

**Beyond Margaret Sanger:  
Commercial Interests in Early U.S. Birth Control Policy**

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## **Beyond Margaret Sanger: Commercial Interests in Early Birth Control Policy**

Abstract:

While the birth control social movement receives credit for legalizing contraception, this paper argues that condom manufacturers and retail druggists played key roles in policy creation and direction. Poor-quality condoms sold by black market competitors left manufacturers and druggists with the problem of how to limit contraception. Between 1933 and 1939, 16 states and approximately 200 cities overturned six decades of prohibition by allowing the sale of prophylactics and/or contraceptives in drug stores. This forgotten series of “drug store only” laws formed the backbone of pre-Pill legislative policy. Using primary sources, content analysis, and statistical tests, I find evidence supporting a hypothesis that business groups and the social movement influenced birth control policy.

In the universe of organized interests, businesses are thought to exercise strong influence on the political process, and stand in general opposition to public interest groups and social movements (Schlozman and Tierney 1986; Baumgartner and Talbert 1995; Gray and Lowery 1996; Berry 1997; Moe 1980; Walker 1991). As opposing sources of policy, the two sides play key roles in structural theories of American political history describing alternating cycles of social reform and conservative entrenchment (Schlesinger 1986). During periods of conservative dominance, businesses push through legislation favorable to particular industries. During periods of reform, citizen groups assert power and businesses become bystanders or forces for the status quo (McFarland 1987; McFarland 1991; Vogel 1989).

Businesses, however, exhibit heterogeneity across industries. Such heterogeneity suggests that they can, in isolation or association, act as agents of reform, even in periods when citizen groups are thought to dominate the political agenda. Oddly, this possibility is ignored in many accounts of social change (Sanders 1999; Clemens 1997; McAdam 1982).<sup>1</sup> None start with the question posed here: How do business groups influence paths of social change? Part of the answer is by behaving in ways similar to what social scientists expect: They lobby for regulatory protection. This protection, however, is not a defense of the status quo, and its implications on future prospects for social change are profound.

The subject of business influence on social change is of particular interest in a period like the New Deal. One of the many significant changes in this period was legal birth control. This story of legalization is usually told through laws not policies; through a social movement, not a set of interest groups. The storytellers are usually historians and law professors, not political scientists. At first glance, the narrative seems reasonable. The social movement model

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<sup>1</sup> For one interesting counter-example, see (Rosenberg 1991, 189-201).

of mobilization begetting public acceptance and political action, largely through the judicial system, fits more recent periods of social change in civil rights and women's rights, experienced first-hand, coincidentally or not, by many of those responsible for the standard narrative.<sup>2</sup> And, of course, there is Margaret Sanger, whose presence, like an unusually bright star, can distract attention from other important group constellations.

In contrast to the standard narrative, I argue that business groups, specifically newly ascendant condom manufacturing giants and retail druggists, played key roles in legalization by shaping policy direction. These groups shared the general goal of legalization, but operated apart from the social movement, and had their own powerful motivations for rewriting laws. Most importantly, unlike the social movement, which repeatedly failed in federal and state legislatures, manufacturers and druggists achieved considerable success. Between 1933 and 1939, 16 states and more than 200 cities overturned six decades of prohibitions, by allowing the sale of prophylactics and/or contraceptives in drug stores. This important and forgotten series of “drug store only” laws formed the backbone of pre-Pill legislative policy.

If social movement mobilization provides a demand-side account of birth control legalization, the condom manufacturer-druggist alliance is a complementary supply-side story. Different political problems and group preferences created barriers to cooperation between the social movement and industry. The abundance of inexpensive, low-grade black market condoms in the late 1920s left manufacturers and druggists with a dilemma of how to limit contraceptive distribution. The alliance materialized out of a mutual desire to control a fast-growing, lucrative new trade, and secure dominant positions in the marketplace for both groups (Stigler 1971; Peltzman 1988). In contrast, finding the social movement's preferred

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<sup>2</sup> This narrative is best summarized in the statement by Linda Gordon, the movement's preeminent historian: “The legalization of contraception and abortion in the United States was primarily the result of the feminist movement and has benefited all women greatly” (Gordon 1976, 417).

contraceptive, a diaphragm, was nearly impossible. Since European-manufactured diaphragms were routinely confiscated by customs agents, few American women had any familiarity with the devices. In addition, the requirement for a physician's fitting put the diaphragm out of reach for millions of poor women. This scarcity left social movement leaders fighting to expand distribution through the creation of a national network of birth control clinics.

Given the small library of scholarship on the birth control movement, this paper focuses on the political problem facing businesses and their responses.<sup>3</sup> The argument unfolds over four sections. 1) First, I outline condom manufacturers and druggists' motivations for changing birth control policy, and highlight the political entrepreneurship of two manufacturers, Youngs Rubber Co. and Julius Schmid Inc. 2) Second, I trace the alliance's evolution using a content analysis of condom advertisements published between 1929 and 1939. I show how advertising content shifted in 1933, the same year as the first drug store laws, to a new strategy of promoting cooperation with druggists. 3) Third, I test my argument using logit models to analyze the influence of druggists and black market commerce on the likelihood of passing state and municipal laws. I find strong patterns at the municipal level, but not the state level. 4) Finally, I use primary source materials to show the unusual degree of political access druggists and manufacturers had in lawmaking. I show their involvement at every step of the political process, from research generation to statute drafting to law enforcement.

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<sup>3</sup> For a small sample of this literature see (McCann 1994; Gordon 1976; Dienes 1972; Garrow 1994; Kennedy 1970; Chesler 1992; Reed 1978).

## Commercial Birth Control Interest Groups

Condom manufacturers and retail druggists had mutually reinforcing motivations to join forces in the late 1920s for the purposes of changing birth control policy.<sup>4</sup> The historical timing of the alliance's ability to form was a consequence of subtle political openings and revolutionary technological changes in the early 20<sup>th</sup> century. While the U.S. government banned contraceptives, it quietly tolerated, even promoted, condoms for their "disease fighting" abilities. The Army provided condoms to soldiers during World War I, and the Public Health Service allotted \$4 million for the creation of a Division of Venereal Diseases (Brandt 1987, 102-115). The birth control movement's first trial, a 1918 arrest of Sanger, ended with a New York state judge ruling that contraceptives could be used "for the cure or prevention of disease," a subtle approval of prophylactics even as they remained technically illegal.<sup>5</sup>

From these incremental changes, condom entrepreneurs sought to expand their businesses and reshape the industry. Condoms were popular options because they were inexpensive compared to "female hygiene" jellies and creams, and, unlike diaphragms, did not require a doctor's fitting or regular office visits. The major problem was a high rate of failure, nearly 60 percent. In the late 19<sup>th</sup> century, the condom-making had been a cottage industry dominated by small entrepreneurs stretching animal intestines like salt water taffy in hidden basements. But by 1920, a new wave of entrepreneurs had begun piggybacking off advances in chemistry and industrial manufacturing. They applied economics of scale and scope; new factories, stronger and thinner materials, capital intensive advanced dipping machines, and standardizing inspection practices (Chandler 1990). These advances dramatically reduced per-

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<sup>4</sup> The literature on birth control commerce is tiny compared to that on the social movement. See (Tone 2002a; Tone 2002b; Tone 2000; Tone 1996; Murphy 1990).

<sup>5</sup> *People of the State of New York v. Margaret H. Sanger*, Court of Appeals of New York, 118 N.E. 637 (1918).

unit production and distribution costs, and condom production soared, doubling from 3 million to 6.25 million between 1914 and 1928 (Tone 2002a, 183).

Thanks to a more favorable legal environment, European firms dominated condom manufacturing at the turn of the century. But in the 1920s, dozens of U.S. firms began serving a small, but fiercely competitive, domestic market. Most of these firms were all-purpose rubber companies that generated the bulk of their revenues from vulcanized products unrelated to contraception. Condom consumers encountered a marketplace of more than 100 brand names. Out of this competition emerged an oligopoly of five companies: Youngs Rubber Co., Dean Rubber Co., L.E. Shunk Latex Products Inc., Julius Schmid Inc., and Killian Co. These firms, which relied on condoms as a main source of revenue, were at the forefront of innovation. They adapted new technologies, capital-intensive manufacturing techniques, and modern advertising practices, following a path first set by other durable goods producers in the late 19<sup>th</sup> century.

Despite their investments, condom companies claimed they were struggling to stay afloat. Legal prohibitions meant cheap, counterfeit condoms circulated through informal channels. Consumers bought them from gas station attendants, pool hall workers, shoe shiners, and barbers. With birth control largely confined to a black market, counterfeiters and small-time “peddlers” stole condom manufacturers’ revenues and brand names. Higher drug store prices ensured that these channels remained a competitive alternative throughout the Depression-era. Approximately two-thirds of condoms spilled “into illegitimate, bootlegging channels,” wrote Fortune magazine’s editors (Fortune 1938, 23). Some of these bargain condoms sold for as little as three for a penny, but continued to fail at high rates.

To solidify their financial foundation, manufacturers needed social acceptance and predictable profitability for their products. But the unregulated industry left them with a

dilemma. They could sell exclusively to drug stores and preserve a reputation for quality while losing a huge piece of the mass market. Or they could allow their goods to circulate everywhere and risk them developing an undesirable character. Selling exclusively to druggists, while asking for government help in limiting retail channels, offered manufacturers the best chance to avoid their dilemma and achieve both goals.

Druggists made an ideal partner. They comprised one of the largest and best organized professional groups in America, behind lawyers and doctors. Moreover, druggists had their own reasons to align with manufacturers. The threat of a “peddler,” who lured away customers with shoddy merchandise, probably contained some fiction. But druggists gained financially by believing it. With an overall market size estimated at \$38-million by the late 1930s, condoms represented a lucrative new stream of revenue (Fortune 1938, 18). Standard markups of 300-2,000 percent meant a single druggist could net \$700,000 in annual profits by selling 25,000 condoms a month. “It is a common saying in the drug trade,” concluded one contemporaneous consumer economist, “that the sale of condoms pays the store rent” (Himes 1936, 201-205). The groups’ relationship was mutually profitable, especially for the condom oligopoly, which by 1947, produced 99 percent of the 720 million condoms sold in the U.S. (Naismith 1950, 12).

Birth control movement leaders also sought to gain middle-class acceptance of contraception through an affiliation with professional medicine. But the rhetorical strategy of disease prevention and public health was better suited for promoting condoms. Moreover, neither condom manufacturers nor druggists, regardless of their personal sympathies, had professional or organizational interests in the agenda of reproductive rights, which was a permanent source of tension within the social movement. Finally, social movement leaders also

feared that becoming linked to groups with financial interests would tarnish their public image and undermine their political efforts.

### **Political Entrepreneurship and the Creation of a New Alliance**

Two manufacturers, Merle Youngs and Julius Schmid, deserve the title political entrepreneurs. They were not only self-appointed leaders of the alliance; they were agents in its creation (Wagner 1966; Frohlich et. al. 1971). Youngs was a newcomer to the business, while Schmid had been making condoms since the 1880s. The two shared a philosophy that when it came to contraception and disease prevention, customers would pay more for better products. In addition, the connection between their success and the industry's gave them obvious personal incentives to assume leadership roles (Olson 1971; Hardin 1982). Their brands occupied the premium end of the market, selling for as much as six times the price of bargain brands, but offering better materials, higher rates of effectiveness, and longer life spans. By the end of the 1930s, they had risen to the top of the condom industry, becoming a virtual duopoly that accounted for 84 percent of U.S. retail condom sales (Murphy 1990, 12).

Tracing the evolution of the druggist-manufacturer alliance is a challenging task because of the sparse historical record.<sup>6</sup> In order to analyze the relationship between the two groups, I rely on a content analysis of advertisements in the trade journal the *American Druggist*. Published by the Hearst Company, *American Druggist* was among the largest pharmaceutical business publications in the country, reaching more than 25,000 drug stores.

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<sup>6</sup> Unlike other subjects, researchers cannot rely on rich materials from the National Archives or a university collection. None of the leading academic histories on venereal disease or contraceptive commerce describe interactions between manufacturers and druggists (Himes 1936; Brandt 1987; Murphy 1990; Tone 2002a). None of the leading manufacturers left publicly available papers. No scholar has written a complete history of drug stores, and the authorized, popular histories that do exist make no mention of contraceptive sale policies (Kremens 1976; Lebhar 1963). Individual biographies of chain store founders suffer from similar deficiencies. Therefore, my use of advertisements is as much an approach of necessity as desirability.

The monthly magazine featured articles on new products, sales techniques, and occasional updates about how major political issues affected druggists' bottom lines. A primary purpose of the magazine, though, was advertising, and businesses hawked products of all types, including condoms. The analysis here focuses on ads published from 1929-1939.<sup>7</sup> Over this period, condom manufacturers placed 177 separate advertisements totaling 164 <sup>3</sup>/<sub>4</sub> pages, and all five leading manufacturers published at least one advertisement.<sup>8</sup> The rate of condom advertising followed a smooth arc in which condom advertising spiked in 1931, and continued rising to a peak in 1933 before beginning a gradual descent lasting through the end of the decade.

As one of the pioneers of a drug store only sales policy, it is not surprising that Youngs Rubber published the first *American Druggist* condom ads in 1929. The timing and motivation behind these early advertisements is not entirely clear. But the most likely explanation stems from Youngs' position as a newcomer needing to differentiate himself from his competitors, his inexperience in alternative strategies like technological innovation, and his own personal appetite for risk in a climate of legal and social uncertainty. By almost a 2-1 margin over its

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<sup>7</sup> It is likely that many druggists knew which companies made condoms before the first ads starting appearing. Had legal restrictions on contraceptive advertising not existed, condom manufacturers might have published advertisements earlier. I began my search for advertisements in 1925, and found no examples until 1929.

<sup>8</sup> Because druggists in the 1930s were divided into wholesalers, independent retailers, and chain store operators, I investigated a wide range of available media sources as part of my research. Organizations for the three major druggist groups – wholesale, retail, and chain – still exist today, although the wholesale and retail druggist organizations have changed their names. The current communication staffs for all three organizations have a small number of records from the 1930s, none relating to contraception. Neither the National Wholesale Druggists Association nor the National Association of Chain Drug Stores published trade journals in the 1930s. The annual yearbooks published by these groups have no advertisements, and serve more as directories and summaries of annual meetings. Retail druggists were the only association with their own trade journal, the *National Association of Retail Druggists Journal*, which was devoted predominately to political issues. The ads in this journal, which I also collected, were similar to those in the *American Druggist* and ran over a shorter time period, 1934-1939. In addition, only two manufacturers, Youngs Rubber and L.E. Shunk Latex Co. published in the journal, and never in the same year. *Druggists' Circular* is a third trade publication similar in mission and audience to the *American Druggist*. Almost all ads published in *American Druggist* also appeared in *Druggists' Circular*, though the number of total ads was smaller. Condom advertising in *Druggists' Circular* dropped off sharply in toward the end of 1934. I also searched the pharmaceutical business newspaper *Drug Trade News*, which was aimed primarily at drug store wholesalers, but it did not contain condom advertisements. The largest chain store industry journal of the period, *Chain Store Age*, also did not contain condom advertisements.

closest competitor, Youngs Rubber was the largest and longest-running advertiser in the magazine, running ads in 10 of the 11 years analyzed.

The content of the advertisements illuminate three major themes. First, early advertisements support the claim that the political economic problem facing druggists and manufacturers was how best to restrict sales. Manufacturers warned druggists about how black market sales compromised both groups' reputations, and promised to sell condoms exclusively to druggists. Second, advertisement content changed in 1933, the year of the first drug store laws, invoking rhetoric of cooperation and political action. Manufacturers made overt references to shared goals and identities, and, as laws began to spread, classified their collective efforts as a "movement". Third, manufacturers played the role of generals in policy formation, while druggists served as foot soldiers. Manufacturers usually provided political and financial support, while druggists usually approached local governments to initiate legislative action.

#### *The Black Market Threat (1929-1932)*

Youngs Rubbers' early advertisements in the *American Druggist* centered on the threat that black market condoms posed to manufacturers and druggists' profits and reputations. An analysis of the 67 total advertisements published between 1929 and 1932 (shown in Table 1) highlights Youngs Rubber's consistent warnings. Early ads portrayed the black market menace in colorful imagery. The peddler was frequently pictured as a bandana-wearing pirate, complete with hoop earrings, lurking the shadow of the safe and sanitary druggist, or hanging out with a group of men resembling a mafia gang. "Are you permitting pirates to shoot at your reputation?" "Don't let his disguise deceive you," and "Beware a pirate's bargain!" read three headlines of 1929 ads. The text of these ads was a version of this one from September 1929:

“Pirates who sell, illegitimately, the same goods which are sold by drug stores as a professional, hygienic service, are shooting at the prestige and reputation of the druggist. . . Every druggist owes it to his personal reputation and to the prestige of his professional, to help drive such pirates out of his neighborhood.”

Youngs Rubber’s advertisements warned druggists to be on the lookout for counterfeit Trojans “closely resembling the genuine.” Druggists, the advertisements said, could be assured that Youngs Rubber sold its condoms exclusively to drug stores through “responsible wholesale houses and our own direct representatives.” “The Trojan Plan,” as it was called in a May 1930 ad, was the “fairest, squarest and safest proposition for druggists” interested in protecting their wallet and their good name. In a one-page signed letter published in November 1932, Merle Youngs urged druggists to spell out the differences between the condoms found in drug stores and in “any garage, pool hall or lunch wagon,” and why drug store condoms carried a higher price tag. He asked them, in essence, to act as his sales representatives.

“Talk with regular customers at every opportunity about the better drug store quality. Poor quality goods are not safe. Bring this fact to customers’ attention. Point out the difference in quality, in safety and protection. We do not advise that any druggists suggest the use of these goods, but we do recommend that every druggist discuss quality with those who ask for prophylactic rubber goods, and try to convince his customers that a drug store quality article justifies a drug store price.”

#### *A “Movement” for Regulation (1933-1935)*

The biggest advertising year for condoms was 1933, when 33 ads totaling 31 ½ pages were published. Four of the five leading companies – Youngs Rubber, Dean Rubber, L.E. Shunk Latex, and Julius Schimd Inc. – ran advertisements, the only year so many manufacturers advertised at once. This occurrence is not surprising since 1933 was an important year of internal organizing in the drug industry. On May 5, leaders from all corners of the drug industry incorporated the Drug Institute of America, an attempt to unite chain

stores, independent retailers, wholesalers, and pharmacy boards. For the first time, manufacturers positioned themselves alongside druggists as part of an industry subgroup.

An analysis of the 71 advertisements published from 1933-1935 (shown in Table 2) highlights the new emphasis manufacturers put on industry cooperation. They frequently mentioned the Drug Institute by name, and placed its membership logo in the corner of ads. “We urge the support of all active retail druggists in the work of The Drug Institute of America, by joining the Institute when approached by accredited representatives,” said Youngs Rubber’s July 1933 ad. “The Drug Institute says ‘NO’! read an August 1933 ad for Dean Rubber, referring to the Institute’s support for drug store only policies. “For years we have advocated and practiced the sale of prophylactic rubbers to druggists only. Now the Drug Institute puts the stamp of approval on this policy by taking a definite stand against the sale of such goods outside the drug trade,” read the Dean ad.

Buoyed by an *American Druggist* editorial claiming that “more complaints than ever are being received concerning the sale of prophylactics rubber goods in non-drug stores,” Youngs Rubber, in a July 1933 ad, urged druggists to take matters into his own hands.

“You should do more than join The Drug Institute. We urge you to write your own Codes or Practice covering this business. Every druggist has it within his power to accomplish results in his own locality, and at once. Your first consideration should be to stock only those goods.”

The need to take action was urgent, Youngs Rubber claimed, in order to “prevent any possibility of these goods being secured by peddlers, pool halls, gas stations, and other illegitimate places.”

Store codes quickly became legal statutes. The alliance’s political successes began in Long Beach, California, in 1933 and spread to more than a dozen California cities by the end of

the year. The first state-wide adoption of prophylactic laws occurred in Iowa the following year, with Oregon and New York to follow. Read a February 1934 Youngs advertisement:

“Various states have enacted legislation to control the distribution of prophylactics. Such laws can be secured where they are wanted by druggists’ organizations. Work with your local, county, state and national associations for regulations to curb the indiscriminate sale of prophylactics. The cooperation of local health authorities will help promote such regulations.”

Youngs Rubber also offered its own services for interested druggists. “We will gladly send you copies of regulations already in force, with suggestions on how to go about it in your city.”

Youngs Rubber was not the only company working on druggists’ behalf. Dean Rubber, maker of the Peacock brand, swore its opposition to druggists’ chief rivals. “The filing station attendants and pool hall attendants in your neighborhood may be fine fellows – but – we are old fashioned enough to believe that they should be your customers for prophylactics and not your competitors,” read a September 1934 ad. Like Youngs, Dean Rubber supported druggists “in many cities to introduce and put into force city ordinances that prohibit the sale of prophylactics through ALL unlicensed sources.”

Julius Schmid Inc. represented an alternative strategy for cooperation with druggists. Throughout the early 1930s, legal restrictions and social attitudes had kept contraceptive advertisements out of most popular media. If customers wanted to find out about contraceptives from a publication, they read vaguely worded small print ads in the back of men’s pulp magazines. In 1933, however, Schmid began the nation’s first prophylactic ad campaign aimed directly at consumers. The idea was a bold one. Youngs Rubber, when considering whether to start its own campaign, mailed out a survey to druggists asking “Shall Trojans be nationally advertised?” The company concluded no, saying in a January 1934 ad, that druggists believed

consumer advertising was “not the way to serve the best interests of either the public or the drug stores.” The ad campaign was deemed unwise economically, popularly, and ethically.

Nevertheless, Schmid went forward with its plan. The goal was to “stimulate greater public good will for the druggist,” to “direct prophylactic business to the drug store,” and to promote Schmid’s three brands, Ramses, Sheik, and Fourex. The ads ran in 14 national “men’s magazines” over a 14-month period. Schmid’s advertisements are notable for their elevation of the druggist into a symbol of humanity, courage, and respectability. Condoms were an afterthought. The three brand names were placed in small print near the bottom of the ads without descriptions of the products’ features. The only distinguishment necessary was an association with the druggist. The ads carried headlines like “Your Friend... the Druggist,” and “He has to be a College Man!” “Your doctor’s RIGHT HAND MAN!” and “How would you like to be the...Druggist?” The ad with this last headline described the druggist in fawning tones as an intelligent, humble, hardworking member of the community.

“Wonder if anyone every stops to think what a druggist puts into his business before he takes a cent out of it? His investment begins with a college course in Pharmacy and a long apprenticeship working for someone else. Then, one fine day he signs a costly lease for a store. How the bills mount up for fixtures!...At least he opens his doors for business. Keeps them open night and day. Serves the public unceasingly, untiringly. As merchant, as druggist, as friend. The world doesn’t begrudge a druggist a modest living profit for a grinding 18-hour day of hard work!”

With manufacturers ingratiating themselves in a variety of ways, it is probably not surprising that there was some jealousy between them over who deserved credit for political entrepreneurship. Dean Rubber’s claims appeared to chafe Merle Youngs. In an oddly self-referential advertisement from September 1934, Youngs Rubber characterized the alliance as a “movement for legislation” to restrict condom sales. But as it claimed satisfaction at the movement’s progress, the ad’s tone was sour and resentful toward late-joiners.

“In fact, druggists’ organizations everywhere are backing our “Drug Stores Only” Policy to such an extent that these manufacturers now see the necessity for climbing aboard our bandwagon. Some of them even insist that they are doing the driving! It is of small importance who drives the wagon, so long as it stays on the road and headed for the goal which we set up years ago.”

Whoever was driving, the wagon wheels began to speed up in the mid-1930s. Drug store legislation was introduced in a majority of states. Municipal ordinances spread beyond large urban centers to places like Grand Rapids, Michigan, Syracuse, New York, San Leandro, California, and Joliet, Illinois. “Further investigations are being carried on at the present time, additional cities are studying legislation,” reported the editors of the *N.A.R.D. Journal* (N.A.R.D. 1934, 826). They predicted that “many more” would soon follow.

#### *Congratulating Each Other on Movement Success (1936-1939)*

By 1936, manufacturers and druggists had cemented their political relationship. Drug store only laws had passed in six states and as many as 135 cities. Legislation was pending in at least a half dozen other states and an unknown number of cities. Condom advertisements between 1936 and 1939 shifted again. An analysis of the 39 advertisements published over these four years (shown in Table 3) highlights the return to a style of advertising more common during the early part of the decade. Advertisements declined in number and page size, and their contents updated legislative action infrequently. Instead, manufacturers published ads with a purpose that most average consumers would expect: Promoting a product. Condom manufacturers differentiated their products through the usual suspects of price and quality.

The late 1930s were a time for manufacturers and druggists to build on earlier gains. Contraceptives were becoming socially accepted by consumers and governmental bodies. To ensure that the trend would continue, those in the condom business needed to continue promoting an image of safety and reliability. “It is natural,” read an October 1936 Dean Rubber

ad, “that we take pride in the evolution of prophylactic merchandising – from an under-the-counter item to an open, legal commodity endorsed and recommended by leading medical men and social workers in their campaign against social diseases.” Dean Rubber had “visioned (sic) a day” when condoms would “take their rightful place alongside other legitimate drug store items,” and condom manufacturers would take their rightful place alongside other businesses, worrying more about ordinary commercial obstacles and less about unique political ones.

As the decade drew to a close, Youngs Rubber took up the role of industry historian, boasting of its achievements in ads with titles like “Highlights in the History of the Prophylactic Industry!” Were it not for the company’s “constant vigilance, ethical direction, and forward-looking policies,” the “peddlers and other outside outlets long ago would have captured the prophylactic business.” The claim was simple: Once manufacturers and druggists seized control, consumer acceptance, profitability, and high-quality products followed.

### **Statistical Tests: Data and Hypotheses**

Building on the content of condom advertising, this section uses logit models of two original data sets to test for the influence of a manufacturer-druggist alliance on drug store laws.<sup>9</sup> The empirical strategy is to obtain a cross-section of observations as close as possible to the exact point of the first laws (1933), and use them to make predictions about passages over the next six years.<sup>10</sup> The dependent variable in both data sets is, therefore, the passage of a law coded as 1. A complete record of the approximately 200 municipal laws passed may be lost to history, but my research indicates that it is reasonable to claim that laws were more likely to

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<sup>9</sup> For a complete discussion of data sources see my Data Appendix.

<sup>10</sup> Unfortunately, the sparseness of the historical record precludes the collection of exact dates for most laws, and thus an analysis of panel data using fixed effects or first differencing. However, the short historical period during which these laws passed – six years – makes the cross-sectional strategy a reasonable substitute.

pass in larger, more urbanized places. To control for these effects and to deal with the data practicality issues, I use a complete sample of the 191 cities with populations greater than 50,000 as of 1930. (A map of the 16 states and 91 cities that passed laws is shown in Figure 1.)

To test my argument, I use occupation figures as proxies for alliance influence and black market threat.<sup>11</sup> Ideally, I would seek to measure influence through political access, but the available state and city-level data from the period is limited to 1933 per capita figures on drug store employees. My measure of black market sites is 1933 per capita figures for gas station attendants, pool hall and bowling alley employees, barbers, and cigar store employees. Since pool hall figures are not available for all 191 cities, I substitute bar employees in the municipal model.<sup>12</sup> My argument's observable implication is the following hypothesis:

Hypothesis 1 (Primary argument): Business Alliance Pressure

Cities and states with more drug store and black market employees should have higher probabilities of passing a drug store law.

I consider four alternative hypotheses to explain the passage of laws. I list each hypothesis below, the variable used to operationalize each hypothesis, and the observable implications of each measure.

Hypotheses 2: Social Movement Activity

It is important to consider a hypothesis for the standard narrative even though historical materials do not suggest a public endorsement of drug store laws by the movement. Thus, I include two variables, a dummy for the presence of birth control clinics and a 1933 per capita measure of clinics. Together, these capture movement activity since all clinics through the late 1930s had an affiliation with the movement. I expect that places with more clinics should pass laws.

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<sup>11</sup> While number of druggists is a weaker measurement of influence than alternatives such as financial bribes or lobbying, any statistical relationship between drug store laws and per capita druggists will probably underestimate alliance strength.

<sup>12</sup> Although there are correlations between some of these variables, none appear serious. Most correlations between any two black market variables at the state and city level are between .35 and .6. Aggregating the black market variables into a single black market index is not advisable because two variables, barbers and gas stations, dominate the index. In addition, including all black market variables allows for the possibility of testing whether druggists considered some black market sites more of an economic threat than others.

### Hypothesis 3: Indirect Effects of the Social Movement

The movement is often credited with indirect influence on changes in attitudes. I include two variables to capture this possibility: 1) The percentage of women age 10 and older in the labor force, and; 2) The fertility rate among sexually active women, defined as between ages 15-44. The movement's strength should be strongest in places with higher labor participation and fertility rates, which should therefore be associated with the passage of laws.

### Hypotheses 4: Demand for Legal Male Contraception

This hypothesis attributes legalization to male consumer demand. I include a variable for the number of men ages 15-44 as a proportion of the total population. This variable is intended to measure the demand of those consumers most likely to want and use legal contraception. The passage of laws should be associated with places where these men comprise a larger part of the population.

### Hypothesis 5: Venereal Disease Threat

Since condoms were known for their semi-adequate protection against sexually transmitted diseases, this hypothesis claims that drug store laws were an institutional response to venereal disease epidemics or economically vibrant houses of prostitution. I include a 1933 per capita measure of syphilis deaths, and expect that places with higher death rates should pass laws.<sup>13</sup>

In addition to these hypotheses, I control for five social and political factors.

- *Religion* is a 1936 per capita measure of Catholics and Southern Baptists. These two religious groups were the most prominent political opponents of legal contraception and should reduce the likelihood of law passage.
- *Income* and *Illiteracy* are two factors likely associated with the size of legitimate retail outlets and the black market. Places with higher median incomes and lower illiteracy rates should be more receptive to a message of legal birth control, whether espoused by druggists or social movement members, and should be more likely to pass laws.
- *Democratic Party support* is a percentage of votes for Franklin Roosevelt in 1932, and is meant to capture liberal political identification. Since the birth control movement's Congressional allies were from the Republican Party, the expectation is that places more supportive of Roosevelt will be less likely to pass laws.
- *Population* is the total number of residents in 1930. Places with larger populations, and thus more urban areas, should be more likely to pass laws.

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<sup>13</sup> Figures on syphilis cases are not available. My expectation is that places with more cases will have more deaths, although the availability of antibiotics means that syphilis deaths could be a function of syphilis cases and other variables such as income. Without city-level median income levels, I cannot interact the appropriate terms to investigate this possibility.

## *Results*

Overall, the results support my hypothesis at the municipal level, but not at the state level. A major problem with the state models is the sign and value changes in the estimators as additional covariates are added. Equally troubling, the estimators for some of the major explanatory variables are in an unexpected direction. For example, in the simplest specification (Table 4, Model 1), the model predicts that states with more druggists and more pool hall and bowling alley employees are less likely to pass laws.<sup>14</sup> There is some support for alternative hypotheses about the influence birth control movement (Model 2). Both clinic estimators are individually significant at the .05 level, and suggest that states with more clinics are more likely to pass drug store laws.<sup>15</sup> However, this association is largely driven by the effect of the two states with the most clinics, New York and California. When those states are excluded (not shown), the coefficients for clinics fall sharply and lose their significance.

The municipal models strongly confirm my primary hypothesis.<sup>16</sup> In the simplest specification (Model 3), the estimators for drug store employees, gas station attendants, and cigar store employees are in the expected direction.<sup>17</sup> In addition, drug stores and gas stations are significant at the .05 level. Joint tests of the black market variables together are significant at the .1 level. As covariates are added (Model 4), the black market estimators lose their

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<sup>14</sup> I ran similar tests using 1930 data on drug store employees and black market sites to check the robustness of my findings. While the drug store estimators are consistently in the expected direction, the overall results are similar to the ones produced here.

<sup>15</sup> A joint test of the two clinic variables is statistically significant at the .1 level.

<sup>16</sup> Selection bias is a concern as sample of large cities systematically differs from non-sampled smaller cities. There are theoretical arguments that business groups can exert more political influence in smaller cities (McConnell 1967). If so, the true influence of druggist-manufacturer alliance in most U.S. cities, which were between 10,000 and 50,000 people, would be underestimated in my models. Although I cannot test this exact theory, I can gain some insight about its applicability by creating an interaction term to see if the partial effect of drug store employees depends on the magnitude of the population within the existing sample. The variable for drug stores and the interaction term are jointly significant at the .01 level (not shown), but the practical slope change is 0. I believe the effects predicted from my sample generally apply to cities of all sizes.

<sup>17</sup> I was not able to confirm these findings using the 1930 Census since data for drug stores, pool halls, and cigar stores is unavailable for approximately half of cities with populations larger than 50,000.

individual and joint significance.<sup>18</sup> However, drug stores retain similar levels of strength and robustness. As an additional confirmation of robustness, I exclude 16 influential outliers using a DFFITS calculation (Model 5). In general, the estimators retain their significance and show stronger effects. The estimator for drug stores employees, for example, doubles in size and is significant at the .01 level.

The municipal models provide some support and refutation of alternative factors in birth control legalization. The positive and significant coefficients for birth control clinics support claims about the social movement's influence. Cities with more clinics are associated with higher probabilities of law passage. There is also some support for the hypothesis attributing law passage to male consumer demand. Cities with more men ages 15-44 are more likely to pass laws. The hypothesis that laws are associated with cities where female labor participation rates are higher is refuted by these tests. Unexpectedly, cities with more working women are less likely to pass laws. Hypotheses about venereal diseases, religious pressure, and indirect movement effects are neither confirmed nor refuted by these results.

Which of the variables included has the largest effect on law passage? Drug stores. I calculate predicted probabilities of law passage for each of the statistically significant variables. Holding other factors constant at their means, a one standard deviation change in drug store employees produces a 21 percent increase in the probability of law passage. In contrast, a one standard deviation change in birth control clinics per capita produces a positive 14 percent change. A one standard deviation change in female labor participation rates decreases the probability of law passage by 14 percent. And a one standard deviation change in the proportion of men ages 15-44 increases the probability of law passage by 12 percent.

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<sup>18</sup> After adding covariates, joint tests of cigar stores and barbers are not jointly significant at the .1 level. Consequently, I exclude them for Model 4.

Another way to compare the effects of drug store employees and clinics on law passage is to generate predicted probabilities across the variables' ranges. I construct these probabilities for situations with and without operating clinics (Figures 2a-2c). With and without clinics, holding other factors constant at their means, the predicted probability of passing a law increases from 15 percent at the minimum number of drug store employees to 96 percent at the maximum number (Figure 2a).<sup>19</sup> Without clinics, the probability of law passage is less than 50 percent when other factors are held at their means. In cities with the most per capita clinics, the probability of law passage is 97 percent, holding other factors at their means (Figure 2c).

While the influence of clinics is noteworthy, it is possible that the variable captures progressive attitudes about sex rather than movement activity. Such attitudes, I believe, would be positively correlated with clinics, thus biasing the estimates. The historical record indicates no formal alliance between the social movement and business groups, or formal support for drug store laws. Moreover, there is a theoretical justification for believing early clinics are conceivably different from later clinics. As early adopters, their establishment should be more difficult because of national hostility to movement demands. Clinic establishment should occur in places that are already sympathetic of movement objectives or more persuaded by movement messages. This hypothesis that clinic operation is an indication of the community around it is strengthened by statistically insignificant findings of additional models (not shown) that use data on 1936 clinics.<sup>20</sup>

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<sup>19</sup> The difference in confidence intervals is due to the distributions of drug store employees in the two types of cities. In cities with clinics, the range of drug store employees is fairly evenly distributed for all values of employees per 10,000 residents. In cities without clinics, the range of employees is concentrated around 10-25 employees, thus producing narrower confidence intervals.

<sup>20</sup> If the clinic variable is a proxy for a liberal social philosophy, movement activity is probably both a cause and effect of these attitudes. Endogeneity would be a concern. The first public opinion polls on birth control were conducted in 1936. In a national survey performed by Gallup, 70 percent believed married couples should have the right to obtain contraception. Disaggregated data is not available.

To test the theoretical claim that druggist influence is a function of progressive attitudes, I interact drug store employees with clinic presence and per capita figures. The drug store variable and the interaction terms are jointly significant at the .01 level, and the effect is positive (Model 6). To see the effect graphically, I calculate the accumulated probabilities that additional drug store employees have on law passage, holding all variables including per capita clinics at their means. The slope of the probability functions (Figure 2d) indicates that the effect of drug store employees when clinics are operating appears to be as much as 20 percent stronger than when they are absent. Overall, these results support the hypothesis that while the manufacturer-druggist alliance and the social movement operated independently, the alliance's influence was bolstered either by movement activity or by progressive attitudes.

#### *Why are the State Models so Poor?*

The poor fit of the state models is a puzzle. The most likely explanations are a missing variable for condom manufacturer influence, and a lobbying process that unfolded differently at state and city levels. Julius Schmid was the primary force behind the first municipal law in Long Beach, California, according to his granddaughter Elaine Petersen. When asked why the first law passed thousands of miles from the company's Manhattan headquarters, Petersen attributed it to a change in zip code. Julius had recently retired to nearby Beverly Hills, where he spent his semi-retirement focusing on politics while his son, Carl, ran the business.<sup>21</sup>

Petersen's account is born out by a letter from the John Wagner, president of the Long Beach Retail Druggists Association to Carl Schmid from October 1933, expressing thanks for "the work that you and your organization did in connection with the passage of the recent ordinance here in Long Beach." Vending machines had represented a great "evil" to druggists,

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<sup>21</sup> Elaine Schmid Petersen. Phone interview. 28 November 2006. "A Record of Achievement." Julius Schmid, Inc. advertisement. Undated. Elaine Petersen personal collection.

Wagner wrote, but “until these matters were brought to the attention of our druggists by your firm, I am sure that they were not aware of the seriousness of the situation. . . Your efforts with the druggists themselves and the City Council had a great deal to do in the action that resulted in the passage of this ordinance.”<sup>22</sup>

After achieving early victories, Schmid and other manufacturers encouraged druggists, through advertisements, free research reports, and visits by sales representatives, to become foot soldiers by lobbying for drug store laws in their cities. At the state level, however, manufacturers’ direct involvement, unrelated to per capita drug store employees, remained crucial to legislative success.<sup>23</sup> One of the best examples of manufacturer involvement is Schmid’s California ambassador, Arthur Mallery, who, beginning in the mid-1930s, lobbied state legislators, and, after passage of a law, devoted himself full-time to gathering evidence on violators. In 1935, the California Pharmaceutical Association first introduced a drug store law, but witnessed its failure because of what the group’s executive secretary called “the lack of a well laid plan to follow through.” After sending out an “SOS for help,” Mallery responded by “re-writing the bill to make it acceptable” to opposing groups. He stayed with representatives from the Association in Sacramento “throughout the entire (1937) session.”<sup>24</sup> On the morning of the bill’s passage, the head of the Northern California Retail Druggists Association penned a letter to Carl Schmid, laying all of the credit at Mallery’s feet:

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<sup>22</sup> John G. Wanger to Carl Schmid. 26 October 1933. Elaine Petersen personal collection.

<sup>23</sup> By historical accounts, a variable for manufacturer influence is unlikely to be related to per capita drug store employees. However, any relation to other explanatory variables would bias the results. I considered dummy variables for manufacturer influence, where states with headquarters or factories for the five major condom companies would be recorded as a 1. Unfortunately, condom manufacturing was confined to four states, New Jersey, New York, Ohio, and California. In city models (not shown), I included the dummies to identify cities in those states, but found no relationship to the passage of laws. Company figures on condom sales at state and city levels would be invaluable data to have, but practically speaking, they are unavailable.

<sup>24</sup> Roy Warnack to Carl Schmid. 2 June 1937. Elaine Petersen personal collection.

“I feel, and I know that I am right in this, that we have to thank the efforts of yourself and your representatives in California for the passage of this bill, which means so much added profit. I might go further and say not only do we have to thank you for the passage of the bill but for the drawing up of same and for that fact that it has been introduced at this session of the Legislature. In other words, we owe the whole thing to your house.”<sup>25</sup>

### **An Auxiliary Police Force: Enforcing Drug Store Only Laws**

Manufacturers’ sales managers and attorneys, together with individual druggists and their associations, formed a powerful auxiliary system of law and order. In addition to their ex ante lobbying, they coordinated ex post law enforcement. They performed surprise spot checks at typical black market sites, collected information on prophylactic products, and filed cases against violators. The depth of their involvement is not surprising given how much they stood to benefit. Trade journal news briefs provide a glimpse this involvement, which extended to any city where condom company employees and druggists were willing to provide manpower and resources. Neither group was shy about its effort. “We have spent many thousands of dollars on research that revealed the large extent of prophylactic sales outside the drug store,” wrote Merle Youngs in an essay. “To combat this, we sought and secured legislation to confine prophylactic sales to the pharmacist. . . . Our nation-wide enforcement work, from coast to coast, has caused the arrest and conviction of thousands of peddlers” (Youngs 1937, 80).

Dean Rubber also promised to help druggists enforce the laws they had just passed. Working with local police, the company sponsored raids that received free publicity through newspaper coverage. In turn, Dean Rubber used the headlines its own ads. Dean’s October 1934 ad in the *American Druggist* featured a drawing of an unnamed Iowa newspaper with the headline “Police Seize Goods in Raids.”

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<sup>25</sup> W. Gnerich to Carl Schmid. 28 May 1937. Elaine Petersen personal collection.

“A state-wide drive to enforce the Iowa Law against the illegal sale of prophylactics and contraceptives is being carried forward in Des Moines, Mason City, Cedar Falls and Marshalltown. Visiting 37 local places, including pool halls, cafes, parking lots and night clubs, policy last night seized a large quantity of contraceptives and a number of machines for vending these goods.”

According to the *Des Moines Register*, “behind the scenes instigating the law and urging its enforcement were the Iowa Pharmaceutical Association and the manufacturers of Peacock Prophylactics.”<sup>26</sup> Raids continued throughout the year, ultimately seizing nearly 300 illegal prophylactic stocks. “This constitutes the most effective and constructive plan of action ever adopted to outlaw the bootlegger or prophylactics,” read a December 1934 Dean Rubber advertisement urging druggists elsewhere to “institute similar crusades.”<sup>27</sup>

Similar patterns took place in states as diverse as Pennsylvania, West Virginia, Tennessee, Washington, and Kansas. Druggists with the Allegheny County Pharmaceutical Association cooperated with local police “to round up eight men in Pittsburgh...in their drive against the illegal sale and peddling of prophylactic goods.”<sup>28</sup> In Harrison County, West Virginia, members of the Clarksburg Retail Druggist’s Association canvassed “filling stations, beer gardens, lunch rooms and pool rooms,” where they made ten arrests,” carrying \$10 fines.<sup>29</sup>

In Tennessee, after Youngs Rubber submitted “vital evidence” to the Knoxville Drug Club, “the organization moved at once to safeguard public health” and passed a local drug store only ordinance.<sup>30</sup> Enforcement “then became an active issue, in which Youngs Rubber Corporation played a leading part.”<sup>31</sup> Youngs Rubber surveyed businesses in Wichita, Kansas, following “vigilant enforcement” of the city’s drug store ordinance, and found that “outside of

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<sup>26</sup> Dean Rubber Manufacturing Co. advertisement. *American Druggist*. October 1934: 185.

<sup>27</sup> Dean Rubber Manufacturing Co. advertisement. *American Druggist*. December 1934: 99.

<sup>28</sup> “Prophylactic Cleanup.” *N.A.R.D. Journal*. 19 March 1936: 358.

<sup>29</sup> “Prophylactic Drive.” *N.A.R.D. Journal*. 20 August 1936: 1130.

<sup>30</sup> “Knoxville Prophyl Law Upheld.” *N.A.R.D. Journal*. 6 January 1938: 46-7.

<sup>31</sup> “Knoxville Prophyl Law Upheld.” *N.A.R.D. Journal*. 6 January 1938: 46-7.

drug stores...no prophylactic purchases could be made.”<sup>32</sup> And in Washington State, 15 dealers, “one of whom has been distributing 300 gross annually, have quit the business; and notice has been served on 1,200 retail outlets including filling stations, pool halls, beer parlors, taverns, restaurants and confectionaries.”<sup>33</sup>

Company managers crisscrossed state lines making detailed logs of the addresses, dates, brands, and prices of condoms sold illegally. Druggists made similar logs, which they sent to trade associations and manufacturers to compile in an information clearinghouse that was frequently used to provide evidence at later trials.<sup>34</sup> Exemplary of this strategy were Youngs Rubber sales managers J. Clair Daley, James Nolan, and J. P. Conner. In Madison, Wisconsin, Daley and representatives from the Wisconsin Pharmaceutical Association arrested eight men after a “check of filling stations, groceries, and other illegal places of sale.”<sup>35</sup> Daley and representatives from the Minnesota State Board of Pharmacy launched a series of drives against suspicious filling station operators in Minneapolis and Duluth. Their work produced 12 arrests, and applause from area druggists for “the check of practices dangerous to the public and injurious to the legitimate business of pharmacists.”<sup>36</sup>

A sales manager’s typical assignment sent him to a city where he had already made contact with the police chief. After soliciting guidance, the manager set out to visit every black market site in town.<sup>37</sup> In 1938, Nolan and the Indiana Pharmaceutical Association helped muster evidence against a confectioner and a filling station operator.<sup>38</sup> A year later, he worked

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<sup>32</sup> “Prophylactic Laws Enforced.” *N.A.R.D. Journal*. 21 December 1939:1814.

<sup>33</sup> “Prophylactic Law Goes Into Effect.” *N.A.R.D. Journal*. 21 September 1939: 1330.

<sup>34</sup> George Edelman to Linn Walsh. Holt & Company memo. October 22, 1953. George Edelman to Floyd Heffron. 11 October 1954. Elaine Petersen private collection.

<sup>35</sup> “Wisconsin, Illinois Prophyl Checks.” *N.A.R.D. Journal*. 28 September 1937: 1530.

<sup>36</sup> “Minnesotans Hit Illegal Prophyl Sales.” *N.A.R.D. Journal*. 7 December 1939: 1755.

<sup>37</sup> “Prophylactic Laws Enforced.” *N.A.R.D. Journal*. 21 December 1939: 1814.

<sup>38</sup> “Gary Fights Prophyl Bootlegging.” *N.A.R.D. Journal*. 1 June 1939: 740.

with the Illinois Pharmaceutical Association to bring evidence against two non-druggists in Joliet, Illinois. The two men, unable to pay their \$100 fine, were sent to jail.<sup>39</sup> In Louisville, Kentucky, J. P. Conner and a detective handled arrests. Conner and officials with the Kentucky Board of Pharmacy arrived in Louisville to warn city officials about the spread of venereal diseases and inferior prophylactics “sold by peddlers, pool rooms and the like.” Conner also contacted 14 oil companies operating filling stations in the city so that “when the drive was put on, prophylactic merchandise was unobtainable in none save two independent stations.”<sup>40</sup>

Youngs Rubber also provided the assistance of its private attorney, Alfred S. Perlstein, with the enforcement of drug store laws. He participated in virtually every case in the New York-New Jersey area, arguing on behalf of druggist associations. “Special investigators” Harold Snyder and Jerome Helfert usually brought complaints on behalf of the state pharmaceutical association. If the defendant fought the charges, Perlstein prosecuted.<sup>41</sup> In addition to bar keeps and gas station attendants, Perlstein’s targets included a plumber selling mail-order contraceptives out of a Murray Hill tenement house.<sup>42</sup> Less than a year after New York passed its law, the State Enforcement Committee and Perlstein had made more than 118 arrests, and won 59 convictions in “Greater New York City alone,” according to a news account.<sup>43</sup> By the end of the decade, he had compiled a record of more than 350 convictions.

## **Conclusion**

The view of policy change presented in this thesis fits well with the two ways Americans traditionally see interests groups. As both manipulators and protectors of the

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<sup>39</sup> “Prosecute Illinois Prophyl Violators.” *N.A.R.D. Journal*. 16 February 1939: 258.

<sup>40</sup> “Prophyl Violators Fined.” *N.A.R.D. Journal*. 7 January 1937: 70.

<sup>41</sup> “Keeping Posted.” *Druggists Circular*. January 1939: 56.

<sup>42</sup> “N.Y. Wins Prophyl Fight.” *N.A.R.D. Journal*. 7 April 1937:352-353.

<sup>43</sup> “New York Enforces Its Prophylactic Law.” *Druggists Circular*. November 1935: 30.

common good, interest groups are often cast in pure and craven forms (Petracca 1992; Schattschneider 1960; Lowi 1969). But condom manufacturers and druggists do not easily fit into either category. They were primarily businessmen, facing a problem of how to limit contraception. Their alliance gained direct access to governmental circles, enabling the passage of 16 state and approximately 200 municipal laws legalizing contraceptive sales in drug stores and securing dominant marketplace positions. The alliance enforced these laws, conducting spot raids at black market sites, and providing attorneys and evidence for prosecutions.

Casting the alliance strictly in the cold terms of commerce, however, would be unfortunate as well as inaccurate. Many of the individuals involved were sympathetic to the cause of contraception. Six decades of prohibitions had left products shoddy and sullied, stamped with the mark of illicit lasciviousness. During the 1930s, as condoms became associated with professional medicine, they became cheaper and more widely available. Their quality rapidly improved with protection rates rivaling the once superior diaphragm.

One of the ironies of birth control is that condom manufacturers, like those in the social movement, had been excluded from the political process at the turn of the century because of inferior technology and social taboos. Yet in the end, it was these manufacturers who benefited from changing American attitudes more than the social movement. Sanger has become a celebrated historical figure, but the pre-Pill economic landscape that emerged following legalization and widespread public acceptance came to be dominated by male contraceptives and commercial capitalism. It is no accident that within a quarter-century of the first drug store laws, condoms had grown from 15 percent of annual birth control sales to 90 percent (Fortune 1938, 8; Tone 2002b, 72). Birth control was victorious, but the condom was king.

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## Data Appendix

The data used in this study is compiled from a variety of sources published between 1930 and 1940. Data on drug store laws is from condom advertisements and articles in the *American Druggist*, *Druggist Circular*, *N.A.R.D. Journal*, *Birth Control Review*, and the *Journal of Contraception*. By my estimation, slightly less than half of drug store laws were passed in cities with populations greater than 50,000. In the 1930s, Youngs Rubber mailed reports to druggists that supposedly chronicle the spread of drug store only legislation. These reports would be potentially rich sources of data, although it is likely they were destroyed as larger companies bought Youngs Rubber, first in the 1950s and again in the 1980s.

Data on drug store and black market occupations is from the 1933 U.S. Census of Business. Data on fertility, income, illiteracy, proportion of sexually active men, and women in the workforce is from the U.S. Census of Population. Median income levels are not available for cities. Illiteracy rates and population figures are from 1930. Income levels are from 1933. Fertility is calculated as the number of children under age 1 in 1930, divided by the number of women ages 15-44. Data on religious membership is from the 1936 U.S. Census of Religious Bodies. Figures for 1933 are not available. Data on birth control clinics is from the Margaret Sanger Papers collection at the Library of Congress. Data on syphilis disease deaths is from the 1933 Census of Mortality. Data on presidential election returns is from Edgar E. Robinson's *The Presidential Vote 1896-1932*. Vote totals are available at the state- and county-level, not the city-level. All per capita figures are per 10,000 people. I compiled all data by hand.

**Table 1: Condom Advertisements (1929-1932)**

Youngs Rubber Co.

| Year             | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|------------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1929<br>(5 ads)  | 100%         | 0%                | 0%            | 100%                   | 0%                  |
| 1930<br>(12 ads) | 58%          | 0%                | 0%            | 100%                   | 0%                  |
| 1931<br>(12 ads) | 42%          | 0%                | 8%            | 100%                   | 0%                  |
| 1932<br>(8 ads)  | 38%          | 0%                | 63%           | 100%                   | 0%                  |

L.E. Shunk Latex Co.

| Year             | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|------------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1929             | --           | --                | --            | --                     | --                  |
| 1930             | --           | --                | --            | --                     | --                  |
| 1931<br>(11 ads) | 18%          | 0%                | 64%           | 0%                     | 0%                  |
| 1932<br>(12 ads) | 25%          | 0%                | 75%           | 0%                     | 0%                  |

Dean Rubber Manufacturing Co.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1929            | --           | --                | --            | --                     | --                  |
| 1930            | --           | --                | --            | --                     | --                  |
| 1931<br>(6 ads) | 0%           | 0%                | 0%            | 100%                   | 0%                  |
| 1932<br>(1 ad)  | 0%           | 0%                | 100%          | 100%                   | 0%                  |

**Table 2: Condom Advertisements (1933-1935)**

## Youngs Rubber Co.

| Year             | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|------------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1933<br>(8 ads)  | 50%          | 0%                | 25%           | 100%                   | 50%                 |
| 1934<br>(12 ads) | 67%          | 75%               | 17%           | 100%                   | 83%                 |
| 1935<br>(10 ads) | 40%          | 90%               | 10%           | 100%                   | 40%                 |

## L.E. Shunk Latex Co.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1933<br>(6 ads) | 0%           | 0%                | 66%           | 0%                     | 0%                  |
| 1934            | --           | --                | --            | --                     | --                  |
| 1935            | --           | --                | --            | --                     | --                  |

## Dean Rubber Manufacturing Co.

| Year             | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|------------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1933<br>(10 ads) | 60%          | 0%                | 30%           | 90%                    | 50%                 |
| 1934<br>(11 ads) | 55%          | 27%               | 18%           | 100%                   | 73%                 |
| 1935             | --           | --                | --            | --                     | --                  |

## Julius Schmid Inc.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1933<br>(9 ads) | 22%          | 0%                | 56%           | 67%                    | 22%                 |
| 1934<br>(5 ads) | 0%           | 0%                | 60%           | 100%                   | 80%                 |
| 1935            | --           | --                | --            | --                     | --                  |

**Table 3: Condom Advertisements (1936-1939)**

Youngs Rubber Co.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1936<br>(5 ads) | 0%           | 80%               | 60%           | 60%                    | 20%                 |
| 1937            | --           | --                | --            | --                     | --                  |
| 1938<br>(4 ads) | 0%           | 25%               | 0%            | 25%                    | 0%                  |
| 1939<br>(4 ads) | 50%          | 50%               | 50%           | 100%                   | 0%                  |

Dean Rubber Manufacturing Co.

| Year             | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|------------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1936<br>(3 ads)  | 100%         | 33%               | 0             | 100%                   | 0%                  |
| 1937<br>(12 ads) | 83%          | 0%                | 83%           | 58%                    | 0%                  |
| 1938<br>(1 ad)   | 100%         | 0%                | 100%          | 100%                   | 0%                  |
| 1939             | --           | --                | --            | --                     | --                  |

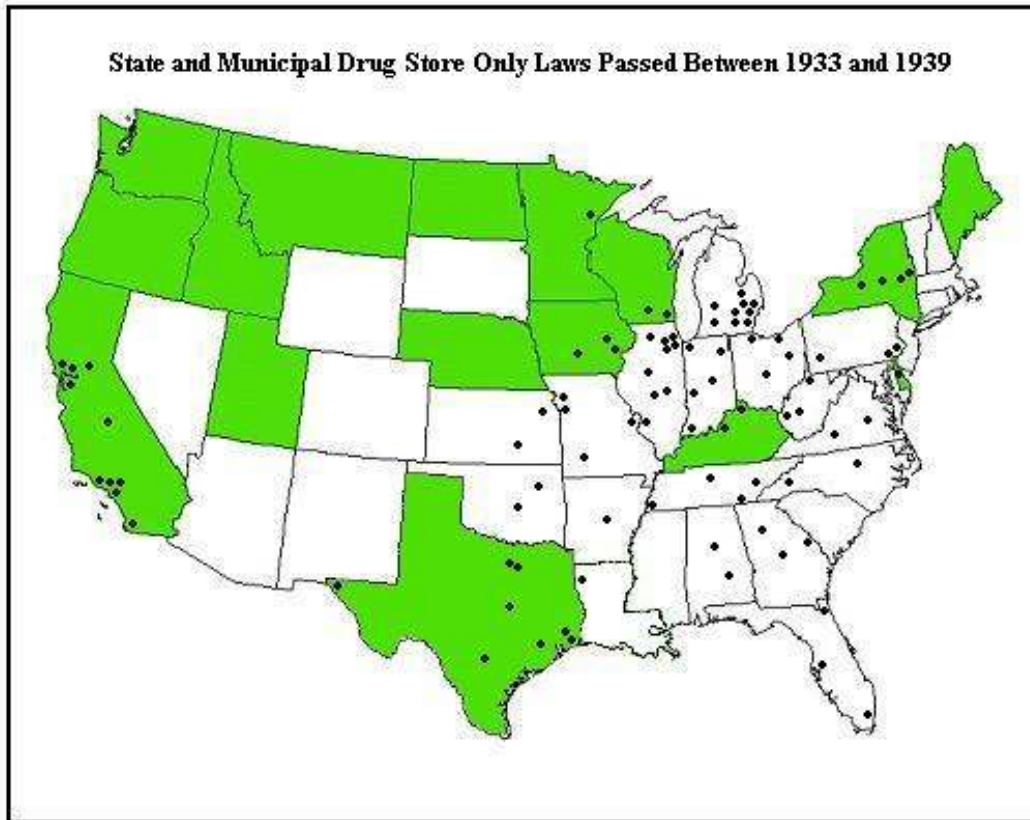
Julius Schmid Inc.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1936            | --           | --                | --            | --                     | --                  |
| 1937            | --           | --                | --            | --                     | --                  |
| 1938            | --           | --                | --            | --                     | --                  |
| 1939<br>(4 ads) | 50%          | 25%               | 75%           | 75%                    | 0%                  |

Killian Co.

| Year            | Black Market | Movement Progress | Profitability | Drug Store Only Policy | Collective Interest |
|-----------------|--------------|-------------------|---------------|------------------------|---------------------|
| 1936            | --           | --                | --            | --                     | --                  |
| 1937<br>(6 ads) | 0%           | 0%                | 100%          | 100%                   | 0%                  |
| 1938            | --           | --                | --            | --                     | --                  |
| 1939            | --           | --                | --            | --                     | --                  |

Figure 1



**Table 4: Logit Estimates for Drug Store Laws**

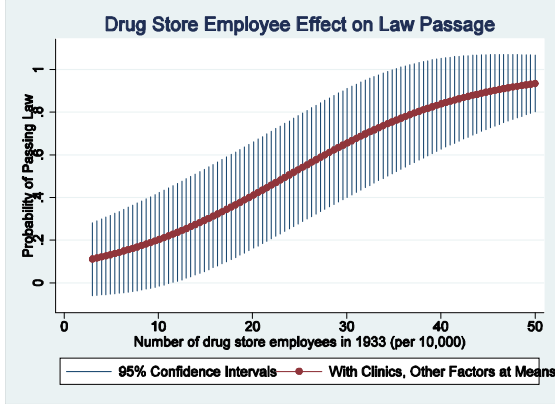
|                                                                  | Model 1<br>(State Laws)    | Model 2<br>(State Laws)      | Model 3<br>(City Laws)      | Model 4<br>(City Laws)           | Model 5<br>(City Laws)           | Model 6<br>(City Laws)            |
|------------------------------------------------------------------|----------------------------|------------------------------|-----------------------------|----------------------------------|----------------------------------|-----------------------------------|
| Drug store employees<br>(per capita)                             | -.348*<br>(.209)<br>[.096] | -.005<br>(.344)<br>[.989]    | .0874<br>(.0327)<br>[.008]  | .1<br>(.0359)<br>[.005]          | .191<br>(.052)<br>[.000]         | .108<br>(.0396)<br>[.006]         |
| Pool hall and bowling<br>alley employees<br>(per capita)         | -1.036<br>(.724)<br>[.153] | -4.671<br>(2.738)<br>[.088]  | --                          | --                               | --                               | --                                |
| Bar employees<br>(per capita)                                    | --                         | --                           | .0122<br>(.0226)<br>[.587]  | .0063<br>(.0191)<br>[.741]       | -.0083<br>(.0205)<br>[0.686]     | .0066<br>(.0198)<br>[.739]        |
| Gas station attendants<br>(per capita)                           | .0725<br>(.0728)<br>[.319] | -.0522<br>(.107)<br>[.627]   | .0627<br>(.0316)<br>[.048]  | .0386<br>(.03)<br>[.199]         | .0648<br>(.0311)<br>[0.038]      | .0325<br>(.0291)<br>[.265]        |
| Barbers (per capita)                                             | .271<br>(.229)<br>[.237]   | .429<br>(.379)<br>[.258]     | -.0401<br>(.0452)<br>[.375] | --                               | --                               | --                                |
| Cigar store employees<br>(per capita)                            | .349<br>(.174)<br>[.045]   | .133<br>(.338)<br>[.692]     | .0219<br>(.0292)<br>[.452]  | --                               | --                               | --                                |
| Catholics and Southern<br>Baptists<br>(per capita)               | --                         | .00013<br>(.00071)<br>[.848] | --                          | -.00017<br>(.00017)<br>[.327]    | -.00006<br>(.00022)<br>[.793]    | -.0002<br>(.0002)<br>[.257]       |
| Presence of birth control<br>clinics                             | --                         | -4.70<br>(1.868)<br>[.012]   | --                          | -.143<br>(.6403)<br>[.823]       | -1.222<br>(1.381)<br>[.376]      | 5.685<br>(2.475)<br>[.022]        |
| Birth control clinics (per<br>capita)                            | --                         | 498.92<br>(251.18)<br>[.047] | --                          | 12.257<br>(5.0585)<br>[.015]     | 26.07<br>(9.461)<br>[.006]       | -57.05<br>(20.82)<br>[.006]       |
| Illiteracy rate                                                  | --                         | -.210<br>(.558)<br>[.706]    | --                          | -.112<br>(.111)<br>[.314]        | -.0469<br>(.183)<br>[.798]       | -.100<br>(.112)<br>[.373]         |
| Median income                                                    | --                         | -.0226<br>(.0153)<br>[.14]   | --                          | --                               | --                               | --                                |
| Fertility                                                        | --                         | --                           | --                          | -2.842<br>(30.45)<br>[.926]      | -34.28<br>(36.84)<br>[.352]      | -1.329<br>(29.85)<br>[.964]       |
| Democratic Party vote in<br>1932                                 | --                         | -4.483<br>(8.791)<br>[.61]   | --                          | 1.755<br>(1.277)<br>[.169]       | 4.263173<br>(1.577405)<br>[.007] | 1.787<br>(1.234)<br>[.148]        |
| Female labor force<br>participation                              | --                         | -.075<br>(.217)<br>[.73]     | --                          | -.118<br>(.053)<br>[.029]        | -.348<br>(.0792)<br>[.000]       | -.123<br>(.0534)<br>[.021]        |
| Syphilis deaths<br>(per capita)                                  | --                         | -3.1<br>(3.161)<br>[.326]    | --                          | .082<br>(.16)<br>[.608]          | .594<br>(.362)<br>[.101]         | .0627<br>(.154)<br>[.685]         |
| Proportion of total<br>population comprised of<br>men ages 15-44 | --                         | --                           | --                          | 23.07<br>(11.33)<br>[.042]       | 20.89<br>(15.38)<br>[.174]       | 23.87<br>(11.32)<br>[.035]        |
| Population                                                       | --                         | --                           | --                          | 4.25e-08<br>(2.43e-07)<br>[.862] | 1.75e-07<br>(1.25e-06)<br>[.889] | -5.86e-08<br>(2.12e-07)<br>[.782] |
| Drug store<br>employees*Clinics per<br>capita                    | --                         | --                           | --                          | --                               | --                               | -.294<br>(.119)<br>[.014]         |
| Drug store<br>employees*Presence of<br>clinics                   | --                         | --                           | --                          | --                               | --                               | 3.685<br>(1.156)<br>[.001]        |
| Constant                                                         | -1.299<br>[.559]           | 16.141<br>[.127]             | -2.804<br>[.000]            | -6.105<br>[.09]                  | -2.376<br>[.587]                 | -6.221<br>[.076]                  |
| <u>Goodness of Fit</u>                                           |                            |                              |                             |                                  |                                  |                                   |
| $\chi^2$                                                         | 10.47                      | 19.57                        | 23.92                       | 78.28                            | 140.1                            | 70.83                             |
| Log-likelihood                                                   | -23.27                     | -15.04                       | -111.74                     | -96.27                           | -66.01                           | -94.05                            |
| Pseudo-R <sup>2</sup>                                            | .238                       | .508                         | .155                        | .272                             | .455                             | .280                              |
| N                                                                | 48                         | 48                           | 191                         | 191                              | 175                              | 191                               |

Robust standard errors in parentheses. Clustered at state level in municipal models.  
p-values in brackets \* p ≤ .1      \*\* p ≤ .05      \*\*\* p ≤ .01 Two-tailed test

## Figures 2a-2d: Municipal Law Models

The x-axis of each graph represents the entire range of a given explanatory variable.

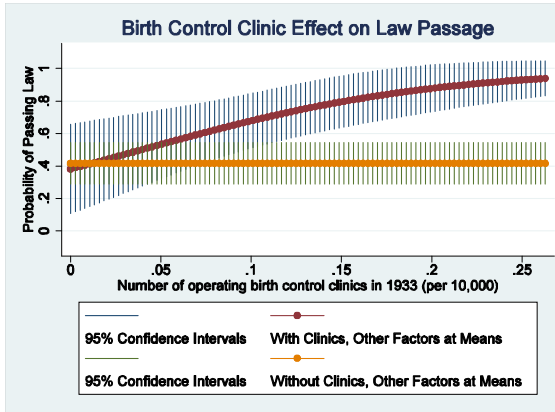
2a



2b



2c



2d

