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The More Things Change, the More They  
Stay the Same: A Business Review of the  
Sherman Antitrust Act, the Eighteenth, and  
Twenty-First Amendments

Heather Briemann Hardin

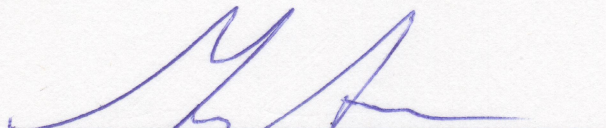
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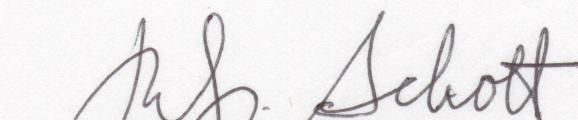
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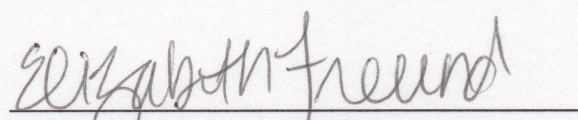
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Title: The More Things Change, the More They Stay the Same: A Business Review of the Sherman Antitrust Act, the Eighteenth, and Twenty-First Amendments

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Honors Thesis

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## I. Introduction

Ben Franklin stated, "Being ignorant is not so much a shame, as being unwilling to learn" (Ravitch, 2000, p.12).

Learning is a critical component for success, and history provides us with an immeasurable source of knowledge, experience and wisdom to draw from. Despite the fact that things will never be exactly as they were ever again, Twain has been quoted as saying that, essentially there are echoes of the past in present day events and practices. These echoes serve as signposts in helping us examine and understand the relationships that evolved and, ultimately what it takes to make an impact on society and in the world in general. It is essential to study the past to better understand the present (situation) and be better prepared, equipped and ready for the future.

Researching and recreating historical events to obtain knowledge can be applied to benefit not only the business world, but also society as a whole. Business, government and society can benefit from historical research and study. The ability to understand the implications of events, and the changing climate of perceptions and values/ideals can allow these actors to potentially influence the changes as well as anticipate and more readily adapt. In sum, historical analyses may provide us with an opportunity and the necessary information to develop models and theories.

In this paper, I am going to explore a number of topics and issues surrounding the passage of the Sherman Antitrust Act, the Eighteenth Amendment along with the Volstead Act, and the Twenty-First Amendment, which repealed the Eighteenth Amendment. Through the examination of key events, actors and other factors leading up to the passage of three laws and/or pieces of legislation related to business I hope to have a better understanding of

society's tolerance of business activities. I will study the people, places and events surrounding each of these laws to determine how and why they were passed. What events contributed to the passage of each? What affect did the passage have? How might this knowledge be useful in anticipating future changes?

By looking at different components and perspectives surrounding each policy, based on the historical record, I will examine the goals and objectives behind them. Specifically, my analysis will enable me to explore questions such as, what was the purpose of the action? Why was action taken? Who and what was most effective in shaping the action and outcomes? I specifically want to look at the arguments for and against, as well as the motives for each position. I want to discern whose interest obtained priority. Were all the actors accurately informed about the issue? These are just some of the many questions that I plan to address.

The purpose of this research is not to predict the future. It is not reasonable to expect to know every detail or exactly how things will change in the future; the past will not repeat itself in the same way. These are lessons we learn through our understanding of systems theory and contingency theory.

Systems theory helps us understand the interrelated and interdependent nature of the organizational environment. In the social sciences this is depicted in the exchanges that occur within our environment, such as people, capital and energy. This is relevant to this study because it helps us understand the connections, influence, and impact that society has with the political, economic, and legal environment. It is the interconnectedness of actors and institutions that makes this knowledge significant and applicable.

Contingency theory is more relevant in explaining how the various actors adapted their approaches to their environment in order to accomplish their goals. It is “the idea that the organizational structures and control systems managers choose depend on the characteristics of the external environment on which the organization operates” (Jones, 2008, p. 741). This is pertinent because it shows how people (as individuals as well as in organizational context) evaluate what is going on in their surroundings. This analysis and understanding can then be factored into their decision making process.

The examination of controversial legislation like the prohibition and anti-trust policies will allow me to explore the relationship(s) between business, government and society in a more practical, applied fashion than traditional textbooks and lectures would allow. A liberal arts education reinforces the significance of knowledge, and teaching individuals how to think. Specifically, this approach encourages us to think holistically and to explore outcomes in terms of a bigger picture of events, processes and inputs. In this research, I do not want to simply study particular laws and how they developed. I want to understand everything around the policies, and how everything is connected.

Humans are always striving to simplify and comprehend the world and world events. As a result we construct theories and models to deal with the seemingly unexplainable. Unfortunately, models and theories are just that, and therefore not perfect; although, like history, they do assist us in our understanding and coping. In an effort to better understand the world I will use this study to develop a model to help us with our understanding.

To accomplish this task, I have outlined the goals of the research and the focus on three specific laws. In the following section, I will explain my methodology, how I completed the research. The remaining sections will thoroughly describe each policy and the

factors surrounding its passage and present an analysis of the data. Then, I will discuss the findings, compare and contrast, and draw connections that can be used for a model. Finally, I will explain the conclusions discovered through my research.

## II. Methodology

As a qualitative research project, the majority of the research is based on historical data and records. I will perform content analysis of the data compiled. I am doing archival analysis of historical records that have been written about the events leading up to the passage and repeal of these laws. Much of the data was researched at the library through the use of encyclopedias, and other reference materials such as; dictionaries, textbooks, books, online journals, and Internet sources.

Through my research of the time period that each piece of legislation took place in I am able to analyze key actors, events and other factors that contributed to the passage of the law. From those records I will come up with a coding system or a system that pulls out the key concepts and ideas that are beneficial to this study. With this information I will develop a model of important factors that have been most influential and effective in the past, to better understand the present and prepare for the future.

Ultimately the way people view an issue dictates how it is handled. I want to look at the components to determine how society perceives the matters that affect them. The ideas around the general business environment can be used to understand the factors regarding the interaction that occurs between business and society, and then how government can impact that relationship. A big component of this is the role of sociocultural forces.

“Sociocultural forces are pressures emanating from the social structure of a country or society or from the national culture” (Jones, 2008, p. 223). This encompasses many things



such as: What issues are important; why they are important; what were the catalysts that brought them to action; what plan of action did they take to resolve the issue? Demographics can dictate and influence both perceptions and the sociocultural forces. Demographic forces are changes in attitudes toward the characteristics of a population, such as age, gender, ethnic origin, and/or social class (Jones, 2008, p. 224). There are a number of factors that influenced the changes in legislation that originated from social concerns and public opinion. Therefore, I have to examine where, why and how the change was initiated.

By focusing on the “BGS” environment I am referencing the business, government and society relationship. When referring to the government I am indicating the regulatory agencies and officials that may have influenced the various policies. This includes congress, the president, and to some degree the law enforcement officers. When discussing business, I mean organizations, corporations that provide some product or service in an effort to make a profit. This can be the actual interest of the companies, or the men who owned them, such as the U.S. robber barons. When mentioning society, I mean the individual citizens who are not already acting in the interest of business or government. It refers to the masses, overall populations, as well as those who may associate themselves with an organization attempting to speak up for a portion of society. This includes women’s movements, religious organizations or even neighborhood locales. These organizations are just a way for members of society to come together behind a unifying message to voice their feelings. To organize my material there are a number of criteria that are important when trying to understand BGS. These criteria are presented in Table 1. All three of these dynamics were, and continue to be vital in the passage of law(s) in this country.

TABLE 1  
ORGANIZATION OF BGS INFORMATION

Business (B)	Government (G)	Society (S)
Actors <ul style="list-style-type: none"> <li>• Industry</li> <li>• Owners</li> <li>• Representatives</li> </ul>	Actors <ul style="list-style-type: none"> <li>• Politicians</li> <li>• Judges</li> <li>• Congress</li> <li>• Law enforcement</li> </ul>	Actors <ul style="list-style-type: none"> <li>• Activists</li> <li>• Organizations and movements</li> <li>• Population segments</li> </ul>
Practices (abuses)	Federalism	Societal Concerns
Regulations	Interstate commerce	<ul style="list-style-type: none"> <li>• Values</li> <li>• Beliefs</li> <li>• Problems</li> </ul>
Market/economy	Regulations/precedence	Demographics
		<ul style="list-style-type: none"> <li>• Population shifts</li> </ul>

All three pieces of legislation selected, Sherman Antitrust Act, the Eighteenth Amendment, and its repeal with the Twenty-First Amendment were somewhat controversial. They were controversial because they were issues that the public voiced a very strong opinion (and there were multiple opinions), the legislation greatly impacted numerous facets of the country and the government had to balance it all. There are a number of opposing opinions and perspectives for each subject that I have to analyze. Through the uses of various sources I will look for changes, motivating factors and consistencies in the different accounts to understand the overall atmosphere.

It is important to investigate as many different positions and understand them thoroughly. I plan to use tables to organize the data and look for patterns. A challenge to this type of research is ensuring that the information collected is authentic and accurate. When

going back over one hundred years it is difficult to find primary sources. Therefore, I have to not only authenticate the source, but also consider if the writer/creator was competent, honest and unbiased (Research Design in Occupational Education, 1997). To accomplish this I will examine the consistencies in the reviewed records. This will assist me in determining the causal conditions and the context, including properties that pertain to the specific law or legislation as well as conditions that enabled the passage or repeal of these acts to occur.

This study has a number of limitations. First, the material that I have sampled has been restricted to resources available through Albright College campus and my own online searches. It was not a comprehensive assessment and review of all the material available on the subjects. I know there are more resources that could have been utilized, both academic as well as personal records and memoirs. I was also constrained by time in completing this project. Second, there is not a feasible way to know and thoroughly analyze and understand every single factor that contributed to or potentially influenced the course of history as it relates to these laws and acts. Additionally, there are overlapping factors, which also influence each other.

In the end, my goal is to develop a model that may have predictive capability. To do this "...We have to challenge our assumptions, delve beneath our experience, and look beyond the literature if we are to uncover phenomena and arrive at new theoretical formulations" (Strauss, A. & Corbin, J., 1990, p.76). I plan to learn everything I can, but acknowledge that further research will be required.

### III. American Anti-trust - Sherman Anti-trust Act

The purpose of government is "to protect the rights that governments instituted. A proper government's responsibility is to protect the rights of the individual, by banning the

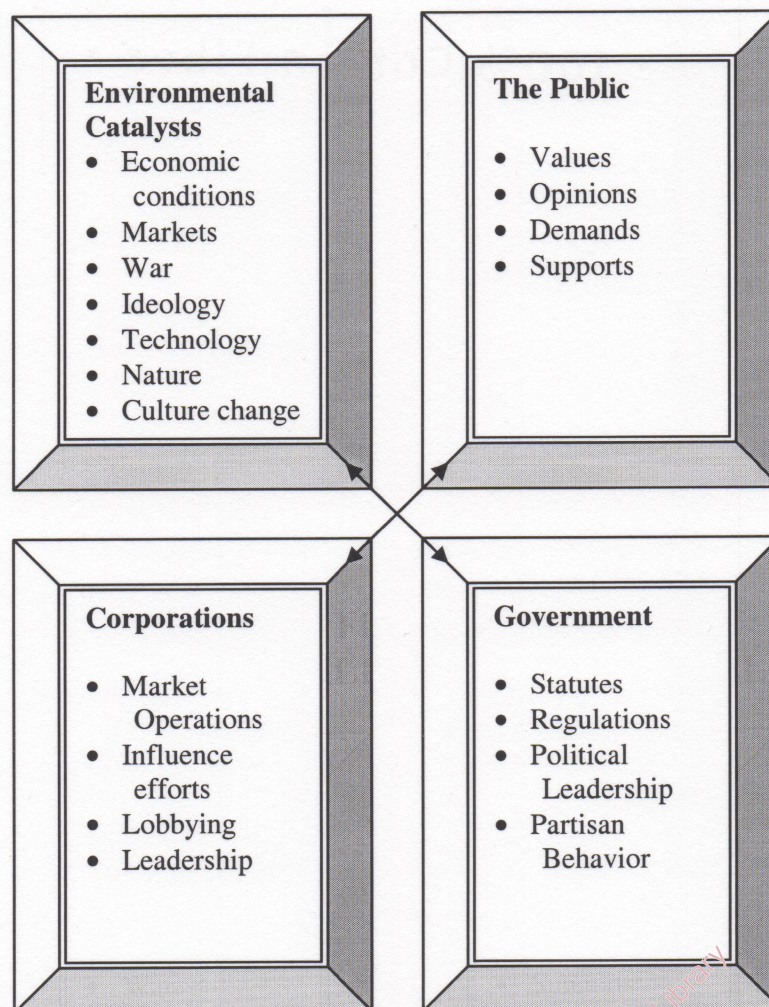
initiation of force, thus making all relations between men peaceful, i.e. free from the threat of violence and fraud” (Capitalism.org, 2004). The role of government is to maintain security and order for its people. “Capitalism is a social system based on the principle of individual rights” (Capitalism.org, 2004). The United States is a capitalist society, and a democratic republic, where the people have power to influence the government.

The United States of America is a society in which people believe very strongly in their individual freedoms and the right to influence the government. What is important to the people impacts the decision making of those with the authority and control. Government has a very delicate and complex relationship with the rest of society and business.

The Countervailing Forces Model “depicts the BGS relationship as a flow of interactions among the major elements of society. It suggests complex exchanges of influence among them, attributing dominance to none” (Steiner, G.A., & Steiner, J.F., 2005, p. 15). The strength of each waxes and wanes depending on a number of other factors, but they all shape and affect one another. For government it is important to rule, and govern, but not at the cost of freedom(s). An overview of potential interactions can be seen in Figure 1.

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**Figure 1**  
**COUNTER-VAILING FORCES MODEL**



Source: Steiner, G.A., & Steiner, J.F., 2005, p. 15

Federal antitrust laws impact the control and freedoms of state governments, business organizations and individual citizens. “Antitrust laws aim to ensure the existence of competitive markets by sanctioning producers and suppliers of products and services when their conduct departs from that competitive ideal” (Forbath, W.E., 2003, v.1 p. 212). ‘Ideal’ is ambiguous and its meaning is left up to individuals’ discretion. The intention of these laws

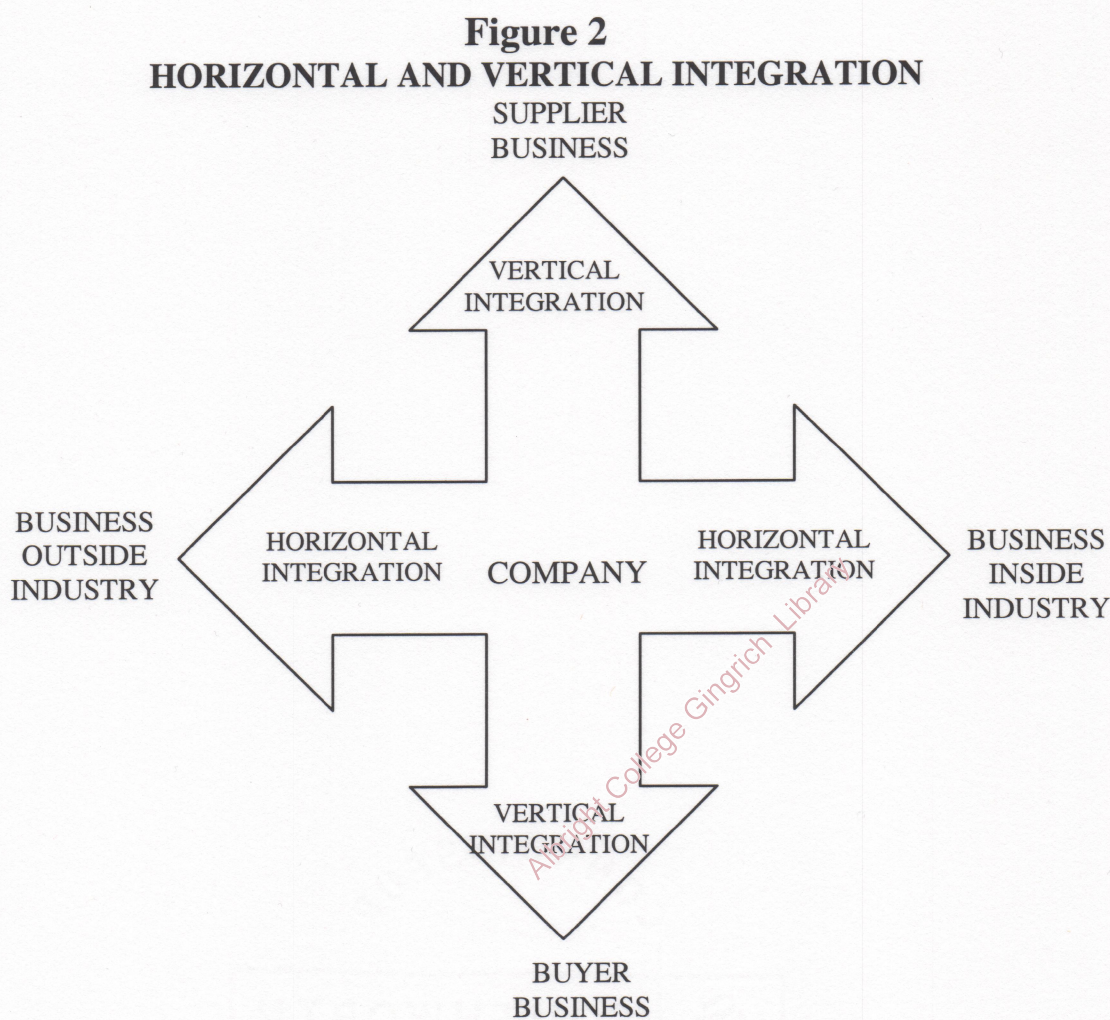
is to keep the market thriving, for businesses to be aggressive, but reasonable and just in a free market.

Antitrust laws are controversial because it is difficult to be effective while also trying to maintain this balance of authority and control with freedom. The design of the law is to be competitive but fair, while also protecting the interests of everyone involved. This is challenging because what is best for one, may not be what is best for all. Over time, business, products and services have developed (rapidly), in order to keep up with the times, laws and legislation have to evolve and progress too.

The Sherman Antitrust Act marks the beginning of federal antitrust legislation in the United States. Although, it is not the first time that it was an issue that American citizens felt was important. There may not have been a federal mandate, but local and state regulations did exist. “Long before the Sherman Act, Americans harbored a deep hostility toward monopolies. Several of the first state constitutions, written in the 1770s and 1780s, condemned monopolies as violations of the cherished principles of equal rights and equality before the law. Some of the founding generation, including Thomas Jefferson, sought to include a prohibition on monopolies in the federal Bill of Rights” (Forbath, W.E., 2003, v. 1 p. 212). Protection from unfair practices, limiting power and abuses has always been a goal of this country.

How to, or what is the most effective means of protecting citizens is contingent upon the current environment. “Before the passage of the Sherman Act in 1890, the states had responded to the Trusts with their own antitrust efforts, inscribing antimonopoly provisions in their state constitutions and enacting antitrust legislation of their own” (Forbath, W.E., 2003, p. 213). As businesses continued to grow, technology, strategy, and practices changed

requiring new techniques to temper the power and influence companies had over the economy and markets. For example, with the development of trains and the implementation of railroad systems, which traveled across state borders, came new obstacles for law enforcement and regulation. Not only did they have to abide by the current state regulations but find a way to police across jurisdictions. Additionally, businesses expanded with their increased ease of transportation. This gave owners a significant advantage over competitors that may have been limited to a specific area.



Source: [http://www.vingerhoedskruid.nl/Vingerhoedskruid\\_5\\_Organisatie.htm](http://www.vingerhoedskruid.nl/Vingerhoedskruid_5_Organisatie.htm)

Concerns about business that led to the need for antitrust measures developed from a change in business organization. Companies sought to gain competitive advantages through either horizontal arrangements or vertical integration and trusts. These were and are methods that businesses employ to improve their organization's ability to make profits. "The search for profits and control motivated this great movement of expansion and consolidation"(Forbath, W.E., 2003, v. 1 p. 213). Horizontal integration is the combination of two companies within the same industry (Steiner, G.A., & Steiner, J.F., 2005, p. 333). Vertical integration is "the degree to which a firm owns its upstream suppliers and its downstream buyers" (QuickMBA.com, 2007). These practices are illustrated in Figure 2.

Trusts are the transfer of title(s) of a company to a group of trustees who can then control a group of companies as a single company (which is now illegal) (Steiner, G.A., & Steiner, J.F., 2005, p. 328). These are strategies for a company to increase money and power in their prospective market(s).

Because the government did little to regulate business during the nineteenth century; these and other 'robber barons' were able to gain monopoly or near-monopoly power in their respective industries. This was accomplished through several means, including mergers with competing business and the formation of trusts, where a group of managers controlled rival companies without formal ownership of the business. This concentration of economic power in a few giant corporations made it possible to take advantage of the efficiencies and stability that come with large-scale production but it also gave corporations the ability to manipulate prices and government policy (Greenfield, K., 2003, v. 1 p. 580).

This shift was not isolated to one specific industry. "The 'rise of big business' began with the railroads in the 1850's; only in the 1880s and 1890s, however, did manufacturing firms follow suit. By 1900 John D. Rockefeller's Standard Oil Company, James B. Duke's American Tobacco Company, and dozens of other new nation-spanning giants had emerged, exerting substantial control over entire industries and their newly nationalized markets"



(Forbath, W.E., 2003, v. 1 p. 213). Table 2 provides a selection of robber barons and the industries they were engaged in.

TABLE 2  
U. S. ROBBER BARONS

Name of Robber Baron	Industry/Industries	State(s) of Operation
Astor, John Jacob	Real Estate, Fur	NY
Carnegie, Andrew	Railroads, Steel	PA
Cooke, Jay	Finance	PA
Duke, James Buchanan	Tobacco, Electric power	NC
Flagler, Henry	Railroads, Oil, Real Estate	NY, FL
Frick, Henry Clay	Steel	PA, NY
Huntington, Collis P.	Railroads	CA, VA, NY
Rockefeller, John D.	Oil	OH, PA, NY
Vanderbilt, Cornelius	Railroads, Shipping	NY, PA

The job of regulating these companies was left to the courts and state legislation. This approach did not prove to be successful. The courts did not have the power, meaning funds and manpower, to regulate all companies, in all industries across the country. "Big business thrived because of the absence of any meaningful counterweight to its influence" (Greenfield, K., 2003, v. 1 p. 580). Their growing power and financial gains provided them with greater influence. Their increased dominance in the market and over competitors is created by their ability to dictate prices and, to a certain degree, the supply of their product or service. They also obtained more power in relation to policy, through growth of the company, employment

of more people, and increased finances to influence (sway) politicians and offer campaign support (for individuals and issues).

With their increase in wealth and control they were able to exploit other businesses, people, and policy. “With the economic and industrial expansion following the Civil War, large corporations and business combinations were increasingly accused of a variety of abuses that inhibited competition, including cartels, monopolies, price fixing, price discrimination, market-share and closed-market agreements, and other anticompetitive collusion” (Fowler, R., 2005, v.1 p. 199). Predatory practices such as these were damaging to the consumer, in addition to businesses, thereby impacting the entire market.

The responsibility to regulate, control and temper these practices was left to the states. Initially, states felt the authority to regulate these businesses was within their jurisdiction and for the federal government to over step or take control was against their rights (of state power). “In general, however, state prosecutors and state judges proved reluctant to invoke these restraints, out of fear that strict enforcement would result in factory closures and ultimately damage local economies” (Forbath, W.E., 2003, v.1 p. 213).

As businesses continued to expand across state borders, it became more and more difficult to enforce state regulations, and their impact on (local) economies also amplified. State regulation was not working and triggered the need for federal regulation.

When Congress took up the matter in 1888-90, the division of federal versus state authority loomed large in debates. Senator John Sherman of Ohio, chair of the Senate Finance Committee and sponsor of the Sherman Act, saw clearly the inadequacies of state regulation. His first antitrust bill envisioned direct federal control over corporate structure, authorizing federal courts to dissolve all agreements or combinations “extending to two or more states,” and “made with a view or which tend to prevent full and free competition” in goods “of growth, production, or manufacture,” much as state officials could “apply for forfeiture of charters” (Forbath, W.E., 2003, v.1 p. 213).

Eventually, with Congress' efforts, the federal government took action with the passage of the Sherman Antitrust Act. "So widespread and strong was the opposition to the trust movement that the Sherman Act of 1890, designed to curb trusts, passed the Senate with but one dissenting vote and passed the House without opposition" (Steiner, G.A., & Steiner, J.F., 2005, p. 328). "The Sherman Antitrust Act forbid any business organization, 'in the form of trust or otherwise,' constituting a 'restraint of trade or commerce among the several states, or with foreign nations'" (Fowler, R., 2005, v.1 p. 199-200).

Congress deliberately made the language general to determine what conduct violated the act. "Although courts were left with the daunting task of interpreting the new regulatory dictate and filling in the details, the legislation was a novel, bipartisan effort to address the problems of monopolies nationally" (Fowler, R., 2005, v.1 p. 200).

In an effort to satisfy the public, this was a 'good act' on the premise that the government listened to the people and took action. "Congress preferred ambiguous statutory language that could please many competing constituencies: in this case, both the agrarian and populist public demanding a restoration of proprietary forms of capitalism and the dismantling of the great trusts, and also the metropolitan business interests that favored the continued development and flourishing of the new large scale corporations"(Forbath, W.E., 2003, v.1 p. 214). Again, to adhere to the public's concerns politicians tried to please as many people (voters) as possible. Yet, in the process they put the responsibility back on the court to determine what to do. Without the policy outlining the necessary details, and specifications the court was reluctant to take action.

It took many years for the legislation to make it through Congress, which is typical of the process to get any legislation passed. Once it was passed, they started to implement the

new regulations but it takes time for the effects to be realized (a number of years). Some people felt that the Sherman Antitrust Act actually supported mergers because the doctrine's restrictions seemed to focus more on cartels and price fixing. "Efforts to curb trusts languished until Theodore Roosevelt was elected to the presidency in 1904 on a trust-busting platform. By that time 185 trusts had been formed" (Wyzalek, J., 2003, v.4, p.26). "Until Theodore Roosevelt's administration, enforcement of the Sherman Act was lax, and the U.S. Supreme Court did little to further the law's goals" (Fowler, R., 2005, v.1 p. 200). Once Roosevelt took office, he recognized that the new big corporations were now a part of the United State's economy. He had to establish a way to integrate and regulate this new form of business to benefit the country.

Roosevelt "proposed creating a new body of federal corporation law to separate the 'good Trusts' (with their greater efficiency and economies of scale) from the 'bad' (with their predatory business practices and their purely opportunistic and anti-competitive welding together of firms)" (Forbath, W.E., 2003, v.1 p. 214). Additionally, Roosevelt wanted to integrate big business in America, let it thrive (in order to obtain the benefits), but not at the expense of the people or the economy. With growing pressure from both societal concerns, as well as the legislative and executive branches of government, the Supreme Court also began to take action. "In affirming the dissolution of the Standard Oil trust, the Supreme Court crafted new methods for interpreting Sherman in *Standard Oil Company v. United States* (1911). This decision held that unreasonable agreements restraining trade were illegal under a 'rule of reason' analysis" (Fowler, R., 2005, v.1 p. 201). This furthered the political agenda and continued efforts in the direction of regulation and enforcement.

Furthering the progress of legislation is just part of the process, in order to be effective the laws must also be enforced. “The supreme court refused to use the Sherman Act until 1911. Demands arose for more precise definitions of illegal monopolistic practices, and Congress responded in 1914 by passing the Clayton Act and the Federal Trade Commission Act”(Steiner, G.A., & Steiner, J.F., 2005 p. 328).

By the 1913 presidential election, Taft v Wilson, there was still a need for further reform. “In part due to the *Standard Oil* decision, the Clayton Antitrust Act and the Federal Trade Commission Act were passed by the Democratic Congress in 1914 and signed into law by President Woodrow Wilson, thus fulfilling a promise in the 1912 Democratic platform to strengthen antitrust statutes. It took several years and multiple pieces of legislation to figure out who, what and how to combat the powerful corporations and robber barons. The Clayton Act defined many anticompetitive practices (Steiner, G.A., & Steiner, J.F., 2005 p. 328). The FTC Act “established an agency to continuously supervise and administer the antitrust laws” (Steiner, G.A., & Steiner, J.F., 2005 p. 328). Both of these acts were established to supplement the Sherman Act and reinforce antitrust statutes.

Under the Clayton Antitrust Act, “certain activities and contracts, such as price discrimination, stock-acquisition mergers, and exclusionary-dealing agreements, were prohibited if shown to substantially decrease competition in the affected markets” (Fowler, R., 2005, v.1 p. 201). The Federal Trade Commission was established as a regulatory agency with the authority to identify unfair (competition) and deceptive business practices. It was to “develop antitrust expertise, investigate abuses, seek to maintain competition, and design adjustable remedies.

The agency's mission, however, was not simply to ensure compliance with Sherman and Clayton. It was to prevent activities violating the spirit of these laws" (Fowler, R., 2005, v.1 p. 201). Penalties included fines, jail sentences and required "break ups" (dissolution) of the companies into smaller organizations. The message was to stop unjust, unreasonable, and excessive use of power on the part of individual 'robber barons' and their corporations.

The urbanization of the country and growth of big business had other effects as well. The increase in government regulation and the influence of the public's viewpoint continued into other realms. Shortly following the creation of the antitrust legislation came the prohibition of alcohol.

#### IV. Analysis – Anti-trust

The Antitrust policies that impacted America in the late 1800s, early 1900s had a number of factors that contributed to their need and passage. Many of the contributing factors were a product of the environment. As a country, the United States is a capitalist society, which rewards opportunistic growth and allows the market to progress freely. Antitrust legislation was needed to temper the excessive power that particular organizations gained prior to the establishment of these regulations. The purpose was to limit, prevent, and control harmful business practices (abuses). Capitalism created the motivation and opportunity for creative, aggressive entrepreneurs to take advantage of the market.

Historical and legal precedence played a role in the development of the Sherman Antitrust Act. Legally, business regulations prior to 1890 were limited to local and state regulations. Despite the fact that the new business development was a shift from previous business models, there were established views against monopolistic, big business abuses. As a nation, the founding values were to look out for the interests of the people and supported

society's right to a fair market. Even though times were changing and the environment created new opportunities and threats, the primary need to do what was best for citizens. This contributed to the passage of (federal) antitrust legislation, beginning with the Sherman Act.

In doing what is best for the citizens of the country, political leaders listen to public opinion. In developing campaign platforms, fulfilling in office duties and pursuing their personal goals they listen to the needs of their constituents. The public stance against trusts existed since the founding of America. As businesses pushed the limits and became more aggressive, society's position was reaffirmed. Although, at the same time government needed to allow business to thrive. The federal antitrust legislation was established in an effort to satisfy both societal concerns and the needs of business.

Federal versus state control is another issue that contributed to how business was regulated during this period. Originally, states attempted to control the business activities within their own state, but this was no longer feasible. This is due to the Industrial Revolution, the new form of business, as well as the growth and expansion of the country itself. The population of the country was on the rise, and communities developed across the nation. Corporations also grew and extended beyond state lines. Business owners were able to manipulate their market position to their benefit, and to the detriment of others. As a result the federal government ratified a new policy. This is connected to another key factor, change.

Change is a very broad term. With regard to the enactment of the Sherman Antitrust act, it is the newly expanding country, the industrial revolution and innovative methods of doing business. Change occurred in the economy (business) as well as in the expansion of the population (society). As a response, government regulation was put in place to help cope with this change. BGS has a symbiotic relationship, where they all impact one another. The

changes in the first two areas combined with the motivations of political actors, for example, to enact policy or follow through on campaign promises, created the motivation, opportunity and need for this new legislation.

Lastly, the current state of the country plays a crucial role, and it incorporates many of the already discussed variables. The current state of the country includes the factors such as the current political administration, economy, population demographics and public opinion, as well as issues and events such as war. The expansion of business that led to the Sherman Antitrust Act was preceded by with the end of the Civil War and Industrial Revolution. These two events marked a big shift in the values and development of the country. New policy was not needed, created and enacted all at once. Rather a series of events occur, build on each other and through a chain reaction everything culminated to the passage of the first federal antitrust act.

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TABLE 3  
TIMELINE OF ANTITRUST LEGISLATION

Year	Antitrust Legislation/Actions
1890	Sherman Antitrust Act
1911	Standard Oil Co. of New Jersey v. U.S. is decided.
1914	The Federal Trade Commission Act is enacted. The Clayton Act is enacted. The Uniform Partnership Act is promulgated.
1916	The Uniform Limited Partnership Act is promulgated.
1930	The Robinson-Patman Act is enacted.
1930s	Administrative agencies were established: Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC)
1950	The Model Business Corporation Act is drafted by the ABA
1975	Magnuson-Moss Warranty Act is enacted
1976	The Revised Uniform Limited Partnership Act is promulgated Hart-Scott-Rodino Antitrust Improvement Act is enacted
1984	The Revised Model Business Corporation Act is issued
1996	Economic Espionage Act passed
2000	U.S. v. Microsoft case decided

Source: Pearson, 2004

[http://myphliputil.pearsoncmg.com/student/bp\\_cheeseman\\_blaw\\_5/timeline.html](http://myphliputil.pearsoncmg.com/student/bp_cheeseman_blaw_5/timeline.html)

All of these components impact each other. Some factors played a bigger role in the passage than others, but their impacts are not isolated. They overlap and influence the BGS

relationship, and compound/combine with one another. The most prevalent factors, or aspects that contributed the most to the enactment of Sherman Antitrust Act were: the long standing distrust of monopolies (historical precedence), the expansion of business and society with the development of country (change), and federalism with the need for federal regulation over state control. All of the factors contributed to the passage of the act, but those three were the driving force.

Since the passage of the Sherman Antitrust Act there have been a number of amendments and other policies that build upon the original legislation. Many of these can be seen in Table 3. Additionally, there are other forms of regulation to protect individuals from unfair business practices.

As it turns out, the values that were expressed by Jefferson in the 1700s, and beginning of federal legislation in the late 1800s are still used in present day. With increased growth and development of business along with ongoing globalization, one can expect the continued use of and further creation of antitrust-like policies in the future.

#### V. The Eighteenth Amendment: Prohibition

“The fundamental issue has never been whether alcohol use is to be regulated, but rather how” (Blocker Jr, J.S., 2003, v.1, p.116). Since the founding of this country, regulation has been placed on the consumption of alcohol. Even in the early 1600s, concerned colonies imposed regulation in various forms, and quickly learned that laws could not only help control consumption but also become a source of revenue (McGrew, J.L., 2009). “Colonial Americans pioneered nearly every form of legal regulation that would later be employed” (Blocker Jr, J.S., 2003, v.1, p.116). Regulations were imposed in various ways; who could drink, where and what they could drink, as well as where alcohol was sold and the percentage

of alcohol beverages could contain, just to name a few. Legal limits were a method to manage drinking, a source of revenue for law enforcement, but also reflective of the value system of the country.

During the 1700s and early 1800s people began to examine the effects of alcohol on the individual (mind and body) as well as society as a whole. The first temperance beliefs began to stir from both scientific perspectives as well as from the moral perspective (church). The temperance “health argument” first emerged in the 1752 Almanac. Additional publications were made such as Dr. Benjamin Rush’s “Inquiries into the Effects of Ardent Spirits Upon the Human Body and Mind” in 1785 (McGrew, J.L., 2009). The focus was on the harmful affects of alcohol, psychologically and physically.

As the colonies developed, and people from all over the world immigrated to America, they brought their culture with them. This included drinking habits, and new types of alcoholic beverages. Communities were also transforming from rural societies to more urbanized ones, which created another shift in drinking patterns and habits. The temperance movement blamed the growing social problems such as poverty, unemployment and crime on alcohol.

“The movement to curb the use of alcohol was one of the central reform efforts of American history,” and is known as the temperance movement (Carlson, D.W., 2003, v.8, p. 78). The temperance movement developed from the efforts of numerous organizations. A selected group of these organizations is listed in Table 4.

TABLE 4  
TEMPERANCE MOVEMENT ORGANIZATIONS (List not all inclusive)

Organization
American Temperance Society
Anti-Saloon League
Catholic Total Abstinence Union
Independent Order of Good Templars
National Prohibition Party
Sons/Daughters of Temperance
Temperance Society – Abstinence Society
Templars of Honor and Temperance
Women’s Christian Temperance Union
Women’s Legion for True Temperance

Religious organizations played a very large part in the progress of the temperance movement and ultimately Prohibition. These organizations provided an easy means for networking, gaining support and organizing behind a message. Religious organizations also recruited a lot of support and worked with women’s organizations.

There were a large number of women who organized as proponents for the prohibition. The feminist movement started in the early 1800s but the Women’s Crusade of 1873 and the organization of the WCTU (1874) marked the official entrance of women into the temperance movement (McGrew, J.L., 2009, and Ohio State University, 2009). This was

important because the rise of the feminist movement was not only a byproduct of the temperance movement but also another large group of people with another set of reasons alcohol should be banned. "Political, economic and social changes led to the rise of the New Woman" (Freeman, S.K., 2009). Women were now noticeably visible and active in the workforce, social life and in politics. Women's new role in the public arena marked a shift in 'traditional American values.' Churches also noticed this shift and spoke up.

Many religious organizations (Protestants, Catholics and Christians) mobilized for the temperance crusade. They used every form of literature they could to spread their concerns to stress the importance and urgency of their message. Additionally, they spoke during church services and encouraged (pressured) support. "Reformers sensed divine compulsion to send out missionaries to preach the gospel of abstinence from the use of distilled spirits" (Carlson, D.W., 2003, v.8, p. 78).

Initially the temperance movement was not concerned with beer and wine, just spirits. Overtime, the movement shifted and emphasized complete abstinence from all alcoholic beverages. The organizations began with moral reform then moved to legal regulation in local communities. As these groups grew in size and they acquired more strength, their successes continued to expand into larger communities. They extended into more states and eventually advocated for a federal mandate, forcing abstinence on the entire nation.

The control or regulation of alcohol can take place in many forms, though the goal was complete abstinence. Regulation has targeted virtually every aspect of alcohol use: including production, availability, sale, pricing, as well as drinking limits and age requirements (Blocker Jr, J.S., 2003, v.1, p.116). Laws continued to evolve based on the current attitude of the country. The organizations that were unhappy and wanted to prohibit

alcohol in all forms continued to search for which means would be most effective. There are a number of reasons people felt the prohibition would be a successful piece of legislation.

Prohibition increases supply costs, as these must include the cost of evading detection and the potential cost of punishment. This implies a higher equilibrium market price and less consumption. Second, Prohibition inhibits consumer access to alcohol by raising search costs, making quality dubious, and increasing the possibility of being cheated. Third, Prohibition may create a prevailing sentiment that a certain good is “bad” or “immoral,” thereby decreasing consumer demand. Finally, Prohibition may deter some individuals’ consumption because of “respect for the law.” Even though consumption per se was not illegal, purchasing alcohol during Prohibition involved doing business with criminals (Miron, Jeffery, 2001).

Supporters of the prohibition used a number of arguments to accomplish their goals. One argument was in reference to World War I. They argued that the cereal grains used to manufacture beer and liquor diverted valuable resources from food supplies for American soldiers (O’Connor, K., & Sabato, L.J., 2007, p. 75). Additionally, “the malaise of drunkenness sapped the strength of manufacturing production at home and the conduct of America’s Soldiers in World War I” (O’Connor, K., & Sabato, L.J., 2007, p. 75). The war, and support for the American troops became a way to make the prohibition alcohol appear to be an act of patriotism. “Many states enacted dry laws and in 1917 Congress provided for Wartime Prohibition” (Miron, Jeffery A., & Zwiebel, J., 1991, p.242).

Another, different approach came from religious and women’s groups. They campaigned against alcohol because they believed it greatly contributed to domestic violence. Prohibition was necessary to protect women, children and the (American) family. These arguments were at the forefront of the anti-alcohol campaign.

Beneath what they publicly claimed there was a substantial amount of anti-immigrant sentiment or Nativism. “The distrust of the immigrant population became more pronounced as the economic, political, and social power of the cities developed. It was given a strong

impetus by the anti-German tremors which shook the country in a mood of anticipation before WWI” (McGrew, J.L., 2009). The issues that people blamed on alcohol, such as urbanization and poverty, were exacerbated by the influx of immigrants. A lot of citizens developed an “us versus them” mentality and looked at immigrants as a burden to American society believing that they did not deserve to be here. “Many Americans blamed the problems caused by rapid modernization on the foreign born” (Pennock, P., 2009). There were many other issues that were affecting Americans, and the nation as a whole that factored into the question of Prohibition.

“The movement to achieve Prohibition was most persuasive when it focused on eliminating the evil saloons rather than on controlling personal drinking habits. Saloons were places where men, usually working class and often immigrant men, gathered for fellowship and drink”(Pennock, P., 2009). Saloons were also associated with gambling and prostitution. Therefore, in order support their argument against the evils of alcohol they chose to associate it with people, places, and activities that the rest of society would agree with and see negatively. Through both moral and legal reform they continued to expand. “As each new cycle of reform began by building on the legal foundation constructed by its predecessor, alcohol regulation gradually became more coercive” (Blocker Jr, J.S., 2003, v.1, p.116).

The most coercive of course, being the Eighteenth Amendment. It is the only amendment to be passed by state convention rather than state legislature, because of the lack of support in the state legislatures. “In 1919, Congress passed the Eighteenth Amendment over President Woodrow Wilson’s veto” (O’Connor, K., & Sabato, L.J., 2007, p. 75).

Following the passage of the Eighteenth Amendment, “Congress enacted the Volstead Act, officially known as the National Prohibition Act (41 Stat. 305 [1919]) to enforce the

amendment, which became effective on January 29, 1920 (Lewis, P. (Ed), 1998, v.8, p.194).

The Volstead Act was written by Wayne Wheeler, and sponsored by Andrew Volstead.

Wayne Wheeler was a very active member in the Anti-Saloon League, acting as superintendent, principal attorney and eventually the head of the entire organization (Ohio Historical Society, 2005). He was a very powerful activist, but not a member of congress.

Andrew Volstead was the Chairman of the House Judiciary Committee, he oversaw the bill's passage and acted as the sponsor. With the passage of these two pieces of legislation the prohibition of alcohol in the United States began.

AMENDMENT XVIII  
(Ratified January 16, 1919)

Section 1.

After one year from the ratifications of the article the manufacture, sale, or transportation of intoxicating liquors within, the importations thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(Ravitch, D., 2000).

## VI. Analysis – Eighteenth Amendment

Historically, there is a lot of precedence for the control of alcohol. Dating back to the founding of this country all forms of regulation have been utilized. People have always supported regulation in some form, although the amount of regulation and the types of control have varied over time. The methods used to limit and/or restrict alcohol reflect the values of society. In contrast to the antitrust act(s), the Eighteenth Amendment grew mostly out of social movements.



The movement against alcohol came in many forms, primarily from religious and women's organizations as well as other activists. The crusade against alcohol originated out of religious values and for the preservation of American families. They rallied locally, and spread across the state. Eventually, with the involvement of the Anti-Saloon league, and increased support the movement shifted its focus from individual drinking to the evils of saloons and alcohol in general. The way the issues were framed greatly shaped how successful they were. With a new message that more people could agree with, interest groups gained momentum and pushed for a national prohibition. Without the adjustment of their message, to refocus against the alcohol industry, it would not have been so successful. Many of the organizations gained support for the prohibition of alcohol because of other underlying issues.

Changes in social demographics, and other societal issues impacted the advancement of legal reform. Women's organizations were forming, and organizing in an effort to have their voices heard. Religious groups motivation started with moral reform, which then evolved into legal reform. The population growth, increased number of immigrants and urbanization of the country transformed the social landscape. "The battle over alcohol provided an arena for the mounting conflicts between modern and traditional, urban and rural, immigrant and native, Catholic and Protestant. The use of alcohol sharply divided American society; alcohol became a symbol for larger cultural clashes. (Pennock, P., 2009). With this added source of conflict, change and adjustment, people became distracted or confused about the real issues. This movement strove to advance their goals and pass legislation by persuading public opinion. When the issue was no longer solely about alcohol and other

clashes became associated with the mounting battle, more people got on board. World War I intensified this.

The framing of issues, changes in social demographics and public opinion are part of the state of the country, which was also going to war. War created further reasoning and arguments in support of the prohibition. The tension surrounding the United States involvement in WWI generated more anti-immigrant sentiment. Additionally, many organizations contended that alcohol was anti-American; it was an act of patriotism to support the prohibition. This also allowed activists to frame it as a countrywide issue, in an attempt to unify the nation and ban alcohol.

The national prohibition of alcohol was another policy that was greatly dictated by federalism. Regulation was under the local and state authority until the enactment of the Eighteenth Amendment. With its passage the federal government was now in charge of enforcement. In many ways, federal and state regulations should supplement and support one another, but when there is a conflict the federal statutes trump the state. This factor was not a driving force behind the need for federal action but was greatly responsible for how the legislation was instituted and the affects of the new policy. The institution of a national prohibition did not have the affect that many proponents had hoped for. Many believed that once successful, it would never be repealed.

#### VII. The Twenty-First Amendment: Repeal of Prohibition

“There is no likelihood of any repeal of the Eighteenth Amendment or of any change in the Volstead Act” (Tomkins, 1923, p.24). Floyd W. Tomkins wrote this in the *Annals of American Academy of Political and Social Science* in an article titled “Prohibition and Its Enforcement” in September 1923. Little did he know within a decade of his article’s

publication, that repeal was exactly what would happen, with the enactment of the Twenty-First Amendment.

The Eighteenth Amendment, which officially outlawed the sale, manufacture and transportation of alcohol in the United States, lasted from 1919 until 1933. During this time the national government did not have the means to enforce with such widespread, rampant, illegal behavior. "As a result of the lack of enforcement of the Prohibition Act and creation of an illegal industry an increase in crime transpired" (Thornton, M., 1991).

This period marks the development and rapid growth of organized crime. "The Mafia as well as other organized crime groups were generally perceived as a product of Prohibition. Since Americans were uncertain about Prohibition, the Mafia was not regarded as a particularly threatening phenomenon to the average American citizen" (Rhoads, A., 2006). As a result organized crime got a foothold during the prohibition, and involved both citizens and law enforcement officials.

Organized crime groups supplied alcohol, but also involved themselves in "speakeasies," which not only provided illegal beverages, but created a new social environment. "Speakeasies were generally either bars or restaurants to which people gained admission by personal introduction or by presenting a card, usually informally" (Pillsbury, S.R., 2003, v.7, p.492). Whether people were going out to "speakeasies" or drinking in their homes, the consumption of alcohol did not cease, as many had hoped.

In addition to citizens who chose not to abide by the law, there was mass corruption of law enforcement officials and politicians. "From the start, enforcement was under funded and understaffed. The Prohibition Bureau, charged with enforcing the law, had a small budget and only a few thousand agents, many of whom were inept, corrupt or both" (Moss, G., 2007,

p. 125). Federal Prohibition Director Rutter “uncovered a gigantic bootlegging conspiracy by which blind pig proprietors had paid money to police officers and ‘prominent deputy sheriffs’ for protection” (San Francisco Call and Post, 1922). Many people, ranging from bootlegging criminals, crooked cops and corrupt politicians made a lot of money during the prohibition period; while at the same time the government no longer collected tax revenue that were previously provided from alcohol sales. “Enforcement created political problems, both when it worked, by flooding courts and jails, and when it did not, as speakeasies replaced urban saloons” (Blocker Jr, J.S., 2003, v.6, p.501). As a result there was a substantial loss of faith and respect for law enforcement.

The Prohibition (legislation) had a number of unforeseen outcomes. “One unintended social consequence of Prohibition was the advancement of women’s rights” (Moss, G., 2007, p. 125). Previously saloons were for men, and discriminated against women. The new speakeasy welcomed men and women, creating a new social environment.

Many women had spoken up for the passage of the Eighteenth Amendment. Although, afterwards many women wanted it repealed. The lack of respect for the law, from citizens as well as officials motivated a new women’s movement. For example, Pauline Sabin founded the Women’s Legion for True Temperance in 1929, which was renamed Women’s Organization for National Prohibition Reform (WONPR).

Mrs. Sabin originally supported Prohibition in the belief that ‘a world without liquor would be a beautiful thing’ and a better place for her two sons. However, with the passage of time she became distressed at what she saw as the hypocrisy of politicians who would vote for stricter enforcement of the Eighteenth Amendment and then illegally be drinking alcohol a few minutes later, the counter-productivity of Prohibition, the decline in moderate drinking and the increase in binge drinking, the growing power of bootleggers, the widespread political corruption, mob violence, increased public intoxication, growing disrespect for law, and the erosion of personal liberty at the hands of an increasingly intrusive centralized government. Thus, Mrs. Sabin and

millions of other American women came to oppose Prohibition for the very reasons they originally supported it. They wanted the world be a safer place for their children and a better place in which to live. And women were politically infinitely more powerful than before prohibition; they were now able to vote (Hanson, D.J., 2007).

Regardless of which side they supported, their ability, and success in organizing and unifying behind a cause created an opportunity for them to speak their mind and take action.

Interestingly, both of these things also contributed to another change; the “new ethic of play” (Moss, G., 2007, p. 126). My interpretation of this is the societal change, or the desire and drive for Americans to engage (more) in new social activities. Many Americans “during the 1920s were caught between two conflicting value systems. They retained the traditional values of hard work, thrift and sobriety, but they also embraced the new ethic of play” (Moss, G., 2007, p. 126). This is described as the mass entertainment that came along with development of business and urbanization. Not only did men and women enjoy nightclubs, movies, sports, and theater, but also illegal drinking and gambling (Moss, G., 2007, p. 126). “Millions of Americans were willing to break the law or reject traditional morality if restrictions such as Prohibition interfered with their pursuit of pleasure” (Moss, G., 2007, p. 126). There was disregard for the law, but many officials engaged in the same behavior in the pursuit of gratification.

Steadily, the Prohibition lost support. From about 1925 on enforcement declined even more in urban areas (Moss, G., 2007, p. 125). The economic, political, legal and social environments have a very dynamic relationship and all impact one another. The status, actors and events in each area have an influence on the business firm, as well as the overall environment (because they shape one another). These environmental relationships and interactions are presented in Figure 2.

Figure 2  
THE SEVEN KEY ENVIRONMENTS OF BUSINESS

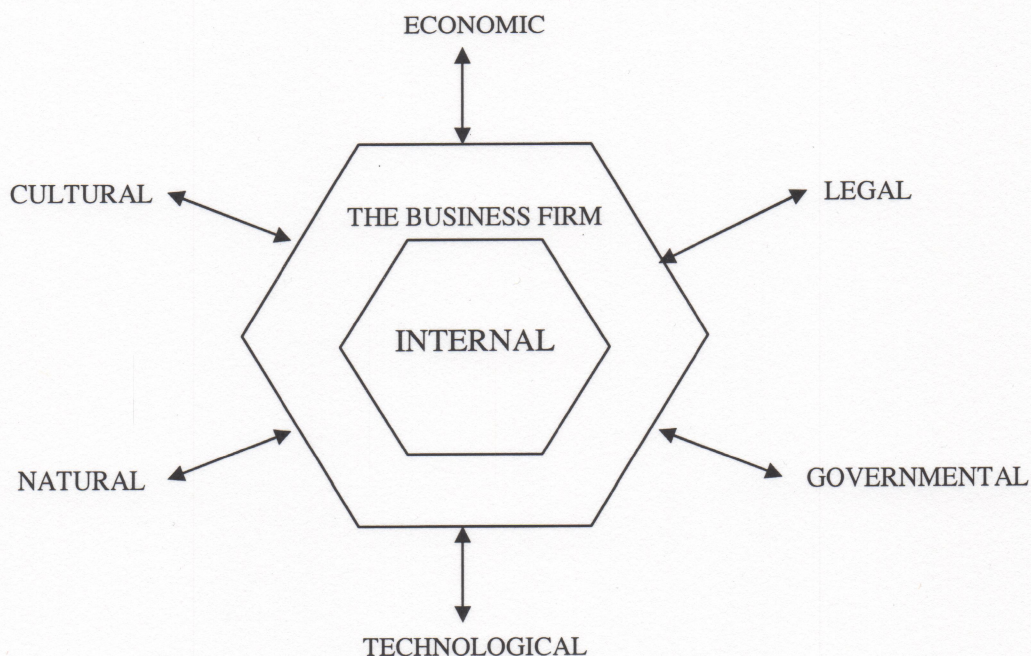


Diagram provided from Steiner, G.A., & Steiner, J.F., 2005, p. 35

“The stock market crash of 1929 and the resulting Great Depression of the 1930s further changed the political climate. Critics of Prohibition argued that the rise of criminal production and sale of alcohol made the legal ban ineffective” (Lewis, P. (Ed), 1998, v.8, p.194).

Obtaining realistic or accurate statistics about drinking habits or the level of involvement that criminals had is very difficult, simply because the activities were illegal.

Estimating alcohol consumption during Prohibition is complicated by the possibility that Prohibition was accompanied by the changed in attitudes or actions that affected underlying relationships. Thus, for example, while the number of arrests for drunkenness may be closely related to alcohol consumption, Prohibition could lead to more vigorous enforcement of drunkenness laws, raising the number of drunkenness arrests for a fixed level of consumption. Alternatively, it could drive more drinking into the home, thereby lowering the drunkenness arrest tally. Similarly, deaths due to alcoholism may increase due to low-quality alcohol (Miron, Jeffery A., & Zwiebel, J., 1991, p.243).

Additionally, the public support and attendance of illegal speakeasies propagated contempt and a lack of respect for law enforcement, with blatant, public disregard for the law. “Finally, critics argued that legalizing the manufacture and sale of alcohol would stimulate the economy and provide desperately needed jobs” (Lewis, P. (Ed), 1998, v.8, p.194). The legalization of alcohol would provide (legal) jobs in the manufacture, distribution and sale while also allowing the government to collect taxes (on alcohol, and employment). To adhere to public opinion and do what is best for business, government and society, measures were taken to begin working towards the repeal.

In 1932, the Democratic Party ran on a platform calling for a repeal of the Eighteenth Amendment. Franklin D. Roosevelt won in an overwhelming victory, defeating Hoover by seven million votes, signaling the end of Prohibition (Franklin D. Roosevelt Presidential Library and Museum). First, Roosevelt passed the Cullen-Harrison Act, which modified the Volstead Act raising the legal limit of alcohol per volume (from .5% to 3.2%). Shortly thereafter, the Twenty-First Amendment was passed.

#### AMENDMENT XXI

*(Ratified on December 5, 1933)*

##### Section 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

##### Section 2.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

##### Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(Ravitch, D., 2000).

The law repealed the prohibition at a federal level, but gave the power and authority to regulate alcohol back to the states. Alcohol had previously been regulated at the state level. Despite the repeal on a federal level, localities and states were free to institute stricter regulations in their areas if they chose to do so. To date alcohol is still regulated at the local level (Lewis, P. (Ed), 1998, v.8, p.194).

#### VIII. Analysis – Twenty-First Amendment

“Prohibitions breed disrespect for the law because despite draconian penalties and extensive enforcement, huge numbers of people still violate prohibition. This means those who break the law, and those who do not, learn that obeying laws is for suckers” (Miron, J., 2009). This is what happened for the thirteen years of prohibition in America.

Although, it is difficult to get an accurate assessment, because it was illegal, drinking continued despite the laws against it. As a federal mandate, the federal government was now in charge of enforcement and they created an agency just for that. Unfortunately, with a limited number of agents (some of which were corrupt) and with a narrow budget they were unsuccessful.

Instead, during the roaring twenties, a new social scene emerged. Organized crime flourished, speakeasies were all over the cities with drinking, gambling and prostitution. Corruption existed in political offices and law enforcement agencies. The law was grossly ineffective. When it was fervently enforced the court system could not keep up. When it was not, and corruption became increasingly visible, the public was losing respect for the law. These changes in businesses (they were illegally providing alcohol, and the involvement of organized crime), and society (new forms of entertainment and disregard for the law), inspired/incited the need for further modification in government policy.



Therefore, many people who previously supported the Eighteenth Amendment switched sides and called for its repeal. Public opinion transformed again when they realized the actual effect that the prohibition was having (rather than its intended goal). All of these things contributed to the state of the country along with the onset of the depression. By this point politicians recognized the need for a change in legislation. Franklin D. Roosevelt successfully ran, and won on a campaign calling for the repeal of the Eighteenth Amendment. Regulation is vital and still present, although the repeal of the prohibition proves that complete elimination of alcohol did not work.

This was the first and only time a constitutional amendment was repealed. Alcohol is regulated at the state level, and is still prohibited in some locales/areas. Alcohol remained an important topic, both legally and socially. Shortly after the passage of the Twenty-First Amendment, Alcoholics Anonymous (AA) is established (1935). By 1944 “the United States Public Health Service labeled alcoholism the fourth largest health problem” (McGrew, J.L., 2009). Furthermore, drinking ages have varied over time and in different states, ranging from 18-21 years old.

As times have changed so have the types of regulation. For example, with the development of technology and the effect alcohol consumption can have on an individual, laws have been established to limit blood alcohol concentration (BAC levels) when operating a vehicle. A timeline of relevant and related legislation is presented in Table 5.

TABLE 5  
TIMELINE OF ALCOHOL LEGISLATION (List not all inclusive)

Year	Legislation or Action
1862	President Lincoln imposes new tax on liquor to pay the bills from Civil War
1884	Laws enacted to make anti-alcohol teaching compulsory in public schools (NY)
1906	Pure Food and Drug Act is passed, regulating the labeling of products containing alcohol.
1910	New York introduces the first drunk-driving laws
1920	Passage of the 18 <sup>th</sup> Amendment, and Volstead Act; beginning of prohibition
1920-1933	Illicit alcohol trade booms in the United States
1933	Prohibition is repealed; passage of the 21 <sup>st</sup> Amendment
1935	Alcoholics Anonymous is established
1944	The U.S. Public Health Service labels alcoholism the fourth-largest health problem
1970-1975	The minimum drinking age is lowered in 29 states from 21 (to 18-20) following the enactment of the 26 <sup>th</sup> Amendment, which lowered the voting age to 18.
1978	President Carter signs bill legalizing home brewing of beer
1980	Mothers Against Drunk Driving (MADD) is established
2000	Federal law requires states to pass legislation making it a crime to drive with a blood alcohol concentration (BAC) at or above .08 percent.

Source: AlcoholFacts.net, <http://www.alcohol-facts.net/Alcohol-Timeline.html>

Since the prohibition period the regulation of substances, including the issue of legalization, is an ongoing debate (i.e. tobacco and marijuana). How issues, both old and new, are handled will depend on a number of factors.

#### IX. Discussion – Summary Analysis

Through the study of these three legislative acts I have determined a number of criteria or key factors that appear more often than others. Key factors are those that were the most influential in motivating, driving, and establishing each law: Federalism, historical/legal precedence, change, as well as the state of the country, public opinion and actors.

Federalism is an important factor in any type of regulation in the United States. The political infrastructure is designed to incorporate both state and federal regulation. The legislation that is passed (at what level), and how it is established, as well as enforced are determined by federalism. The debate of federal versus state authority was prevalent during the development and passage of each of the three policies. The Antitrust legislation was driven by a need for federal regulation over state control because business was expanding beyond state control. Prohibition, the Eighteenth and Twenty-First Amendments, were not inspired or propagated by federalism, instead, control at the federal level greatly affected how the law was enforced, which greatly contributed to its eventual repeal. The attempts at federal control shifted back to state authority.

Historical and legal precedence impact the way an issue is framed, and how people feel, it helps establish a pattern or standard. How long a topic has existed and its historical and legal past is reflective of values (at the time). Issue framing is the perspective that is used to explain a specific problem. This is particularly important when dealing with the actors, such as politicians, judges and activists. This is because they determine how the problem is

perceived, interpreted and expressed. Antitrust and Prohibition were long standing issues for Americans. Concern for Antitrust measures date back to the founding of the country. The specific business dealings were not at the heart of the problem, but rather the unfair treatment and overall harm to the economy that arise with monopolistic organizations. The regulation of alcohol has an extensive history. Legally, it has been regulated by every means possible, both in an effort to benefit society as well as to generate revenue for the government. Laws have been established, amended and repealed. Alcohol's existence precedes the establishment of the country and the institution of our government. Since then, regulation has been applied and prohibition had been exercised at the local and state level. Overtime, restrictions have fluctuated, influenced by the events, actors and values of the time. The passage of the Eighteenth Amendment was the nation's first attempt at a countrywide ban. It's repeal with the Twenty-First Amendment, was consistent with the notion that alcohol regulation changes, but was the first time a constitutional amendment was ever repealed. This concept of historic and legal precedence being reflective of values can also dictate public opinion.

Public opinion is volatile and ever changing. It can be impacted in many different ways, shift rapidly or develop and evolve over time. Additionally, there is no guarantee that there is one uniform opinion. Public opinion is divergent, complex, and it plays an important role in the agenda setting process. "Agenda setting is central to the policy process: if an issue does not attract the appropriate attention, chances are it will languish without government response" (Kraft, M.E., & Furlong, S.R., 2006, p. 75). According to Kingdon, there are three main determinants, the problem, policy and political "streams" that flow through society, and when they converge they create the opportunity for action (Kraft, M.E., & Furlong, S.R., 2006, p. 75).

The problem stream refers to the actual problem or topic, as well as how and whom it affects. The policy stream encompasses the potential solutions and policy alternatives. “The political stream is the political climate or public mood” (Kraft, M.E., & Furlong, S.R., 2006, p. 77). “Agenda change emerges when the three process streams are joined. At critical times, dubbed ‘windows of opportunity,’ the conditions in all three streams favor a joining of problems, solutions, and political momentum”(Mintrom, M., 2000, p. 44). In order for the Sherman Antitrust Act, Eighteenth Amendment and the Twenty-First Amendment to successfully make it through congress, all three streams had to come together.

The three streams can be influenced by all the key factors to help bring about change in policy. Antitrust legislation had a secure foundation in the public’s opinion regarding big business. Aggressive decision-making and the affluent robber barons gained the attention of bureaucrats and campaigning politicians. The overall national mood, and market created the necessary opportunity for the passage of the Sherman Antitrust Act.

The establishment of prohibition with the Eighteenth Amendment was the product of escalating alcohol regulation. Interest groups gained support, and used the media to increase awareness and support for their cause. They focused on all the information they could to make the problem appear more prevalent. The Eighteenth Amendment gained enough political support to be passed through a state convention.

During subsequent years, the social, political and legal environment significantly changed. The shift in public opinion was very obvious, as was the need for a change in regulation. Political elites recognized and acknowledged this, and ran for office pledging to repeal the prohibition, resulting in the overwhelming passage of the Twenty-First Amendment. The key factors previously mentioned impact the three streams of this model,

which leads to policymaking and legislative action. Agenda setting, and public policy are also determined by the state of the country.

The present state of the country (during a given period) is a very broad category, but it encompasses a lot of important aspects. For example, the “state of the country” can include the tone or overall attitude of the country, which affects public opinion. It also includes the political environment, financial market, as well as wars, revolutions and depressions.

The antitrust legislation developed out of the advancement of business following the civil war and industrial revolution. The growth of the country, business and society, stimulated the expansion of big business, which then required federal antitrust legislation. During this period of growth, prior to the enactment of the Eighteenth Amendment, there was a substantial increase in the immigrant population, and a shift in values. The urbanization of the country along with rising crime and poverty rates were changing the social environment. Interest groups associated the negative aspects with increased drinking and alcohol. On the verge of WWI, the temperance movement also successfully exploited citizens’ patriotic beliefs to get them to support Prohibition. The illegalization of alcohol greatly changed the state of the country.

The resultant new atmosphere embraced societal desires for freedom, entertainment and satisfaction. Speakeasies became the new meeting place, organized crime flourished and there was widespread corruption of police and politicians. People in business, government and society came together advocating the repeal of the prohibition, believing that regulation would be better, providing them with more control. The state of the country consists of many things and evolves over time as things change.

“Change” is another significant factor to evaluate, but it is challenging. Change can be used to describe something that transpired as a part of another factor, or discussed as a completely different component. Change can be impelled through a focusing event (such a crisis) and can become a motivating factor for new policy. There is significant overlap when studying the various changes that take place. Though, the changes with each act may not have occurred the same way, it’s presence is a consistent component. Change, incites and stimulates a reaction. When any single actor in the business, government and society troika encounter “change” or shifts, ripples of the effect spread out and have an impact on the other two components of the BGS dynamic. Eventually, legislation follows. All of these factors are dependent upon and largely dictated by the actors.

The actors who can determine whether or not an issue has any standing are politicians, judges and activists. These people speak for the public, or at least some element in the BGS relationship. Members of congress, judges, incumbent presidents and presidential candidates running for office affected all three acts of legislation. Table 6 provides a list of U.S. presidents from 1885-1945 and indicates the issues these actors had an impact on.

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TABLE 6  
U.S. PRESIDENTS 1885-1945

President	Party Affiliation	Term	Issue Impact
Cleveland, Grover	Democrat	1885-1889	
Harrison, Benjamin	Republican	1889-1893	Antitrust
Cleveland, Grover	Democrat	1893-1897	
McKinley, William	Republican	1897-1901	
Roosevelt, Theodore	Republican	1901-1909	Antitrust
Taft, William H.	Republican	1909-1913	Antitrust
Wilson, Woodrow	Democrat	1913-1921	Antitrust, Prohibition
Harding, Warren G.	Republican	1921-1923	
Coolidge, Calvin	Republican	1923-1929	
Hoover, Herbert	Republican	1929-1933	Prohibition
Roosevelt, Franklin D.	Democrat	1933-1945	Prohibition

Business owners/representatives and government officials were the most influential actors in shaping antitrust legislation. Judges also played an important role in how they interpreted the laws, and whether or not (and how) they chose to enforce them. Social activists and interest group leaders played a significant role in making prohibition a legislative issue. State representatives in the convention and congressman Andrew Volstead facilitated the movement's progress to the federal level.



Actors during the prohibition affected the methods of regulation, interpretation of the legislation and ferocity of enforcement, on the part of police as well as the court system. All of the factors influence and build on another, which makes it difficult to differentiate and understand the impact of each.

TABLE 7  
KEY FACTORS IMPACTING LEGISLATION

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Factor	
<hr/>	
Actors	<ul style="list-style-type: none"> <li>• Politicians           <ul style="list-style-type: none"> <li>○ President (candidates)</li> <li>○ Federal and state representatives</li> </ul> </li> <li>• Judges           <ul style="list-style-type: none"> <li>○ Law enforcement officers</li> </ul> </li> <li>• Organizational Activists           <ul style="list-style-type: none"> <li>○ Societal/public groups</li> <li>○ Business Representatives</li> <li>○ Political lobbyist</li> </ul> </li> </ul>
“Change”	
Federalism	
Precedence	<ul style="list-style-type: none"> <li>• Historical</li> <li>• Legal</li> </ul>
Public Opinion	<ul style="list-style-type: none"> <li>• Issue Framing</li> <li>• Agenda Setting</li> </ul>
State of the Country	

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The key factors, as presented in Table 7, were present and influential in the Sherman Antitrust Act, the Eighteenth Amendment and the Twenty-First Amendment. The way these

factors may have presented themselves may have been unique to that specific policy or time, but in the big picture they proved to be consistent factors. Thus, I am proposing that decision makers and actors in business, government, and society seriously consider these factors in their decision and policy making efforts. Therefore, in order to determine what and why something matters, these are the elements that need to be examined. How they matter, and the particular impact they may have is dependent upon the time and the specific details of each factor. As the problem, policy and political streams develop, the actual impact takes effect, further legislation is made and new laws are established.

It is also important to note each policy is not an individual law, but rather a series of acts that have been amended and redefined over time. The laws have to progress and develop to fit the changes in the environment, and balance the relationship between business, government, and society. This is representative of how perceptions and values can evolve over time. As a result the laws are modified to make them effective and align with the times. Historically and legally, everything establishes precedence. All three pieces of legislation are still relevant today, and have been used and amended since their institution. The problems that business, government and society face are just appearing in new ways.

## X. Conclusion

“In the universe of human endeavor, we can distinguish subdivisions of economic, political, and social activity – that is, business, government, and society – in every civilization throughout time” (Steiner, G.A., & Steiner, J.F., 2005, p. 6). Interplay amongst business, government and society creates the environment in which we work and live (Steiner, G.A., & Steiner, J.F., 2005, p. 6). Changes, problems and challenges develop through this interaction and trying to maintain balance between them. The problems that we face (as a result of this

dynamic relationship) have not changed; they are simply appearing in different ways. The contribution of this research is greater insight into the complexities of the issues, and better understanding of their significance.

The past will not repeat itself and this model cannot predict the future. It is simply a tool to help us, as people become more knowledgeable about our environment and ourselves. Understanding relationships and the key, influential factors enables us to use our minds and examine the current situation. From there we can develop an evaluation of the issues, make decisions and other preparations based on our expectations. History gives an opportunity to study real examples, examine cause and affect relationships, and see how the past has influenced the present day. With the continuing development, and globalization of markets and societies, old issues are going to resurface in new ways. This research is significant because this pattern not going to change, expansion and development are going to continue to happen, and the knowledge obtained from the past can be used to help us in the future. The more things change, the more they stay the same.

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