From Bone Dry to Modernized:

The Vitality of State Regulation of Alcohol in Washington

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Abstract

Using the Washington state historical and contemporary experience as a framework, this essay will make the case that in 1933, 2009, and before and beyond, the states, rather than the federal government or the federal courts, are in the best position to balance their own local values and needs to determine alcohol policies. The Washington examples described demonstrate that states should be given the freedom to function as "laboratories of democracy" where innovation and experimentation can take place. Only then will alcohol regulation truly enjoy the public support necessary to its success.

I. Introduction

Since the time of Washington State's territorial days, there have been distinctive and robust debates regarding virtually every aspect of the manufacture, use, distribution and sale of alcohol. It has often been said that alcohol is a consumer product unlike any other, and given this history, many Washingtonians would agree. Alcohol policy in Washington was initially grounded in the view that alcohol was immoral and, later, that it posed "unusual dangers, both directly as an intoxicant, and indirectly, as a stream of commerce that generated corruption and crime." [1] The more recent debates suggest a retreat from those views, as Washingtonians look instead to loosening state controls. Wineries, craft brewers and distillers seek to undo "strict regulations" that "have nothing to do with health and safety" and that, without the benefit of

history, appear to be "just a bizarre quirk." [2] These shifting cycles in the public mood toward alcohol, from prohibition to deregulation and everything in between, actually serve to illustrate the importance of state regulation of alcohol.

State regulation of alcohol puts the power of decision making over a complex product directly with the people who are impacted by those decisions. Whether the record later deems decisions made by states as "unwise" or "improvident" (as was feared by some in Congress at the repeal of national prohibition) is to large degree irrelevant. [3] What does matter is that states have the power to respond to their citizens' evolving and contracting attitudes toward alcohol. Whether the public demands change to alcohol policy or resists it, state-based regulation means that local business people, teachers, doctors, law enforcement personnel, workers, and families all have the power to influence the alcohol policies that impact them. State regulation of alcohol means that policy decisions over the manufacture, distribution, sales and consumption of alcohol will fit the communities they serve. In short, state based alcohol regulation is the tool for communities across the county to avoid a one-size-fits-all approach to alcohol policy, whether the proposed policies are prohibitionist or expansionist.

The Washington experience in particular shows how state regulation ensures that policy choices reflect the will of the majority, and in turn how such regulation ensures that alcohol manufacturers, distributors and retailers are responsive to the values and standards of their communities. So long as the states remain the arena for the dialogue, there is every reason to believe the system will continue respond to the unique needs of Washingtonians, just as another state's system of regulation will respond to the different, but also unique, needs of its own citizens.

II. Discussion

A. Prohibition in Washington

In 1855, the first territorial legislature of Washington proposed a referendum to the people to prohibit the manufacture and sale of liquor. The referendum failed: 650 votes against and 564 votes for, and the referendum is viewed not so much as a statement against consumption by other territorial settlers as a statement against liquor being sold or traded to the Native Americans. [4] Still, the stage was set for the first wave of a temperance movement in Washington. Early Washingtonians were receptive to reform movements of all kinds, including abolition and women's suffrage. The zeal for alcohol reform took hold in Washington around 1874. The Women's Christian Temperance Union, the Anti Saloon League, and others orchestrated attacks on liquor traffic as "one of the greatest menaces to mankind." [5] The motivating force was a reaction to the saloon culture that followed the workers who brought the railroads westward. [6]

Although the reformers prized the idea of state wide prohibition, they employed a strategy that one scholar calls "local gradualism." By coaxing citizens of local communities to adopt incremental changes in alcohol policy, the prohibitionists managed to win "partial but positive victories" at the local government level. [7] The strategy paid off. Eventually, the territorial legislature passed a local option law, with a number of localities electing to become "dry." The law was ultimately declared unconstitutional by the territorial Supreme Court, but as elsewhere in the country, the temperance movement was "not often demoralized by either legislative or judicial defeats . . . ." [8]

Rapid changes brought by the advent of the railroads fueled the flames vitality of Washington's temperance movement. With the railroads came not only urbanization, but refrigerated rail cars, which allowed brewers to deliver their product far beyond the previous limitations of the beer wagon. Saloons appeared in small rural communities, and in the rush to open new establishments "almost anyone could become a saloonkeeper." [9] Almost anyone who did was in debt to a brewery, and"the debt slaves had to hustle to attract the customers to pay their bills." [10] The competition was frenzied and unrestrained. One historian noted:

> Almost anyone could get a license. There was no restriction on the number of licenses. So you would have maybe four or five retailers on a block, that is saloons, selling for both on-premise and off-premise consumption. And you would have them competing with each other for a very limited market . . . as they were splitting the market they had to sell illegally in order to make ends meet. They were driven down into illegal sales. [11]

Small wonder the Washington Grange, which organized rural interests toward prohibition, referred to the saloon as a "putrid fester spot." [12]

Despite the movement's strategy to achieve "moderate goals before pursing more radical goals" and focus on "local issues before targeting the state and national issues," even the local option concept ran into trouble at the Washington State Capitol. [13] While local option had been endorsed as a reasonable compromise, political support for it disappeared when the Anti Saloon League began to advocate the county as the local government unit that would control the local option election. Those opposed to total prohibition and even those otherwise favoring the local option compromise, feared that the county based local option was "anti-saloon," "anti-drugstore," and "anti people."[14]

In the end, it was neither agreement nor compromise in the state legislature that advanced the issue. Instead, it was the 1912 amendment to the Washington State Constitution giving the people the power of initiative and referendum. The Anti Saloon league decided to use the power right away, and on November 12, 1914, the people of Washington approved Initiative Measure 3: a statewide prohibition. [15] There was opposition from forces including from the Seattle business community, which argued that total prohibition was not a "true temperance" law in that "instead of destroying the saloon . . . will establish a saloon in every household." [16] Nonetheless, more eligible voters turned out to vote for Measure 3 than had voted for any other candidate or issue in the history of the state. [17] When it came to alcohol, the people of Washington wanted their voices heard.

It appears that the tactic of incremental reform had been successful in readying the people for the more comprehensive approach of statewide prohibition. Washington was not alone. On New Year's Eve 1915 Washington joined 18 other states that had outlawed the sale and manufacture of intoxicating liquors in closing down the saloons. The Seattle Post Intelligencer reported signs on closed saloons saying "Died December 31, 1915," "Stock Closed Out-Nothing Left," and "Closed to Open Soon as a Soft Drink Emporium." [18]

But rather than realizing the virtues of "temperance, cleanliness, thrift and individual responsibility" that the proponents of statewide prohibition believed were due, "all over the state, the market for moonshine booze began a steady expansion." Prosecutors complained the "soft-drink shops were worse than the old time saloons."[19] Because drinking did not stop (in part because statewide prohibition Measure 3 had banned only manufacture and sale), the Washington state prohibitionists took their first success toward a larger movement of abolishing

all alcoholic beverages. To that end, Washington State and others passed "bone dry" laws prohibiting the importation of alcohol into the state from mail order houses.

The "bone dry" state laws were upheld by the federal Webb-Keynon Act, which expressly gave the states the power to prohibit the sale, distribution, transportation or importation of liquor into the states in violation of state laws. But for the radical "dry" forces, state and local control was not enough, and the march toward national prohibition and the Eighteenth Amendment continued. Ultimately, the Washington state legislature ratified the Eighteenth Amendment without a dissenting vote. [20] The community voices that had initially mobilized toward repeal of Washington's Measure 3 were silent. In fact, many of the movement's original critics praised the demise of the saloon. As the editor of the Seattle Times wrote of a dry Seattle: "[W]hen you close the saloons the money that formerly was spent there remains in the family. . . Yes sir, we have found in Seattle that it is better to buy shoes than booze . . ."[21] Nevertheless, in Washington as across the nation "the dry utopia, like all utopias, was easier to fight for than to administer." [22]

The Eighteenth Amendment went into effect in 1919 and was codified in the federal Volstead Act, which prohibited manufacture, sale, barter, transport, export, delivery, furnishing or possessing any intoxicating liquor except as allowed by the exceptions, which included industrial alcohol, medicinal alcohol, sacramental wine and 'near beer" with a 0.5 alcohol content. [23] The federal law turned out to be wholly ineffective in achieving the result the proponents of federal prohibition desired.

Former President William Howard Taft predicted this result when he commented that those who believed "an era of clear thinking and clean living" was at hand were living in a fool's

paradise. He warned that prohibition had been passed "against the views and practices of a majority of people in many of the large cities" and that the business of manufacturing liquor and beer would pass from the hands of law abiding members of the community to the quasi-criminal classes. He warned against "variations in the enforcement of the law" and predicted the "bond of national union" would be strained. [24]

In fact, variations in enforcement were the experience in Washington. The state's governor had no interest in state level enforcement of the Volstead Act, and instead referred any and all questions to the Treasury Department's prohibition administrator stationed in Seattle. When a representative of the Anti-Saloon league inquired whether the Washington was becoming hostile to prohibition, the governor simply stated he did not know and turned his attention to less emotionally charged matters such as the state budget. [25] Washington's next governor was similarly disinterested and prohibited state officers to participate in seizures of boats or cars used in the transportation of liquor. [26] The local enforcement that did occur was at the county level and was underfunded. It put elected sheriffs in the uncomfortable position of trying to look like they were enforcing a law they knew was being violated by their voters. When local enforcement did occur in Washington, it ". . . frequently became either a matter of political showmanship or a profitable racket – to the bitterness of those who held to the ideals of reform."[27]

The City of Seattle elected a mayor who openly opposed prohibition. By 1923, the local newspaper reported that prohibition continued in Seattle in name only:

> The crook has learned to smuggle. Officials were corrupted. . . . Liquor began to pour into Seattle. . . . Saloons in the guise of soft drink places started up on every hand. Lewd

women rented apartments and did a big business selling booze. . . Seattle has become . . . so rotten that it stinks. [28]

The governors, mayors, and local law enforcement did not consider the draconian federal alcohol policies to reflect the sentiments of Washingtonians, despite the fact that Washington citizens remained generally supportive of the more moderate version of state wide prohibition they had voted into place in 1914. Perhaps the more moderate supporters of state prohibition were distressed at the nature of the federal enforcement that did occur. Federal enforcement actions frequently were at the expense of liberties, such as in the high profile prosecution of former Seattle policeman-turned-rumrunner Roy Olmstead. Olmstead was convicted with evidence obtained from wiretaps, and his case went all the way to the United States Supreme Court, where his conviction was narrowly upheld. [29]

Indeed, the policy debates in the 1923 Washington state legislature reveal an unequivocal refusal amongst all but the most zealous prohibitionists to make state enforcement of federal policy a priority. A measure that would have required state officials to enforce the Volstead Act failed to get out of committee, suggesting that while a growing number of Washingtonians were not yet ready to advocate repeal, they were also not comfortable with social policy related to alcohol imposed upon them by the federal government. [30]

The truth is that Washington's citizens were supportive of moderate changes that directly benefited their local communities. However, when ever-more-remote interests began to dictate ever-more-radical prohibition policies, the average person's enthusiasm disappeared. The support for local and even statewide, but not national, alcohol policies foreshadowed the

importance of the Twenty First Amendment, which would give to each state the power to regulate and control alcohol in a way its citizens and communities could support.

B. Repeal in Washington

Social historians note that in Washington and across the country, a backlash against prohibition arose by the early 1930s.[31] Both in Washington and across the nation, the leaders in the movement to repeal prohibition included "outstanding members of the nation's business and intellectual communities." [32] In Washington, the repeal effort included aircraft manufacturer William Boeing and other business leaders, as well as their wives and a large group of wealthy society women. [33] As in the case of John D. Rockefeller on the national stage, in Washington the repealers

> ...include many who had been former prohibitionists. They don't want to see the return of the saloon era of 1917. Instead, they wish to see a new system put in place that will allow alcohol to be sold legally, but only under very controlled circumstances. So the whole movement for repeal in 1933 is not about going back to 1917, it's about establishing a new control mechanism."[34]

This new control mechanism was to be put in place at the state, not the national, level.

While the prohibition movement was a moralistic social movement, repeal was a carefully plotted political movement. It achieved success in Washington in November 1932, when Initiative Measure 61 to repeal prohibition won by a landslide 62% of the vote.[35] National repeal soon followed with the Twenty-First Amendment, which was quickly ratified by the states, including by Washington in October of 1933. Interestingly, while the prohibition movement in Washington was sharply divided between urban and rural lines, the "wet" votes to

repeal would have carried even without Washington's urban centers. [36] More Washington citizens voted for repeal convention delegates in 1933 than had voted for president in 1932. Surely this fact confirms the wisdom of the Twenty First Amendment to placing responsibility for alcohol regulation with individual state governments, where the citizens could register agreement or disagreement.

That the Twenty First Amendment intended not only to repeal prohibition, but to explicitly empower the states to regulate intoxicating liquor, is beyond dispute. The United States Supreme Court agreed the Amendment "effectively constitutionalizes most state prohibitions regulating importation, transportation, and distribution of alcoholic beverages from the stream of interstate commerce into the state" and grants "the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." [37] Even more the recent jurisprudence tending to disqualify certain state laws does not seriously question the states' underlying authority to regulate alcohol. Instead, the focus is on what limits federal law might impose on the particular state laws enacted. [38]

Congressional intent in 1933 was also clear. The Twenty First Amendment intended for each state to have the power to regulate alcohol as dictated by "local sentiments and local habits." [39] It further intended to erase the unsuccessful attempt at federal control by restoring to the states "absolute control in effect over interstate commerce affecting intoxicating liquors which enter the confines of the states."[40] In fact, Congress believed in the state regulatory model so strongly that it was willing to accept the risk identified by some that state legislatures would make "unwise" or "improvident" state liquor laws. [41]

Once the Twenty First Amendment was ratified, Washington, like other states, took hold of the authority granted by Congress and began to design a regulatory system to achieve the "true temperance" of sustainable moderation and effective control. [42] Unlike the violent, corrupt, draconian, and ultimately failed federal enforcement model of the prohibition era, Washingtonians wished for their new system be effective and enforceable. With these principles in mind, Governor Clarence Martin called the legislature into session "the moment the Twenty First Amendment was ratified" in 1933 and Washington adopted its own regulatory framework. [43]

Washington's liquor law, called the Steele Act, established the State Liquor Board and set up a comprehensive regulatory system, with licensing for beer and wine and state monopoly for sprits. [44] The Act also set up a three-tier system with separate licensing of the producer, wholesaler, and retailer tiers. To guard against the saloon model of irresponsible retailers in debt to their brewery owners, early amendments to the Act banned financial interest between the tiers (i.e., "tied houses"); banned "gifts, loans of money, premiums, rebates, free beer, property of any value whatsoever or services of any kind" passing from manufacturer to distributor to retailer; and as an added protection, required retailers to pay cash for product, rather than become indebted to the suppliers. By licensing each tier at the state level, the system was also intended to guard against another unsavory element of the saloon days: absentee ownership. [45]

Consistent with the power it assumed to be granted it by the Twenty First Amendment, Washington also added to its post-repeal regulatory scheme what amounted to a series of price control laws designed to dampen competition and raise the price of liquor. Those measures included price posting, price holding, and uniform pricing from producers to wholesalers and

wholesalers to retailers. [46] While the authority of states to enact such provisions would later become the subject of debate for courts and legal scholars, at the time of their enactment it was anticipated that states were authorized by the Twenty First Amendment to take all measures necessary to eliminate "the profit motive that is the core of the problem." Since low prices stemming from competition were seen to stimulate consumption, using state price fixing powers was viewed "as one of its most effective instruments of control." Washington and other states exercised their Twenty First Amendment powers to adopt "bold and drastic experiments in price control."[47] States were expected to avail themselves of whatever tools necessary to address the particular needs of their communities.

Washington's governor recognized the state's responsibility to create a system that would be effective, but also recognized his state's customs and values, which, for the majority of Washingtonians, included consumption of alcohol. While most Washingtonians were disgusted with the corrupt model of the saloons, most were also interested in safe, legal access to legitimate alcohol. When appointing the first members of the Washington State Liquor Control Board in January of 1934, the governor instructed:

> It is not the purpose of this law to encourage anything other than temperance. Unlike many other businesses, you are not expected to promote sales. Instead of promoting the sale of liquor, you want to discourage the sale and use of liquor. Your function is only to make good liquor available to the people under proper conditions.[48]

With those few words and a comprehensive law, Washington retired the unregulated and disreputable saloon, recognized that the ordinary citizens would be able to purchase and consume alcohol without being made "into lawbreakers merely because they wanted to drink," and eliminated the problem both during and after prohibition of "moonshine booze under fake labels" or worse, the consumption of "violently toxic industrial alcohols." [49] Only a few months later, the first state stores were open and "doing a land office business." [50]

C. Washington's System Adjusts

When, during those early years the state Liquor Board noticed some of the unwanted saloon models of profit-driven free enterprise threatening to return, it adapted the law to include additional market interference mechanisms. But while Washington's new regulatory system had the effect of quickly eliminating "free enterprise liquor," in 1934 it was already facing opposition for what it did not do: allow the sale of liquor by the drink. [51] That lingering element of prohibition was not only unpopular in urban areas, but it was impossible to enforce. It was ignored by city law enforcement and there was no system of state level liquor enforcement. An initiative measure was sponsored by restaurants and hotels to repeal the Steele Act in its entirety. The Board members could have waged a righteous fight for "temperance," but they did not. Rather, they heeded the lesson of prohibition that a rigid, centralized system could not adequately respond to community standards as those standards changed over time.

Accordingly, the Board concluded the Steele Act needed further modification and recommended to the legislature that it amend the law to allow liquor by the drink. As the story unfolded, however, it turned out that community standards were not yet as liberal as the urban hotel and restaurant interests had assumed. The bill died in the state House of Representatives.

Liquor by the drink did not become available in Washington until 1940, when it was passed into law by an initiative of the people.[52] While the ability to obtain a drink in a bar seems tame by today's standards, the episode graphically illustrates the importance of state regulation of alcohol. Washingtonians changed their liquor laws when they were ready, and even then they only changed them by increment.

Moreover, the state Liquor Board administered the liquor-by-the-drink initiative very conservatively. Drinks could only be consumed in the portion of a restaurant designated as a "room," preceded by a proper noun, such as the "Spur Room" adjacent to the Flying Boots Café.[53] Such rooms could not be viewed from the outside, presumably so the sight of a bar and a bartender mixing drinks would not tempt an unwilling person inside for a drink. Even at the time, residents of more sophisticated states probably found it quaint that the people of Washington were only just getting to being able to order a cocktail in a public place. But for most people in Washington at the time, the small change reflected their sensibilities about alcohol. Apparently the change was enough, as the state's liquor regulations were left virtually untouched to any truly significant degree for the next 45 years.

The architects of repeal stressed the importance of public support for the regulatory structure as a means of control. When public sentiment favored the chosen regulatory approach, and when the chosen approach accurately reflected community standards, then in sharp contrast to national prohibition, the regulatory controls proved to be enforceable. "Moderation was to be achieved through compromise and adjustment, through the constraints of law and the development of self control." [54] The idea was to avoid "dramatic flip flops" in statutory policy, such as the "alternation between abuses from underregulation and from overregulation" that

characterized the earlier part of the century. [55] And, absent occasional nibbles around the edges such as the liquor-by-the-drink initiative, Washington modeled that kind of stability for the better part of four decades.

D. Washington's System is Challenged

Things changed starting in the 1980s, with the phenomenal growth of Washington's wine industry and, to a somewhat lesser extent, the parallel growth of the state's craft beer industry. The new voices of public opinion on alcohol policy in Washington State were not the social reformers of the past, but local entrepreneurs devoted to expanding their abilities to market their products and showcase their agricultural communities. These new voices challenged the very restrictions on competition that had been put in place to protect communities from profiteers in the liquor business who "knew nothing and cared nothing about the community" and were immune to "local social influence."[56]

The conversation in Washington has thus come full circle, where community standards desire less rather than more regulatory control. Significantly, however, the Washington wineries and breweries did not initially advocate drastic or fundamental changes to the economic regulations. In the state's tradition of incremental adjustment, the Washington wine interests annually approached the legislature and annually achieved concessions, exceptions and waivers of tied house prohibitions against the overlapping economic interests of producer, distributor and retailer. Washington's tied house law came to be affectionately dubbed the "swiss cheese law" for all of the holes created by years of legislative exceptions.

The one-tweak-at-a-time approach may have gone on indefinitely had another important local business interest, hometown big box retailer Costco Wholesale, not upped the

ante by filing a federal court challenge to virtually all of the price control elements as they applied to beer and wine distribution, including price posting, price hold, uniform pricing, the ban on volume discounts, and minimum markup. [57] Rather than following the Washington tradition of making the case to the legislature (or directly to the people) that Costco's position better reflected community sentiments than existing law, Costco simply asked a federal court to find that federal law anti-trust law pre-empted the deliberate restraints on competition that Washington put into place after repeal.

The federal district court obliged. Over Washington's arguments that the states, not the federal courts, are the appropriate forum for determinations of alcohol policy, the district court ruled that all of the challenged price control laws were pre-empted by the federal Sherman Act. In addition, it ruled that the Twenty First Amendment did not grant to the states the power to pass state laws regulating alcohol in violation of the federal anti-trust laws. [58] On appeal, the Ninth Circuit Court of Appeals declined to find that the majority of Washington's economic controls over alcohol sales and distribution conflicted with federal law at all, and reversed the district court on those grounds. Significantly, the appellate court also confirmed that the wisdom of a state's policy choices is a matter for the democratically elected state legislature, and that relief from such choices is properly achieved "through political will." [59]

E. Washington's System Responds

Once the alcohol policy debate in Washington was returned to the legislative forum, the discussion turned the continuing wisdom and necessity of many of the now legally validated controls. Washington's beer and wine producers, wholesalers, and retailers, including Costco, came to agreement with regulators that it was time, again, to adjust Washington's regulatory

policies for alcohol. It is a testament to the efficacy of the state regulation model that these voices were deemed reflective enough of Washington's citizenry that the state legislature enacted a comprehensive statutory change repealing the tied house laws. The measure was billed to "help eliminate barriers to market, such as archaic "post and hold" requirements, mandatory minimum mark up . . . extension of credit . . . and repeal some provisions that were adopted after prohibition to inhibit marketing of alcohol." [60]

The statutory change makes Washington one of the few states to allow cross ownership between producer, distributor and retailer tiers, which had been outlawed across the country after the repeal of prohibition "to prevent organized crime or large manufactures from dominating the alcohol industry." Those post prohibition goals "got in the way of many budding Washington winemakers, who had to win special exemptions if they also owned an interest in a business that served alcohol or if they wanted to open a tasting room." [61] But even while the Washington State Liquor Board lauded the statutory changes as "progressive and forward thinking." another faction of the Washington State wine industry criticized the statute for failing to repeal all economic regulation of alcohol. It threatened a ballot initiative to deregulate wine entirely. [62]

F. Washington's System Endures

While at first blush Washington's alcohol policy seems to be changing from control with occasional incremental change to deregulation with constant sweeping change, on closer inspection perhaps not so much has changed. Certainly we appear to be in an era where people are not as concerned about alcohol as a social issue. As was observed by Justice Stevens in his dissenting opinion in *Granholm v. Heald*, "today many Americans, particularly those members of the younger generations who make policy decisions, regard alcohol as an ordinary article of

commerce, subject to substantially the same market and legal controls as other consumer products." [63] Judge Calabresi of the Second Circuit Court of Appeals recently added the observation that in today's America, no state prohibits alcohol and "the beer industry is one that runs theme parks rather than organized crime dens."[64]

But the constant is state based regulation. When praising the law repealing tied house prohibitions, the Washington State Liquor Board Chair noted that the new approach strives for "simplification, modernization and flexibility" in Washington's liquor laws. While the substance of the state's decision to move away from economic-based alcohol regulation may well prove unwise, the fact that Washington viewed its regulatory system as flexible enough to make the choice at all is proof that state regulation works as intended.

Similarly, it is no accident that those Washington winery interests who sought total economic deregulation were relegated to the status of minor players during the 2009 legislative debate. Washingtonians remain cautious about changing their liquor laws. Now, as in the past, Washingtonians prefer changes that supplement, rather than repudiate, their successful community based system of regulatory control. Historians agree Washington's comprehensive and thoughtful approach to post repeal regulatory control stands out for its "intelligence and clarity of expression and...overall quality" and for its success in creating "an institution opposed to the saloon and strong enough to perpetuate itself." [65]

G. State Regulation is the Right Paradigm

State regulation of alcohol means that Washington, and any other state, is permitted to adopt laws that reflect the views of its citizens, whatever those views might be at any point in the cycle of public mood toward alcohol. State regulation means that if the people's choices fall out

of favor, the laws and policies can be changed, tweaked, improved, adjusted and amended more easily than at the national level to reflect changing community sentiments. And state regulation means all of the participants in the alcohol trade are ultimately accountable to their own communities in a way that is impossible to achieve at the national level.

It is perhaps no accident that the recent changes to Washington law were initiated by community based Washington state wine producers. If those changes threaten public safety, public health or even the 21st century version of threats to public morals, it is certain the citizens of Washington will make their concerns known to those of their fellow citizens who are producers, wholesalers and retailers. Should public safety be compromised by the recent Washington changes, the flawed policies will be exposed and repealed and newer, better policies, which are more reflective of community need with respect to alcohol, will be enacted.
Our community based systems are the importance of state regulation of alcohol.

III. Conclusion

John Kremer, the first federal Prohibition Commissioner, vowed upon passage of the Volstead Act:

> this law will be obeyed in cities large and small, and in villages, and where it is not obeyed it will be enforced... we shall see to it that liquor is not manufactured nor sold nor given away nor hauled in anything on the surface of the earth or under the earth or in the air. [66]

Of course, the law was neither obeyed nor enforced, and it did virtually nothing to prevent the manufacture or sale, let alone consumption of alcohol. Fast forwarding 70 years, even as attitudes toward alcohol change in Washington and across the country, we remain mindful of one

of the fundamental lessons of prohibition. Alcohol policy choices that fail to reflect community standards, whatever those standards may be, are doomed to failure. State regulation is imperative to a workable, successful, safe and legal market place for alcohol.

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[57] *Costco v. Hoen*, Western District of Washington No. C04-360P, Complaint filed February 20, 2004.

[58] *Costco v. Hoen*, Western District of Washington No. C04-360P, Order on Summary Judgment December 21, 2003; Amended Judgment May 25, 2006.

[59] *Costco v. Hoen*, 522 F.3d 874 (9th Cir. 2008).

[60] "Washington Wine Institute Applauds 2009 Legislation That Helps Improve and Streamline State's Wine Regulation," Press Release Washington Wine Institute, May 18, 2009; Final Bill Report EHB 2040, Revised Code of Washington 66.28.010 as amended by laws of 2009.

[61] "Washington Wine Consumers Could Get More Choices and Lower Prices, Maybe," winespectator.com web feature, posted February 27, 2009, last visited November 11, 2009.

[62] Id.; Washington Wine Institute Press Release May 18, 2009.

[63] *Granholm v. Heald*, 544 U.S. 460, at 494 (2005).

[64] *Buy Rite v. Boyle* at 27.

[65] Rorabaugh testimony; Clark at 250.

[66] Kobler at 13.