

A Regulatory Roadmap: The Importance of *Toward Liquor Control* to Modern Alcohol
Policy

Introduction

Although written nearly 80 years ago, *Toward Liquor Control* (hereinafter abbreviated “TLC”) helps us understand why today’s state alcohol regulatory systems developed the way they did. The authors of TLC provided a blueprint for many of the liquor regulation systems that are in place today. Yet, arguably the authors’ greatest contribution to modern alcohol policy has nothing to do with the structures they promulgated. Indeed, the authors’ words of wisdom about the importance of developing policies that are responsive to the needs of the public—and particularly individual states and communities—remain valuable advice for policymakers today. By highlighting the failures of an extreme national policy imposed unwillingly on many groups of people, the authors of TLC effectively promoted a new approach toward alcohol regulation that exists to this day.

Arguably the most important lesson TLC gives us today is to “keep it local.” In other words, the views and attitudes of people in local communities and states should be kept in mind at all times when designing and implementing regulations. We often hear about private interests taking hold in Congress, but TLC reminds us that localized, public interests are what give force to the law. TLC shows us that by allowing states and communities to play a valuable role in alcohol regulation, we can develop policies that benefit society while curbing social problems.

1. A Roadmap to Modern Alcohol Policy

The influence of the ideas presented in TLC is still visible in alcohol policies today. For example, in Chapter 5 of the book, the authors lay out their arguments in favor of the Authority Plan, their preferred method of liquor control. In this plan, a state authority manages the sale of alcoholic beverages. In this way, the authors argue, alcohol is available to the public, but all of the economic incentives for selling liquor are removed from the equation, as the state, rather than private retailers, handles all alcoholic beverage sales. Perhaps as a response to this idea, several states decided to use an approach similar to the Authority Plan. One such state, Utah, created a state liquor monopoly just two years after the release of the first edition of TLC.ⁱ Utah's justification behind its regulatory system sounds as if it could come from the very pages of TLC:

The purpose of control is to make liquor available to those adults who choose to drink responsibly—but not to promote the sale of liquor. By keeping liquor out of the private marketplace, no economic incentives are created to maximize sale, open more liquor stores or sell to underage persons. Instead, all policy incentives to promote moderation and to enforce existing liquor laws is [sic] enhanced.ⁱⁱ

The reasons behind Utah's system of alcohol regulation are exactly those set out by the TLC authors in favor of the Authority Plan: eliminate the profit motive in the retail sale of alcohol, and establish control through positive management.ⁱⁱⁱ

Utah is not the only state that has embraced the idea of state management of alcohol sales. While all states impose some form of control over alcohol distribution and consumption, nearly half of the states control the sale of alcoholic beverages, either at the wholesale or the retail level.^{iv} Retail distribution varies in each "control state," with

some states using state-operated retail stores, others employing contract agencies, still others using private retailers, and some states using a combination of all three.

In contrast with control states, license states do not participate in the sale of alcoholic beverages at the state level; however, some license states allow municipalities to operate retail stores in certain circumstances. For example, in Minnesota, cities with a population of fewer than 10,000 may own and operate a municipal liquor store.^v And in Maryland, each county decides for itself what distribution system it will use.^{vi}

In both control and license states, alcoholic beverage licenses are considered privileges, and their issuance is always conditioned on qualifications and restrictions, much as the TLC authors advocated. Most states also provide for some form of local approval process before a license is issued or new liquor regulations are promulgated. This combination of state authority with local input is a prominent theme throughout TLC.

There are many examples of the ways that local jurisdictions can play a role in the licensing process of all states. For example, citizens and local governments are often invited to voice their concerns during a publicized license approval process.^{vii} Additionally, many states require license applicants to announce their intention to apply for a license publicly.^{viii} This allows community members to become informed about changes that may affect them and gives them an opportunity to contact the government if they have comments or objections to the changes. Many states also require the local government to approve or recommend approval for request for a license before the state will entertain the application.^{ix} Several states also allow local jurisdictions to prohibit alcohol sales, often through a vote by local citizens.^x By incorporating methods of local

involvement and choice into state alcohol policies, states include the local population in the creation of any alcohol policy.

Although the Authority Plan in its purest form (as outlined by the TLC authors), is not a predominant measure of liquor control among the states today, the various state regulatory schemes in place today developed as a result of localized preferences. Throughout TLC, the authors consistently stressed that policymakers must be in tune with public sentiment and must be willing to change policies as public needs change over time.^{xi} A willingness to listen to the public and to adapt as needs change remains a key ingredient in the success of any alcohol policy today.

The authors of TLC, fresh from an examination of the failures of national Prohibition, were quick to point out that any law only has as much force as the public will give it.^{xii} For this reason, it is critical for policymakers to understand public attitudes and perceptions. At the time of TLC's publication, this reasoning helped the country from placing too much alcohol regulation in the hands of the federal government and opened the door to increased state regulation. Today, TLC reminds us that, even in a predominantly state-regulated system, policymakers must be attuned to public sentiment.

As one way of giving more voice to local communities, the authors of TLC suggested the idea of "local option" (in a licensing system) or adaptation to local sentiment (in an authority system).^{xiii} Today, this idea can perhaps be seen most clearly in the development of alcohol policies on college campuses. For example, college communities may choose to become "dry" campuses even if they are located in an otherwise "wet" jurisdiction. College communities establish these policies based on the students' preferences and attitudes and, given the local nature of a college campus, it is

easy to determine whether students' desires have changed over time, thus necessitating a change in policy.^{xiv}

The authors of TLC realized that national Prohibition simply could not function effectively in the America they knew.^{xv} They understood that one of the main causes of Prohibition's failure was the national government's imposition of a blanket viewpoint on a nation made up of very diverse people. The authors therefore advised that future alcohol policies be developed based on a smaller set of viewpoints—for example, taking the views of all people in a given state or community into account.^{xvi} This approach has been largely taken to heart today, as state regulations remain the predominant form of liquor control in the United States. Even within states, local communities, such as college campuses, may elect to establish their own forms of alcohol regulation.

Although many aspects of the regulatory systems described by the TLC authors exist in some form today, the authors' advice to heed localized public sentiment remains perhaps the most important piece of wisdom for modern policymakers to follow. Today's public has become very vocal in expressing their dissatisfaction with the government's treatment of what they feel to be the majority of the people. In this atmosphere, it is critical that modern alcohol policymakers make the public feel included and valued in the development of policies and regulations.

2. A Tiered Approach to Control

Further evidence of TLC's influence on modern alcohol policy can be seen in the tiered approach many states take to liquor control. The TLC authors advocated for this approach, where beverages with higher alcohol content face stricter regulations than those with lower alcohol content.^{xvii} Many states today have adopted a tiered treatment of

alcoholic beverages. For example, New Hampshire permits the sale of beer and wine in supermarkets and convenience stores, but other spirits must be sold in liquor stores owned by local alcohol beverage control boards.^{xviii} Oregon has a similar setup, allowing beer and wine to be sold in supermarkets and convenience stores but mandating that packaged distilled spirits may only be sold in liquor stores operated by state-appointed agents overseen by the Oregon Liquor Control Commission.^{xix} In Ohio, beverage containing more than 21% alcohol by volume are purchased and distributed by the Division of Liquor Control.^{xx} Ohio allows for all other alcoholic beverages to be sold by “authorized agents,” such as grocery stores.^{xxi} In Utah, all beverages over 4% alcohol by volume must be sold in state-run stores.^{xxii}

In short, while each state varies in its exact approach to the tiered system, many states follow the TLC authors’ advice to regulate stronger alcohol, such as distilled spirits, more strictly than, for example, beer and wine.

3. Guidelines for License States

The authors of TLC were perceptive enough to realize that not all states would utilize their preferred approach, the Authority Plan.^{xxiii} For this reason, they did not limit themselves to only discussing the merits of one type of plan. The authors realized that many states were leaning toward the establishment of a licensing system, and they discussed the pros and cons of this system in addition to setting forth guidelines so that the disadvantages of licensing could be minimized.^{xxiv} These guidelines have been followed by states today.

California is one licensing state that has adhered closely to many of the guidelines suggested by the TLC authors. For example, the authors argue that license states should

create a single licensing board with statewide authority and responsibility.^{xxv} California's Department of Alcoholic Beverage Control has the exclusive power to license and regulate the manufacture, importation and sale of alcoholic beverages, along with the power to suspend, revoke or deny any license for good cause.^{xxvi} California also classifies its licenses, imposing different restrictions based on whether consumption is on- or off-site and on whether the purchase concerns beer and wine or other spirits.^{xxvii} The TLC authors also suggested giving the licensing board the authority to restrict hours of sale, advertising, and sales practices that encourage consumption.^{xxviii} California's Alcoholic Beverage Control department has the power to restrict hours of sale and to place conditions on where and when beverages may be advertised.^{xxix} Finally, California's licensing laws follow the TLC authors' advice that licenses should restrict the number and type of places where liquor may be sold.^{xxx} For example, California limits the number of off-sale beer and wine licenses to one for every 2,500 people in a city or county.^{xxxi}

The structure of the licensing system in states today reflects the guidelines issued in TLC. The TLC authors' willingness to examine several different methods of liquor control has made TLC an important guidebook to be consulted before implementing any sort of state alcohol regulation.

4. The Importance of Flexibility

Throughout TLC, the authors stress that policymakers must be tuned in to public sentiment. Should attitudes toward liquor control change over time, alcohol policies and regulations must change as well. The authors emphasize that alcohol policy must be

inherently adaptable so that it remains in step with the attitudes of the population to be regulated.

This willingness to be flexible remains crucial in alcohol policy development today. As the TLC authors stated, “Law does not enforce itself. Its machinery must be set in motion and kept in motion by individual human beings.”^{xxxii} Prohibition failed because it lacked crucial public support. Similarly, any alcohol policy that seeks to override the wishes of the regulated public will fail. In outlining the structures of several approaches to alcohol regulation, the authors of TLC were attempting to design policies that would balance the public’s desire to have access to liquor, as well as its desire to control that access. The solutions the authors presented – the Authority Plan and licensing systems, both with tiered structures to recognize that different liquors must be treated differently—do a good job at preserving that balance, and states today have embraced these systems, albeit with modifications of their own. Yet it is this balance, first clearly laid out by the TLC authors, that keeps these approaches effective. For this reason, when we read TLC today, we can gain a better understanding of why the policies that we have work so well, and we can glean guidance on how to continue to develop successful regulations for the future.

5. A New Approach to Studying Alcohol Policy

Finally, TLC offered a unique comprehensive study of the effectiveness of alcohol policies on society’s problems. By examining why Prohibition failed, the authors were able to confidently articulate new policies that lacked the flaws of past efforts at alcohol regulation.

Yet, the authors of TLC did not just look to history to determine the best course for future alcohol regulation. They also looked to the international arena for guidance on how alcohol policies ought to be developed. By illustrating the pros and cons of foreign alcohol policies, the TLC authors helped ensure that America would learn from others' mistakes as well as its own.

Through their research, the TLC authors stimulated a discussion about how alcohol problems may best be prevented that continues to this day. New studies about alcohol's effects on society, as well as how those effects might best be mitigated, are constantly being funded, and the merits and drawbacks of those studies—and the policies and regulations they advocate—are being debated in classrooms, legislatures and town halls across the country.

In short, TLC encouraged further research and debate on the subject of alcohol regulation in the United States. In presenting their ideas and guidelines, the authors sparked a discussion that continues to this day and encouraged research and study of policies at home and abroad.

Conclusion

TLC continues to have a profound effect on the structure and development of modern alcohol policies. By changing the way we think about how policies should be designed and implemented, the authors opened the door to a new type of liquor regulation. In doing so, TLC may fairly be said to have given birth to modern alcohol policy.

Many of the ideas first expressed in TLC, such as a tiered approach to alcohol regulation, local option, and state control of liquor establishments, are seen repeatedly in

policies across the country. States today still work toward eradicating the heart of the liquor control problem as expressed in TLC: the desire for increased profits and increased market share.^{xxxiii} The ideas the TLC authors expressed still resonate in studies today and still revolutionize thinking about alcohol policy. If we are to succeed in removing the problems associated with alcohol in society, we must continue to follow the advice of the TLC authors and in particular, we must remain attuned to the desires of the public and craft flexible yet effective alcohol regulations for the future.

ⁱ “About DABC: Origin and Purpose,” Department of Alcoholic Beverage Control (2011), <http://abc.utah.gov/about/index.html>.

ⁱⁱ *Id.*

ⁱⁱⁱ Raymond B. Fosdick & Albert L. Scott, *Toward Liquor Control* Chapter 5 (Kindle ed., BookBaby 2011).

^{iv} “About DABC,” *supra*.

^v Minn. Stat. §340A.601 (2003).

^{vi} “Overview: Licensing of Alcohol Establishments,” [nhtsa.gov, http://www.nhtsa.gov/people/injury/enforce/abcroleweb/pages/Overview.htm](http://www.nhtsa.gov/people/injury/enforce/abcroleweb/pages/Overview.htm).

^{vii} *Id.*

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *See Toward Liquor Control, supra*, Chapter 9 (warning that control systems that do not represent the prevalent attitudes of the community will not succeed).

^{xii} *See id.* at Chapter 1.

^{xiii} *See, e.g., id.* at Chapter 1 (noting that the key to liquor legislation is to place control as close as possible to the individual and to the community); Chapter 4 (noting the usefulness of local option in a licensing system); Chapter 5 (suggesting that a state authority could establish “dry” zones within otherwise “wet” areas).

^{xiv} *See, e.g.,* “Q&A: Messiah College Alcohol Policy Discussion,” Messiah College (2009), http://www.messiah.edu/alcohol_policy/qanda.html (describing a proposed change in the school’s alcohol policy based on changing student opinions).

^{xv} *Toward Liquor Control, supra*, Chapter 1 (noting that Americans believe that there is a solution besides Prohibition to the liquor problem).

^{xvi} *Id.* (noting that state-wide prohibition will not be successful unless it has “overwhelming public support”).

^{xvii} *Id.* at Chapter 3 (arguing that laws should be tiered so that the strictest rules apply to the drinks with the most alcohol).

^{xviii} *See* N.H. Rev. Stat. Ann. Title XIII, Ch. 175 et seq.

^{xix} “About the OLCC,” Oregon.gov (July 7, 2011), http://www.oregon.gov/OLCC/about_us.shtml.

^{xx} “About the Division of Liquor Control,” Ohio.gov, <http://com.ohio.gov/liqr/about.aspx>.

^{xxi} *Id.*

^{xxii} Utah Code Ann. § 32A-1-105.

^{xxiii} See *Toward Liquor Control, supra*, Chapter 1 (noting that the key to liquor legislation is community-level control and acknowledging that many states will follow the license approach to controlling alcohol).

^{xxiv} See *id.* at Chapter 4 (setting out guidelines for licensing systems).

^{xxv} *Id.*

^{xxvi} "Licensing," California Department of Alcoholic Beverage Control (2011),

<http://www.abc.ca.gov/permits/permits.html>.

^{xxvii} "Frequently Asked Questions," California Department of Alcoholic Beverage Control (2011),

http://www.abc.ca.gov/questions/licenses_faq.html.

^{xxviii} *Toward Liquor Control, supra*, Chapter 4.

^{xxix} "Frequently Asked Questions," *supra*.

^{xxx} *Toward Liquor Control, supra*, Chapter 4.

^{xxxi} "Frequently Asked Questions," *supra*.

^{xxxii} *Toward Liquor Control, supra*, Chapter 1.

^{xxxiii} See *Toward Liquor Control, supra*, Chapter 1 (noting that retaining the private profit motive spurs the desire to stimulate sales).