

LOCALITIES, LICENSES, AND LOOPHOLES:

AN ANALYSIS OF VARIANCES IN ALCOHOL REGULATION AND THEIR CONTINUED EFFECTIVENESS IN MODERN INDUSTRY

I. Introduction

The potential evil of alcohol has been a carefully scrutinized topic for centuries, as the beloved liquor bottle has long been cast with blame for all of the corruption, crime and social corrosion facing America. In 1920, a tumultuous demand for national change culminated in the mandate of Prohibition by the federal government. This Noble Experiment banned “manufacture, transportation and sale of intoxicating liquors” as a nationwide decree.¹ No scientific method had to be initiated in order to see how quickly this experiment was a failure; the first documented infringement, stolen and bootlegged alcohol, happened within one hour on the Prohibition clock.² Thirteen years later, the Twenty-First Amendment to the United States Constitution made history as the sole Amendment to ratify via retraction; Prohibition was repealed, and the liquor could flow through the veins of America again.

Repeal was not intended to act as an open market that led directly back to saloon days of the past, however. The figureheads of the temperance movement were determined to add structure to alcohol commerce in order to minimize the perceived evils of the intoxicant while continuing to protect society. John D. Rockefeller Jr. commissioned research regarding what the new structure would need to entail, resulting in a fundamental system that is still relevant as a foundation for alcohol policy today.³

As the scope of the alcohol industry has developed, so has policy alongside it. In 1916, there were 1300 breweries in the United States; today the number is four times greater.⁴ No longer can categories simply be segregated into light beers versus all others; now there are highly

alcoholic craft beers, malt beverages and pre-mixed drinks on retail shelves. To fully resolve how and why different alcohol is regulated in different ways, it is vital to trace back the origins of alcohol policy and follow the thread to modern day statutes. Part II delves into the history of Prohibition: why it came about, why it failed, and how initial policy was established in the first throes of the post-Prohibition era. Part III expands on and modernizes the policy discussion by examining how regulations in states' hands led to such a wide web of today's complexities and loopholes. Finally, Part III establishes the suitability of current alcohol regulations and their continued appropriateness in a fair market system.

II. History of Federal and State Alcohol Regulations

To understand the how and why regarding the development of policy at both the federal and state levels, we first need to paint a picture around the status of society and what vices Prohibition was attempting to cure.

A) The Crusade against the “Evils of Society”: Why Prohibition was Introduced

Concerns about alcohol use, and overuse, were hardly new issues at the onset of Prohibition. Protests against alcohol had been happening throughout the 19th century, led by the Woman's Christian Temperance Union. Social women's groups were highly active, in part due to the view that alcohol was a destructive force in families and marriages.⁵ However, a closer spotlight was shined on the issues when America entered World War I in 1917; quickly others across the nation focused in on the evils of alcohol and the problems it was said to be causing.⁶ At the turn of the century, the Anti-Saloon League became the social group leading the charge, representing the belief alcohol consumption was damaging not just marriages, but society as a

whole. They partnered with anybody who shared their singular goal of Prohibition, regardless of alignment in any other walks of life, quickly becoming a powerful political force.⁷

One of the most prolific problems was the rise of crime and corruption across society. In the late 19th and early 20th century, Americans were heavy users of alcohol; in the free market sales economy, alcohol flowed easily into the hands of any and all with a taste for it. In 1830, consumption peaked, and the average American was drinking 7.1 gallons per year.⁸ Saloons were the go-to outlet for booze, but they quickly became synonymous with alcohol abuse and corruption. These taverns were Tied Houses, which only sold the product of one national manufacturer; they were obliged to constantly increase sales and never leave a drop behind. To promote their product over the competition, each national manufacturer placed increasingly more retail fronts across neighborhoods and near factories, pushing aggressive promotions to encourage sales.⁹ An account from George Turner in 1903 sets the stage of the saloon environment:

“The patronage of the saloon is a very fickle and elusive thing. A place is popular, or it is nothing. ... There are two general business methods of attracting [a good trade]: By giving unusually large measures or big bonuses of free lunch; or by carrying illegitimate and illegal side lines. The first ... does not leave large margins of profit; the second does.”¹⁰

His insight paints a clear picture as to the nature of saloons. Beyond just pushing liquor, saloons began to pedal other products and services, leading down a slippery slope to a sin-filled society that was beginning to turn more people into Prohibition advocates.

Embedded in the argument for Prohibition was a Patriotic plea, as the national mood turned toward supporting war efforts at all costs. From a practical standpoint, the war was taking

a toll on supply levels across many industries. It was argued that grains should be feeding American soldiers rather than producing beer and distilling spirits.¹¹ More so, from an empathetic stance, it was flaunted that people should feel morally wrong to be at home intoxicated while there was a sombering war in place, which many of our own were away fighting.¹² If the reasons alone didn't sway people, the propaganda did; it was highly marketed in a way that linked beer and brewers with Germany and treason- a quite direct and effective message to the American public while at war.¹³

With the country amid a transitional time period of urban growth and industrialism, factory owners and businessmen, too, joined the Anti-Saloon League efforts. As more saloons were erected near factories and alcohol abuse and debauchery increased, it was decided that Prohibition would be a helpful answer to efficiency levels at work. There was an added strength of support behind the push for an alcohol ban when notable men businessmen like Henry Ford demanded it in the name of productivity and safety in factories.

B) The Unsuccessful Noble Experiment: Why Prohibition Failed

Any implemented policy is only as strong as its enforceability. Prohibition, therefore, never had the foundation needed to give it a fighting chance. While metrics suggest that alcohol consumption decreased at first, they far from reflect a correlation to an improved society.¹⁴ The attempted resolution for crime and corruption was met with increased and more organized crime and corruption; the goal to remove watering holes was met with multiple underground speakeasies that far outnumbered the saloons of the past.¹⁵

In 1920, only 1,500 agents were assigned to enforce the new law, yet America had large boundaries to cover.¹⁶ These agents had a nearly impossible scope of coverage to patrol, and yet

were not compensated handsomely enough to strain to do so.¹⁷ This combination of factors set the perfect stage for underhanded dealings and the development of an alcohol black market. Many people involved were never caught and the lucrative nature of the business made bribery easy for those who were.¹⁸

Corruption and crime, reasons Prohibition was first introduced, top the list of reasons Prohibition was a failure. In standard economics, depressing supply of a product is often met with increased demand, and that was no different as Prohibition took place. Saloon closures were met with the rise of hidden speakeasies opening. These retail fronts claimed not to be alcohol shops and sparked the closed-door illegal nature of the new liquor world. Bootleggers and smugglers were on the rise to meet the demand and take advantage of the profitable black market for liquor that was created. Bathtub gin and moonshine became popular drinks of choice, because they were more potent and easier to subtly produce.¹⁹ However, despite the initial 80% decline in alcohol-related deaths relative to pre-war levels, ultimately bootlegged alcohol resulted in upwards of 50,000 deaths and several more injuries and illnesses, including blindness and paralysis.²⁰

Furthermore, these underhanded dealings prompted the rise of organized crime, and the gangster scene boomed. It has been estimated that the notorious Al Capone, gangster extraordinaire of the 1920s, was earning upwards of \$60 million a year from bootleg and criminal operations.²¹ Though insisting he was purely a businessman, gang activity rose throughout the decade, culminating in 1929 with the infamous St. Valentine's Day Massacre.²² Dangerous, organized crime was intensifying and society was feeling the pressure to make another change before it worsened.

Perhaps most importantly for the topic on hand is the fact that a sweeping nation-wide decree was made, regardless of the fact that it was not unanimously, publically supported across the country. While the proactive Anti-Saloon League was making waves and had high support, there were still plenty of Americans not in line with these beliefs. In a policy analysis essay, Mark Thorton postulates:

*“It could be argued that Prohibition increased the demand for alcohol among three groups. It heightened the attractiveness of alcohol to the young by making it a glamorous product associated with excitement and intrigue. The high process and profits during Prohibition enticed sellers to try to market their products to nondrinks – undoubtedly, with some success. Finally, many old-stock Americans and recent immigrants were unwilling to be told that they could not drink.”*²³

When the drink was banned, there was still a pocket of those in the older generation who wanted to drink, and would not accept being told otherwise after knowing a life of it. Meanwhile, those in the newer generation, who may not have ever touched the bottle were suddenly allured by the illicit nature of it.

C. Lessons learned from Prohibition: Developing Appropriate Policy

Passage of the 18th Amendment²⁴ was not the first instance of Prohibition, as states had long been establishing individual policies. For instance, Massachusetts practiced temperance as early as 1838, when it banned the sale of spirits in less than 15-gallon quantities. Maine then passed the first state prohibition law in 1846.²⁵ However, the dramatic social and religious push for change on a national level led to the Congressional passage of the Prohibition Amendment in

1920, followed shortly thereafter with the Volstead Act, passed in order to shape the guidelines for federal enforcement of Prohibition.²⁶

When Congress submit the 18th Amendment for ratification, they stipulated a seven-year time limit for the process; it took only 11 months to receive the support of the necessary $\frac{3}{4}$ of US states to pass.²⁷ The quick timing of state ratification for passing the 18th Amendment was met with a similarly quick regret of doing so.

As the problems from Prohibition started taking a toll on society, the support of Prohibition quickly lost steam. In 1932, Franklin D. Roosevelt stood on a presidential campaign platform that included the repeal of Prohibition, and his inauguration led to quick follow-through, with a 21st Amendment that repealed the 18th by the end of 1933.²⁸ It is important to note that this solely removed the 18th Amendment, and did not actually “legalize” alcohol nationally; it instead reverted policy structure to the Pre-Prohibition era, which allowed states the right to localize their own regulations. That said, several states continued to prohibit alcohol within their borders, and not until 1966 had all abandoned the ban.²⁹

With the new era came a need for new regulation- an appropriate level of guidance that promoted temperance without regressing to the social problems of the past. The Three-Tier System was established and is still in effect today, though with modern adjustments. The structure provides regulation and accountability by separating each tier of the alcohol distribution chain, effectively promoting independent operations at each. This construction has a multitude of benefits for both companies and consumers. The first tier is comprised of suppliers, who are responsible for producing or importing the various alcohol brands in their portfolio. One supplier can represent several brands; Anheuser-Busch and MillerCoors, the two largest suppliers, have

over 200 brands and 170 brands in their portfolios, respectively.³⁰ There are 5,150 licensed brewers, to date.³¹ The suppliers circulate their brands by going through their distributors, who comprise tier two. Also referred to as wholesalers, the companies in this tier act as intermediaries between producer and retailer. They are largely logistics companies, storing high volumes of inventory in large warehouses and planning routes to get inventory to several retail locations efficiently. The retail locations comprise tier three, the final tier where the end-consumer ultimately can find their drink of choice. This segment is made up of both on-premise locations like bars and restaurants, as well as off-premise, where alcohol is bought for home-consumption (ie: grocery stores, package stores and gas stations.) Addition of a middle tier acts as an auxiliary layer of accountability across the alcohol industry. It also hosts more benefits for consumers when compared with direct supplier-to-retail channels, which will be further delineated in the following sections.

III. Why are various alcohols regulated differently?

To the industry outsider, the complexity of state regulations may seem random and haphazard, with no rhyme or reason. However, while society has seen at least a couple generations of turnover from Prohibition days, the regulations enforced today are rooted in history and the many facets that impacted how each type of liquor survived Prohibition.

A. State Control and Local Options: Emulating Niche Community Desires

As policy began to develop, one unequivocal rule of thumb from an economic standpoint was noted: *“If the new system is not rooted in what people of each state sincerely desire at this moment, it makes no difference how logical and complete it may appear as a statute – it cannot succeed.”*³² Thus, the federal government acknowledged the importance for alcohol policy to be

placed in the hands of the states, so that regulations could be voted on and the results would more appropriately mirror the desires of the local communities. Though the government made alcohol sale and consumption legal, it allowed the states to further define what was acceptable within their borders and create any additional restrictions they deemed necessary. With 48 states (at the time) in control of their own policies, came the development of a variety of alcohol regulations. Though many are similar, there are equally as many nuances between them. Even further complexities develop when states authorize localities to address alcohol regulations at a microcosm within their communities, known as the “Local Option”.

The primary overarching dichotomy is whether a state is considered a “control” or an “open” state. In a control state, there is a state-run monopoly over the wholesale of at least one, if not all, categories of alcoholic beverage. States design regulation this way under the premise that it protects citizens. By removing profit incentive at the retail level, they remove temptation for business owners to push larger volumes of product or increase sales by marketing to minors.³³ Seventeen states currently use some form of the control model, thirteen of which also control retail sales through state-run package stores, commonly called ABC Stores (Alcoholic Beverage Control).³⁴ Even amongst these standardized states, laws can vary greatly. Utah, for example requires that all 4.0% ABV and above alcoholic beverages be sold through their state-controlled liquor stores, while New Hampshire only oversees spirits; beer and wine remains sold through private licensees.³⁵

The other states are known as open states. Also referred to as license states, these jurisdictions provide licenses allowing private citizens to operate retail locations to sell liquor. These permits are very specific and niche related, and again the local atmosphere plays a large part in defining the categories. California, for example, narrows down a list of their 22 most

common alcohol licenses and the privileges for each, as well as five licenses commonly used for special events.³⁶ Each type pinpoints a retailer's very precise authority within the alcohol sales world; categories range from winery licenses to Veteran's Club sales.³⁷

Within each state, the Local Option adds even more variety to the mix. For example, a common intrastate difference is seen in the delineation of "wet" versus "dry" counties. In a strictly dry county, the sale of alcohol is prohibited entirely, whereas some mixed counties have specific restrictions, such as restricting on-premise alcohol from being sold at restaurants or bars, but not prohibiting the off-premise sale being purchased and taken home for consumption. The Local Option further explains why some restrictions are still in place, despite seeming antiquated to many. Prohibiting Sunday sales, for example, stems from religious motivations and yet still exists in what has become a largely secular society. However, these laws, also known as Blue Laws, remain intact, as the local community has not voted to change them. A strong correlation can be seen between historically conservative states with religious residents and the intensity of alcohol regulations. For instance, a Gallup poll reflected Mississippi to be the most religious state; it was the last state to repeal Prohibition and took 33 years to do so.³⁸ To date, roughly half of the counties in Mississippi are still dry, and even citizens residing in a dry municipality technically cannot brew their own beer at home for personal consumption.³⁹

Alcohol policy has trickled down from the federal government to localized government, allowing each niche community to generate statutes that mirror their communities. With states in control of their own destiny, alcohol regulations have fragmented to such degree that there are essentially more exceptions than rules.

B. Not All Liquor is Created Equal: Regulation Relative to Alcohol Content Variance

Due to varying levels of alcoholic content, measured in Alcohol By Volume (“ABV”) or often considered higher “gravity,” some liquors are more intoxicating than others when consuming the same amount of volume, therefore they cannot be covered under one blanket regulation.⁴⁰ The initial historic separation broke apart lighter beverages at or below 3.2% ABV from all others.⁴¹ The definitions and separation levels have continued to evolve over time, but in today’s marketplace there is still a clear separation between lower gravity beers and wines from higher gravity spirits.

The original segregation is based on the premise to support control and restriction in the name of public safety. Logically, lower alcohol content beverages, like light beers, could be sold in higher volumes relative to their counterparts; therefore, they required less intense restrictions. It became acceptable for these product to be sold at more accessible outlets and in single serving containers, thus today they share shelf space aside other grocery store items or convenience store products. Practically, it also makes sense because breweries need their products to be cold at point of sale, so it’s serviceable to put them in stores that already have coolers and refrigerated shelf space. An added benefit of allowing beer to be sold in this way is that these shops sell a diverse array of food and consumer goods; therefore they have good margins and sell sufficient volume through many other products. This prevents these retail outlets from feeling pressure to push alcohol and promote binge alcohol consumption.

On the other hand, spirits are higher alcohol liquors typically averaging 40% ABV and therefore cannot be consumed in the same volumes as their lighter gravity counterparts.⁴² Package stores are retail outlets conceptualized purely to sell harder liquors for off-premise consumption. Opposite of beer sales at grocery stores, a sole outlet for spirits means the store does not have other products from which to share overhead costs and makeup margin; therefore, they cannot

afford to deeply discount product. As a majority, if not entirety, of their profits, package stores keep appropriate price points that are high enough to discourage bulk purchases of high gravity liquor. In practice, realistically a liquor store today might have a small variety of supplemental goods, like mixers, plastic cups, or ice, but the foundation as to how and why the developed is still very much in large part the foundation of their business.

Another viewpoint is to consider the storyline about how each type of beverage survived through prohibition, and its association with the “evils” of the drink. Some alcohol thrived through Prohibition, while others all but disappeared. For example, beer brewing in the United States was at the largest disadvantage to rebuild because very few companies survived through Prohibition. The need for hops in bulk did not set the stage for very discreet production, and resulted in a higher shipping cost per product. More materials are needed and more conspicuous for a lower alcoholic hit, therefore the easy and subtle way for people to keep alcohol around was through hard liquors.⁴³ Philosophically, society conceptualized views on which liquors were “more dangerous,” as well as those that were and were not justified morally through their religious roots. Wine was allowed to continue to be produced by farmers for themselves, as well as for providing for religious ceremonies.⁴⁴ Medicinal liquor was prescribed by licensed physicians as a legal practice, citing use for everything from cancer to indigestion.⁴⁵ Though this is no longer a common doctor’s practice, the definition of type of liquor continues to play a large part in the nuances surrounding its sale.

IV. Effectiveness of Current Alcohol Policy

The evidence is clear: alcohol should continue to be regulated the way it is today, both with regards to localization and category discretion.

The system has evolved to align with changes in business models through the years while still protecting consumers. However, it is this area that many associations are constantly lobbying for change (or insisting regulations must stay the same) due to the new outlets via web sales, brewpubs, and blends of higher alcohol malt beverages that were not inundating shelves a few decades ago. A diligent economic dive should be performed before any drastic pendulum swings to undo the current state of regulations in the alcohol industry.

A. Remain Localized: Continued Benefits of State Regulation

Industry regulation developed differently among different states, but all had shared universal concerns the policies intended to address and correct. First, the Tied Houses from saloon days pre-Prohibition needed to be prevented. Saloons fostered a monopolistic environment and generated high levels of commercial bribery, similar to exclusive outlet sales. While the Federal Alcohol Administration act is in place at the Federal level and enforced by the Alcohol and Tobacco Tax and Trade Bureau, states further structure their policies to be enforced within their jurisdiction. Many states, for example, have outlawed a supplier from also having ownership in distribution companies, but other states allow it. For example, Anheuser-Busch owns distributorships in eight states; as recently as 2015, Kentucky voted to change the law, thus AB was required to sell their ownership in the middle tier of the system in this state; however, they continue to operate in others, like Oregon.⁴⁶ This goes to show that alcohol policy is constantly evolving to remain relevant with the current needs of the industry and economy, and the three-tier system is far from a stale remnant of the 20th century.

A second universal area of concern which regulation intends to stabilize is public safety and the enforcement of underage drinking and over-service laws. To protect the people, states

were endowed with something more than normal police power in regulating alcoholic beverages, citing the best interests of public health, safety, morals and general welfare. Research performed by the Community Preventative Services Task Force, an independent operation hosted by the Centers for Disease Control and Prevention, shows a positive correlation between a higher number of retail outlets and an increased level of alcohol abuses.⁴⁷ States therefore should retain close control over the issuance of licensing, as well as carefully monitor zoning to limit outlet sales appropriately.

Third, states are in a stronger position to ensure proper taxation is paid to the Alcohol and Tobacco Tax and Trade Bureau for products consumed within their territory. An economic contribution study states that an estimated \$48.5 billion paid in taxes are directly attributable to the production, sale and consumption of beer; this equates to roughly 40% of the price of every beer paid to taxation.⁴⁸ It is imperative for states to use a closely monitored system to ensure the money is collected and paid appropriately to local, state and federal governments.

State regulations are in place to collect taxes, foster responsible competition, and educate and protect their citizens- a spectrum ranging from thwarting bootlegged liquor to preventing underage drinking. Their strongest effective measure of control is via the continued use of the three-tier system, as local wholesalers specifically aid in partnering to reach each of these goals. Therefore, *States protect wholesalers by allowing brewers to grant distributors an exclusive sales territory for their brands.*⁴⁹

B. Economic Efficiency: Continued Benefits of a Three-Tier System

The three-tier distribution system continues to remain the best method of getting alcohol from supplier to consumer. It creates layers of checks and balances and adds a strong element of

accountability at each tier. The exclusive contracts to distribute specific brands in a specific territory actively aid in keeping prices balanced, inhibit aggressive sales tactics, and allow companies at each tier to be profitable whether large or small. Distributors act as the local division that assure compliance between both producers and retailers, as well as the unit that actively works with the state to ensure continued health of the industry. Benefits are both social and economic, and truly act to serve the local community.

For one, they diligently track data on all inventory, denoting exactly which units are delivered to which retail outlets. The traceability of this process allows them to quickly recall any products from the market if necessary. The past several years have seen product recalls which were met with quick responses, as the distributor provided an effective tier to find the retail channels affected. More so, the rise of craft brewers excitedly rushing to market is met with an increased threat of lower quality product in market. Here, the distributors will become the most effective measure of policing quality, as they act as the gatekeepers to retail shelves should they find a suspect product in the market. In the same way, the middle tier prevents bootlegged alcohol from making it to a legal retail outlet, as the distributor must first accept the inventory from one of their known and contracted suppliers. Then, as the distributor partners with a retail outlet, they perform due diligence to ensure the retailer has an active license from the state, adding another layer of the aforementioned accountability. The data also allows distributors to keep careful tabs on the freshness of beer, and ensures they rotate product and take old inventory out of market, keeping customers safe and helping suppliers keep their brand equity.

Economically, wholesalers collect taxes through their transparent and carefully documented sales to retail. The traceability discussed above acts as a reliable way to ensure the state and federal taxes are appropriately being paid. Additionally, a three-tier system adds jobs,

which stimulates the local economy. The middle tier alone is responsible for over 6,830 alcoholic beverage distribution companies in the United States.⁵⁰

As local operators, distributors are headquartered in the footprint they serve, which is typically a very consolidated area- often just a handful of counties. This allows them to be well versed in narrating the specifics of state and municipality alcohol regulation. While police may not be able to enforce state alcohol law to this degree, distributors can, and are incentivized to do so. These companies support local events and charities in the communities they serve, and work hard to ensure a positive balance to potentially socially-sensitive product sales. They know their market thoroughly and can react more directly to meet the changing demands at the consumer level.

As we see continued changing demographic trends, with the millennial consumer now at legal drinking age in the United States, there will be a continued shift in drinking trends. The value the three-tier system adds within the marketing realm becomes increasingly important, as the millennial drinker will continue to try new flavors and demand innovation. Keeping in mind the cost efficiencies and quality control factors that distributors bring to the table in the middle tier, it is the beneficial way to get new products to market quickly, while assuring they are quality tested and legally mandated.

With the rise of craft brewers and modern moonshine, the regulations will continue to be tested as the line gets toed. These are deeply rooted concerns of associations like the Brewers Association and the Brewers Institute, who aim to progress the agenda of craft brewers and their rights as small companies to self-distribute a low volume of beer or generate retail sales directly from their brewpub. Meanwhile, associations like the National Beer Wholesalers Association

exist to unify the middle tier distributor that is integral to the system and regulates safety on behalf of the consumer. While the tiers will continue to adjust and evolve with the tides, it is ultimately important that they remain united on the importance of the three-tier system as a whole.

C. The Negative Implications of Deregulation

The system has been described as an hourglass shape, with a large number of suppliers and their brands being funneled down to a relatively smaller number of distributors, which then disperses to a wide number of retailers. Adversaries of this system contend that this is a negative process: it creates a bottleneck, decreases efficiency and increases prices for the end-consumer.⁵¹ Challengers to the three-tier system often include those in the wine business and small craft brewers looking for the right to self-distribute or directly ship to customers, the argument being that it decreases cost and increases optionality.

Self-distribution may seem like the truer “free market” option, but the truth is that it creates a more competitive environment (negatively.) If each brewer were to operate as its own small distribution channel, they would have high investment costs in warehousing and rolling stock on top of their current capital expenditures- costs that would likely be passed on to the consumer in the form of price increases. Large brewers would thrive, as they have the financing capacity to handle additional expenses. They would have no incentive to sell any competitor products to potentially cannibalize their own sales, and small, local craft brewers would not afford to compete. This would ultimately minimize variety of options to the end-consumer, as well as raise prices.⁵²

If that logic is not enough, the review of several real-world global case studies in alcohol deregulation can be cited as proof of concept. In the United Kingdom, deregulation led to an epidemic. Restrictions were slowly but steadily removed in the name of competition and convenience for consumers; last-call at bars was removed under the assumption that people would stagger out at different times and not feel the need to binge a final few drinks. However, underage drinking is estimated to now be double that of the US rate, and hospital admissions for alcohol-related problems such as liver disease have doubled as well.⁵³

Domestically, and most recently, the state of Washington voted to convert to a truly privatized, licensed system in 2012 and is the first and only to do so in the United States. As the first test and example of the impacts of American deregulation, two years later news outlets were already reporting that residents now pay more for a liter of alcohol than those in any other state, largely in part from increased taxes on the product, intended to fill the gap left in tax revenue when the state stepped out of alcohol retail.⁵⁴ After privatization, overall sales were found to decrease in Washington; meanwhile bordering counties in the contiguous states Oregon and Idaho reflected a significant increase.⁵⁵ While the initiative did, in fact, provide more outlets to consumers as desired- increasing from 330 state-run stores to over 1,500 by 2015-⁵⁶ it also put roughly 10% of the Washington liquor market in the hands of Costco.⁵⁷ The concentration of product in big box stores has continued potential to limit product variety as buyer-power is increased and focused solely on high-volume products getting to market. A study performed two years after the vote concluded that those who voted “yes” on privatization were eight times more likely to want to change their votes than those who voted no; they were likely swayed by the prospect of increased availability of product, without having the foresight of full economic impact of the decision.⁵⁸

V. Conclusion.

The lessons learned from Prohibition were two-fold: extreme measures with little flexibility across the country do not work and laws must have public support to be effective. Drastic measures and blanket statements have not worked in the past and will continue to fail in the future. As American society continues to become more heterogeneous, the diversity in culture, religion, education, morals and beliefs assures that any new policy will surely be met with opposition. Thus, providing a local option that emulates local desires continues to be the most sufficient method for policy to remain respected. Respect for these laws is an integral part of the puzzle, as legal enforcement can only go so far. Today, the current system is fundamentally supported, as reflected by an Alcohol Regulation National Survey taken in 2015. Of the surveyed participants, 89% believed regulation is important, 70% agreed alcohol should not be sold in the same way as other consumer goods and 91% were satisfied with the convenience and variety in their local communities.⁵⁹

The hypotheticals and examples of history and regulation, or lack thereof, set forth here can largely be seen in today's drug culture. Interestingly, many clear parallels exist between policy evolutions of the two. The illegal nature of production and use has far from suppressed the drug trade; it has simply driven it underground and created a black market. Organized crime kingpins are benefiting from a highly lucrative role in a deregulated field, and there is no middleman to regulate the product or protect the consumer. Prescription pads for a pint have been replaced with prescription pads for a joint. Society is slowly becoming more open-minded to a tempered use of marijuana in a way similar to those who advocated a tempered appreciation for alcohol. Here, again, the argument for localized policy authority strengthens, as several

municipalities are not now, and may never be, ready for legalized intoxicants in their communities.

Ultimately, it is important to remain diligent and learn from the modern examples of others without having to make the mistakes again. Deregulation of the alcohol industry has proven, both past and present, to cause greater problems that will not be a quick fix to reregulate. As complications arise, more intricacies and loopholes may need to be drafted in to new statutes, yet this remains a sturdier option than to uproot the current system entirely. Today's state of industry regulation has the right balance of structure and flexibility to maximize both social and economic benefits. The construed evils stemming from the alcohol market have been largely suppressed; it is only people, themselves, that can truly be blamed for further wrongdoing.

ENDNOTES:

¹ U.S. Const., Amend. XVIII. (Note that the Eighteenth Amendment did not specifically outlaw the consumption of alcoholic beverages).

² Mark Thornton, Alcohol Prohibition Was a Failure, CATO INSTITUTE POLICY ANALYSIS (1991), <https://www.cato.org/publications/policy-analysis/alcohol-prohibition-was-failure> (last visited Oct 23, 2016).

³ *See, generally* RAYMOND B FOSDICK & ALBERT L SCOTT, TOWARD LIQUOR CONTROL (2011).

⁴ Jack S. Blocker, *Did Prohibition Really Work? Alcohol Prohibition as a Public Health Innovation*, 96 AMERICAN JOURNAL OF PUBLIC HEALTH 233–243, 233-243 (2006). [Note: Compared with statistics from reference 31, below].

⁵ PROHIBITION, HISTORY.COM (2009), <http://www.history.com/topics/prohibition> (last visited Oct 28, 2016).

⁶ *Id.*

⁷ PROHIBITION, (2011), <http://www.pbs.org/kenburns/prohibition/roots-of-prohibition/> (last visited Oct 22, 2016).

⁸ Jane O'Brien, THE TIME WHEN AMERICANS DRANK ALL DAY LONG, BBC NEWS, March 9, 2015, <http://www.bbc.com/news/magazine-31741615> (last visited Nov 16, 2016).

⁹ *See generally*, Pamela S. Erickson, 2016 ISSUE BRIEFS FOR STATES 2016 ISSUE BRIEFS FOR STATES (2016).

¹⁰ George Kibbe Turner, "THE CITY OF CHICAGO, A STUDY OF THE GREAT IMMORALITIES," *McClure's Magazine* 28(April 1907): 576-79

¹¹ Prohibition, History.com, *supra* note 5.

¹² PROHIBITION AND CRIME, BBC, <http://www.bbc.co.uk/schools/gcsebitesize/history/mwh/usa/prohibitionrev1.shtml> (last visited Oct 28, 2016).

¹³ Jack S. Blocker, DID PROHIBITION REALLY WORK? ALCOHOL PROHIBITION AS A PUBLIC HEALTH INNOVATION. 96 AMERICAN JOURNAL OF PUBLIC HEALTH 233–243, 233-243 (2006).

¹⁴ Thornton, *supra* note 2.

¹⁵ *Id.*

¹⁶ S. Mintz & S. McNeil, DIGITAL HISTORY: PROHIBITION (2016), <http://www.digitalhistory.uh.edu> (last visited Oct 20, 2016).

¹⁷ *Id.*

¹⁸ Ken Burns Prohibition Documentary, *supra* 7.

¹⁹ Thornton, *supra* 2.

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