries, announced massive investments. Everyone, public official and private executive, thought that America was thirsty and that Prohibition had been wildly unsuccessful, as even the fictional George Babbitt went to Zenith’s Oberlin Avenue to purchase his supplies from a local bootlegger. Prohibition, in this view, had been the misguided work of “cranks” and “church ladies” whose principal desire was to impose their morality on the public. The public had resisted and now, finally, the stars in the political constellation had aligned for the rebirth of the liquor industries. Congress initiated the Twenty-first Amendment once the Democrats took power, and the states rushed to call special ratification conventions. Of the death of Prohibition, there was no doubt; the only question was which state would have the honor of driving the final nail into its coffin. The promise of renewal seemed bright indeed.

The optimism surrounding the repeal of Prohibition, however, soon dashed up against two realities, both of which restrained the rebirth of the liquor industries. The first reality was that Americans were not as thirsty for liquor as both investors and government officials thought. Simply put, Prohibition had “worked”; the dry laws, however imperfectly enforced or obeyed, had substantially reduced the consumption of alcoholic beverages. This marketing reality meant that investors had to win back consumers if they were to realize their profit ambitions and that government officials would have to be complicit in those efforts if they were to reap the bonanza of higher employment and tax revenues that the repeal movement had promised. Both ambitious industrialists and revenue-hungry government officials were very slow to recognize this situation, however.³

² David Kyvig, *Repealing National Prohibition* (Chicago, 1979) is the standard work on the repeal of the Eighteenth Amendment.

³ Those in the field of alcohol studies have known about the reduction of consumption under Prohibition for many years, but this knowledge has been slow to penetrate consciousness outside specialized historical circles. See my essay

The second reality for leaders in the liquor industries was that government officials, however sympathetic and cooperative, were determined to regulate the industries' marketing behaviors. President Roosevelt shared the conviction held by many political leaders, and even some leaders in the liquor industries, that the prohibition movement remained a powerful force in American life, still capable of much mischief. In their view, the federal government must construct a framework for fostering public-private partnerships with the brewing and distilling industries, a framework that would ensure reformed marketing structures. The big problem that fueled the flames for prohibition was what Franklin Roosevelt and others called "the old-time saloon," and government and industry must work together to prevent its reappearance.⁴ The difficulty with the old marketing structure, in their eyes, was that saloons were too ubiquitous and too often associated with various criminal or otherwise unseemly activities.⁵ The structure of control, moreover, was in this view also a matter of federal-state cooperation, with the states free to set their

"American Dream," *New Scientist* (27 Nov. 1999; End of the Millennium Special Edition *Alcohol: The Inside Story*): 94-95.

⁴ Roosevelt had restated his position very clearly in the 1932 presidential campaign. *New York Times*, 6 Feb. 1932. Roosevelt's papers in the Franklin D. Roosevelt Library indicate that he was personally involved in alcohol policy after his inauguration. His statement proclaiming the enactment of the Twenty-first Amendment and the end of Prohibition called for, among other things, policies that would support an orderly transition to legal businesses. Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, 13 vols. (New York, 1938-50), 2: 511-14.

The informed public agreed with Roosevelt in his admonition against "the old-time saloon." When John D. Rockefeller, Jr., commissioned a report for alcohol control policies in anticipation of repeal, its authors explicitly condemned "tied houses." Vertical integration between distiller or brewer and retailers was "responsible for the bad name of the saloon" with "all the vices of absentee ownership" where the supplier cared little for what happened in the community. They also observed that "almost every beer and general liquor law" enacted in 1933 at the state level included provisions to prevent "tied houses." The recommendations were released to the press in early Oct. 1933 in time to influence federal policy; see Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control* (New York, 1933), 43-44.

⁵ The author of a recent study of the old saloons emphasizes that they were agencies that helped men accommodate to the harsh realities of urban and industrial life, a sort of "working man's club." These saloons were dying institutions even before Prohibition, as other forms of amusement started to take their place; see Madelon Powers, *Faces Along the Bar: Law and Order in the Workingman's Saloon, 1870-1920* (Chicago, 1998). Whatever the case, beer manufacturers owned most pre-Prohibition saloons, and competition among them led to their proliferation. With the resulting very small pool of customers per saloon, retailers sometimes turned to illicit sources of income.

own policies, which, of course, could include a continuation of prohibition.⁶

The brewers faced these realities before the distillers did, because Congress authorized the manufacture and sale of low-alcohol beer in April 1933. Dispute soon wracked the brewing industry. Prohibition had hastened the long-term trend of consolidation in brewing, and only about 160 firms reappeared in 1933. Some were established companies, like Anheuser Busch of St. Louis or Pabst of Milwaukee, that had distributed their products to national and even international markets. Other firms were local or regional breweries, some of which arose during Prohibition to manufacture “near beer” that fell under the low alcohol tolerance of the enforcement statutes. All had struggled to survive during Prohibition, either with new products like “near beer” or with old products like refrigeration and yeast services. Before Prohibition there had been a great deal of rivalry among the local, regional, and national “shipping” breweries, rivalries that had led to bitter disagreements over regulation.⁷

The differences among brewers, moreover, were of first importance in 1933, as the distilling industry did not become legal until the formal repeal of Prohibition on December 5. The Cullen Bill had authorized brewing in April 1933 by changing provisions in the Prohibition enforcement statute. During the intervening eight months, brewers had the legal alcoholic beverage market almost to themselves, shared only with the small quantities of wine that Americans drank. The brewers attempted a scheme of self-regulation under the leadership of their trade association, the U.S.

⁶ The Cullen Bill placed brewing oversight in the hands of the Bureau of Industrial Alcohol, and taxation matters in the Bureau of Internal Revenue, both part of the Treasury Department. Treasury officials had a long history of involvement with the liquor industries through taxation, and for most of the Prohibition period enforcement of the Volstead Act resided in Treasury.

⁷ I am greatly indebted to Professor Lloyd Sponholtz of the University of Kansas, whose unpublished paper, “Brewers and the NIRA: An Experiment in Self-Regulation,” is based on extensive reading in the trade press, as well as in primary materials in the National Archives of the United States. Part of the problem was ethnic: the brewing firms were all rooted in the German-American experience. This background led to much self-delusion during the onslaught of the prohibition reform movement. In the brewers’ culture, beer was a benign beverage, “liquid bread” that did not lead to intoxication; see Robert G. Laforge, “Misplaced Priorities: A History of Federal Alcohol Regulation and Public Health Policy” (Ph.D. diss., Johns Hopkins University, 1987), 178-79. In this view distilled spirits, not beer, caused the problems associated with alcohol use. Although brewing and distilling interests could act in concert at the local level to repeal dry laws, they never agreed on a national strategy to fight the prohibitionists. Some brewers even thought that Prohibition would not fall on them, but only on the distillers. These old attitudes had not disappeared in 1933; after repeal the two industries remained bitter commercial rivals for the business of drinkers.

Brewers' Association (USBA), and the National Industrial Recovery Act provisions for "codes of fair competition." The USBA, which represented just over 60 percent of the industry's capacity, tended to voice the interests of the larger firms. Some of those firms had established "tied houses," as the vertical integration of manufacturing and retailing was called in brewing prior to Prohibition, and with the Cullen Bill they sometimes reopened old relationships in real estate, financing, advertising, and the like. Nevertheless, clearly the industry could not allow a return to the old conditions: the government would not stand for it, and many brewers recognized its political folly.

Therefore, under USBA leadership the brewers drafted a code, which proposed a three-tiered distribution system of manufacturer, wholesaler, and retailer, required for everyone in the industry. Structured to prevent the return of the "old-time saloon," the system forbade "tied houses," with one caveat: arrangements in place prior to September 1, 1933 would be allowed to continue.

Some smaller brewers immediately cried foul. They tended to belong to the American Brewers' Association (ABA), if they were members of any trade association. They voiced their views to the New Dealers who were ultimately to approve the code for the industry.⁸ The smaller brewers feared domination by the large firms, who seemed to be placing themselves at a competitive advantage with the September 1 rule, which would make it more difficult for a small firm to gain any significant foothold in the beer market.

When this dispute emerged in the late summer, the beer market also proved desultory. The high optimism leading up to the passage of the Cullen Bill, and the publicity stunts after its passage, had faded in the face of dampened consumer spending amid the Great Depression. Beer marketers were also beginning to learn that Americans were not as thirsty for beer as they had assumed. Although the remaining beer market was substantial, it was smaller than industry leaders and government officials had expected.⁹ In the face of this situation, the brewers continued

⁸ In this case, it was Secretary of Agriculture Henry A. Wallace. The code for the brewing and distilling industries fell under the auspices of the Agricultural Adjustment Administration, which Wallace headed. Wallace had supported Prohibition and was clear in his demand that former saloon conditions not reappear.

⁹ In fact, the per capita alcohol consumption of the drinking-age population did not return to its pre-Prohibition levels until the early 1970s. Clearly, the market problems were not solely a result of the Depression; during the depression of the 1890s, the nation's previous experience with a sustained downturn, beer consumption rose.

operating in self-delusion. The problem was elsewhere: taxes were too high, or bootleggers were still slaking demand.¹⁰

The brewers were simply unable to agree on a code, and eventually the government imposed one on them. Noting the lack of a code in brewing, and observing the likelihood of Prohibition's repeal, Roosevelt expressed his desire for the formation of a special interdepartmental committee to formulate alcohol policy.¹¹ The President's Special Committee, as the body was known, worked quickly to draft codes of fair competition.¹² Its efforts with regard to the distilling industry set the basic shape of federal policy and, eventually, important structural aspects of all alcoholic beverage businesses. By the end of November, furthermore, as the repeal surge swept the nation and national Prohibition's death seemed imminent, Roosevelt decided to create the Federal Alcohol Control Administration (FACA) with an executive order, using authority granted in the National Industrial Recovery Act of 1933. He chose "an old friend," Joseph Choate, a Manhattan attorney active in the repeal movement, to head the new agency. The press quickly labeled Choate "liquor czar." The FACA also had a controlling board that included Harris E. Willingham of the Agricultural Adjustment Administration (AAA), and high officials in the departments of State, Justice, Commerce, and Treasury.¹³

¹⁰ They also worried that an entire generation of potential customers who had come of age under Prohibition had not learned the taste of beer.

¹¹ This committee resulted from an informal meeting with George N. Peek, head of the Agricultural Adjustment Administration. The codes of fair competition that eventually resulted from these processes fell under the AAA, because the liquor industries were consumers of farm products. The President's Special Committee on the Control of Alcohol and Alcoholic Beverages included Harris E. Willingham of the Department of Agriculture, Frank M. Parish of the Department of Justice, John Wiley of the Department of State, Willard L. Thorp of the Department of Commerce, with Herman Oliphant of the Department of Treasury as chairman and Edward S. Greenbaum of Treasury as acting chairman. Harris E. Willingham, Chief, Beverages Section, Agricultural Adjustment Administration, "Report to the Administrator for the Period from October 9 to Dec. 31, 1933," Records of the Agricultural Marketing Service, Reference File of John E. Dalton, Chairman, Alcoholic Beverages Committee of the Agricultural Adjustment Administration, 1933-35, Record Group 136, National Archives of the United States. Repeal of Prohibition was occurring more quickly than most observers had expected; officials earlier in 1933 thought that repeal would not occur until sometime in 1934. The speed of the repeal surge meant that formulating alcohol policy was all the more urgent.

¹² Staff members in the Department of Agriculture did the actual drafting. Harris Willingham was the central figure. Henry A. Wallace to Roosevelt, 22 Jan. 1935, Office File 796, FDR library.

¹³ *New York Times*, 30 Nov. 1933. The Executive Order was available at <http://www.uhuh.com/laws/donncoll/eo/1933/EO6474.TXT> on 1 May 2005. Willingham was "primarily responsible" for writing the codes of fair competition for the distilling industry.

Prior to these organizational decisions, however, the Roosevelt administration considered another alternative for the reborn liquor industries: public ownership. Officials in the Department of Agriculture, led by Jerome Frank, proposed a “Federal Alcohol Corporation” governed by the Secretaries of State, Commerce, Treasury, and Agriculture. The corporation would cover all distilled spirits, fortified wines and beers, imported wines, and industrial alcohol, but not domestically produced wine or unfortified beer. It would actually own distilleries and handle all aspects of those liquor trades, and the industrial alcohol business, except that existing firms could continue under license from the federal corporation. The advantages seemed manifold, including the possible introduction of alcohol blended with gasoline as a motor fuel, interest in which continued in the face of mounting grain surpluses. Roosevelt rejected the idea in late November, however; the rebirth of all liquor industries in the United States would occur under private ownership.¹⁴

The rebirth would also occur under codes of fair competition, codes that the government imposed on the industries. When the federal government dealt with the code of fair competition for the distilling industry, it established a pattern for controlling the entire field of alcoholic beverages. Although the distillers had formulated a code themselves, the President’s Special Committee on Alcohol wrote its own code. The final code was a result of negotiation, but government officials were the key figures in its formulation. Perhaps the most important aspect of the code was the establishment of the Federal Alcohol Control Administration. The FACA would use the services of the Agricultural Adjustment Administration, the Bureau of Internal Revenue, and the Food and Drug Administration, among other agencies. This feature made it unlike other codes of fair competition constructed in 1933; like those other codes, however, it did provide for an industry-appointed Code Authority to administer the code provisions that did not fall under the purview of the FACA. Although there was to be no federal ownership of distilleries and wholesalers, the director of the FACA would both issue permits authorizing distilleries and control future expansion of production capacity.¹⁵ Thus distilling, in this scheme, would involve a public-private partnership, with the government exercising ultimate authority over basic production investments. Alcohol, clearly, was not to be treated with the

¹⁴ “Proposed Federal Alcohol Corporation,” 20 Nov. 1933, Office File 796, FDR Library. For further discussion of public ownership considerations, see Pamela E. Pennock and K. Austin Kerr, “In the Shadow of Prohibition: American Domestic Alcohol Policy Since 1933,” *Business History* 47 (July 2005): 383-400.

¹⁵ George N. Peek to Henry A. Wallace, 25 Nov. 1933, *Code of Fair Competition for the Distilled Spirits Industry* (Washington D.C., 1935), 18-19. One reason for the permit system was to keep “racketeers” and other criminal elements out of the distilling business.

same New Deal policies as those of other businesses under the National Industrial Recovery Act.

The distilling industry code also established a three-tiered system of manufacturers, wholesalers, and retailers with strict limitations to ensure separation of the three functions. Manufacturers could not provide goods for domestic sale on consignment (foreign consignment sales were allowed, as New Deal officials sought to expand American exports as well as to use the domestic American alcohol market as a bargaining chip in international economic negotiations) or compensate wholesalers or retailers for advertising costs. In other words, a domestic distributor had to take title to the product upon receiving it. There was to be no return of what Roosevelt and other leaders termed the “old-time saloon”; distillers could not hold any license or real estate interests in retailers who sold spirits for consumption on their premises.¹⁶

The distillers did not object publicly to these provisions, but the brewers, once they saw the pattern set, were another matter. In March 1933, anticipating the quick legalization of beer, the editors of *Western Brewer* scoffed at shibboleths about the “old-time saloon” and picked apart any efforts to define that institution. The faults that had led to Prohibition, they convinced themselves, were the result either of actions of the spirits industry or of the behavior of customers, not a result of the vertical integration of marketing in their industry. When they proposed their own regulations, the editors suggested all marketing controls rest with the state governments, which might best require retailers to have comfortable chairs and tables for the leisurely consumption of their “non-intoxicating beverage.”¹⁷ Late in December, brewing industry leaders and the editors of *Brewery Age* bitterly objected when federal officials rejected the industry’s own code in favor of placing the brewing industry under the FACA. Brewing and distilling, in their eyes, were separate industries and commercial rivals that should not be the subject of independent oversight. After all, unlike spirits, they did not consider beer intoxicating.¹⁸

George Peek, as head of the Agricultural Adjustment Administration, explained the genesis of the final code for brewing. They had not followed all of the usual procedures in adopting the brewers’ code in the interests of having a code in place when Prohibition was repealed. The final code was a compromise between the administration’s code and the brewers’ code. A central difference was that the brewers, like the distillers, would operate

¹⁶ *Code of Fair Competition for the Distilled Spirits Industry* (Washington, D.C., 1935), Article VII.

¹⁷ “How Should Beer Be Regulated,” *Western Brewer* 69 (March 1933): 22-24; “Avoid the Evils of the Old Time Saloon,” *ibid.*, 27-28.

¹⁸ Press Release, 28 Nov. 1933, Brewers Code File, Records Relating to Codes of Fair Competition, Records of the Office of the Solicitor, Department of Agriculture, Record Group 16, National Archives.

under the supervision of the FACA. The code's oversight committee was to have representatives of the USBA and the ABA, but brewers who were not members of either association were to elect a majority. Regional bodies, a feature much desired by an industry fractured between local, regional, and national producers, would decide most disputes.

Two features stood out in this code. First, unlike the controls over distilling, there was to be no restriction of entry into the brewing business. Clearly all parties concerned thought that the business would expand; there was no need to restrict the volume of production. In this sense, government policy favored brewers over distillers. Second, the code governed distribution in anticipation of a separate code for wholesaling. Distributors had to follow this code in the meantime.

The code was strict in its control over brewer marketing practices. Following the provisions of the earlier distilling code, the code forbade brewery ownership of retail outlets and shipping products on consignment.¹⁹ With regard to retail sales, brewers were forbidden to own, "directly or indirectly," any license to sell products where they were consumed. Any existing licenses would be honored but could not be renewed. The manufacturers could not "furnish, give, or lend any money or other thing of value, directly or indirectly" to any retailer. The brewers could not furnish equipment in any fashion and there were strict limits on signs. Brewers could not require a retailer to sell only their products and could not own real estate at the point of retail sale.²⁰

A separate code for liquor wholesaling quickly followed. Because it immediately followed Prohibition's repeal, the code did not include the usual labor provisions. Unlike the brewing and distilling codes, the wholesale code emerged without a private trade association suggesting any provisions.²¹ It also separated the wholesaling of beer and of spirits. The President's Committee once again made clear its demand for the establishment of a three-tiered distribution system. Like the manufacturers, the distributors were not to own or control any retail outlets where there was consumption of any form of liquor on the premises. Gone was the business of the rectifiers, who before Prohibition had purchased spirits in bulk before blending and packaging them. The wholesale code

¹⁹ George N. Peek to Franklin D. Roosevelt, 4 Dec. 1933, Federal Alcohol Control Administration, *Code of Fair Competition for the Brewing Industry* (Washington, D.C., 1935), appendix A, 15-17.

²⁰ *Code of Fair Competition for the Brewing Industry*, Article IV, 3-6.

²¹ In transmitting the distilling and brewing codes for approval, Peek had included comments about industry input. There were no such comments in this case. George N. Peek to Henry A. Wallace, 8 Dec. 1933, *Code of Fair Competition for the Alcoholic Beverage Wholesale Industry* (Washington, D.C., 1935), 18. Although there was a trade association for wholesalers and rectifiers (businesses that blended and bottled whiskies) before Prohibition, it may not have resurfaced to participate in the 1933 negotiations.

forbade any purchase in bulk outside of bottles and separated the distribution of beer and spirits with different provisions. Wholesalers dealing in spirits and those dealing in beer were to form their own code authority, but that code authority would have separate committees for each type of product.²²

Thus, the decisions of federal officials in the immediate aftermath of Prohibition decided the structure of two important industries, distilling and brewing.²³ Although those decisions were somewhat controversial among the business executives concerned, they also enjoyed considerable support. They reflected an understanding of the motives and practices that had fueled the drive for Prohibition, the vertical integration of manufacturing and retailing in the brewing industry. Before Prohibition, the saloon had proliferated—largely because of competition among brewers—and become a social sore in the eyes of many Americans. Those brewers who recognized the problem before Prohibition agreed with the general policy of creating a three-tiered distribution system of manufacturers, wholesalers, and retailers.²⁴

The three-tiered structure proved to be a lasting one. Many states also adopted new liquor policies during the immediate aftermath of Prohibition that further enshrined the three-tiered structure. It has lasted into the twenty-first century in federal law. Manufacturers of liquor may not participate in either the wholesaling or the retailing of alcoholic beverages in the United States.

²² *Code of Fair Competition for the Alcoholic Beverage Wholesale Industry*.

²³ When Congress passed the District of Columbia Alcoholic Beverage Control Act on 24 Jan. 1934, it explicitly required a three-tiered distribution system. Gilman G. Udell, *Liquor Laws* (Washington, D.C., 1978), 105-6.

²⁴ K. Austin Kerr, "The American Brewing Industry, 1865-1920," in *The Dynamics of the International Brewing Industry Since 1800*, ed. Richard Wilson and Terry Gourvish (London, 1998), 176-92.