

The Twenty-First Amendment: A Lesson in Responsible

Lawmaking and Governance

Introduction

In a letter to the *Alta Californian* in 1867, Mark Twain wrote, “Prohibition only drives drunkenness behind doors and into dark places, and does not cure it, or even diminish it.”[1] While this letter was written well before the passage of the Volstead Act in 1919 and, a year later, the beginning of Prohibition, it foreshadowed the dark years that lie ahead. After a thirteen-year failed experiment, Congress passed the Twenty-First Amendment, repealing the Eighteenth Amendment, to the delight of civilians and lawmakers alike. Since then, it is clear that the repeal of Prohibition is achieving its intended purpose. By establishing a three-tier system to control the production, distribution, and sale of alcohol, the United States has promoted accountability and more importantly, transparency amongst each tier in the system. To illustrate the continued benefits of the Twenty-First Amendment, this paper will utilize the following framework:

1. Explore the unintended consequences that plagued the Prohibition era;
2. Explain the benefits of the current three-tier system;
3. Examine the effects of deregulation in the United Kingdom and the potential impacts to the United States.

Prohibition: A Failed Experiment

As with all laws, the Eighteenth Amendment set about in an attempt to curtail a rising trend of alcohol consumption. Starting in 1850, the average alcohol consumption of the population increased year over year through 1915. [2] The rationale behind Prohibition was that by outlawing the production and distribution of alcohol, over-indulgence would be eliminated

and crime would significantly decrease. The subsequent thirteen years provided unimpeachable evidence that Prohibition did not deter crime, but only served as an impetus to organized crime and triggered a chain of various unintended consequences that reverberated throughout the country. To recall the earlier quote from Mark Twain, drunkenness was driven behind the closed doors of society.

Richard Cowan is credited with labeling perhaps the most destructive of these consequences as “The Iron Law of Prohibition”. His law states that “...When drugs or alcoholic beverages are prohibited, they will become more potent, will have greater variability in potency, will be adulterated with unknown or dangerous substances, and will not be produced and consumed under normal market constraints.” [3] Without a government entity monitoring and controlling the production and sale of any product, alcohol in this case, there are massive opportunities for abuse. During Prohibition, transparency of production was all but eliminated and the general consuming public was subjected to substandard and potentially harmful products.

An equally harmful side-effect of Prohibition was the rise of organized crime. Meyer Lansky, Arnold Rothstein, and Al Capone are a few of the well-known gangsters that rose to power during this era and have since been immortalized in television, movies, and other media formats. These men understood that a vast demand for alcohol remained after the Eighteenth amendment was ratified and were able to fill that void by any means necessary. One of the stated goals of the ban on the production and sale of alcohol was to deter crime. However, without an established regulation system, crime flourished. According the U.S. Bureau of the Census, the national homicide rate more than doubled from 1910 towards the end of Prohibition in 1933. [4] Rampant crime and overcrowded prisons were a hallmark of this era and served to nullify the intended outcomes of Prohibition.

To put it mildly, the Eighteenth amendment failed to deliver on its most basic tenets of improving public health and decreasing crime. It was a wildly unpopular law that lacked sufficient resources to uphold and enforce compliance. It also deprived the country of precious tax revenues that could've been leveraged to tackle the underlying issues driving the initial desire for Prohibition. The fact that it is the only amendment to ever be repealed speaks volumes and serves as a stark example of the consequences outweighing the benefits.

Order Restored: The Twenty-First Amendment and the Three Tier System

With the passage of the Twenty-First Amendment in 1933, Congress not only rectified a national mistake, they utilized an ingenious method of legislation. By empowering the individual states to dictate their own alcohol legislation, they ensured passage of the law, and allowed each state to craft laws that fit each unique locale. Regulation ensures that there are effective control and safeguard measures in place, but by decentralizing the authority, it allows competition and a properly functioning marketplace. The three tier system is comprised of the following components:

- Licensed Distillers
- Licensed Wholesalers
- Licensed Retailers

The wholesalers may only buy from the licensed distillers, and the retailers may only buy from the wholesalers. These components generally operate independent of each other. It is this separation that prevents monopolies from forming which greatly benefits the consumer as it pertains to product selection and pricing. Speaking as a general beer consumer, my most cherished benefit is the ability to sample a vast selection of beers and experience the different

techniques employed by each part of the country. By purchasing alcohol through a licensed retailer, I am assured that I am receiving a quality product free of any known, harmful ingredients when consumed properly. For the states, regulating this market allows them to protect the public from illegally-adulterated products and reap the tax-generated revenue benefits that accompany regulation. For example, in Illinois alone, the taxes on beer, wine, and liquor produce more than \$230 million in annual revenue to the state. [5] The days of black-market deals and speakeasy raids are over and the resulting transparency benefits all parties involved. The money that is generated from the production and sale of alcohol is an essential stream that is used to fund countless initiatives in each state.

Along with the fiscal benefits that are bestowed to the states as regulating entities, there is also an inherited responsibility to fund and promote programs that encourage safe consumption habits. Although opportunities for abuse of any product will always exist, state-controlled regulation limits those opportunities by those who are at a higher risk for said abuse. Since all three tiers of the system must be licensed, there is accountability on all fronts to prevent the sale of alcohol to minors. This topic will be revisited later in this paper when comparing a regulated U.S. industry to that of the deregulated United Kingdom. According to a 2013 National Institute on Alcohol Abuse and Alcoholism report, the prevalence of drinking amongst twelve to twenty year olds has steadily decreased from 1991 to 2011 for both males and females. [6] This can be attributed to stricter enforcement on underage sales and increased funding from the states to promote awareness. Every state also partners with groups like Mothers Against Drunk Driving (MADD) to combat drunk driving. A 2012 report from the National Highway Traffic Safety Administration revealed that “the number of drunk driving deaths has been cut in half since MADD was founded in 1980”. [7]

Without the legal and fiscal support of each state, many of the programs that promote awareness of responsible drinking habits would cease to exist. By recognizing that the industry can be regulated while maintaining fair competition and natural market forces, the consuming public and the state benefit mutually. There are groups and individuals that would prefer a deregulated market, but fail to look at a current example taking place in a highly developed country that is unfolding before our eyes.

Early Warning Signs? A Cautionary Example in the United Kingdom

A cursory glance across the globe at countries that bear a striking resemblance to the United States would reveal the United Kingdom as one with which we share many similarities. Pamela Erickson, the CEO of Public Action Management, presented a compelling case against deregulation by examining the consequences of deregulation in the United Kingdom. I will leverage some of her information as I find her conclusions to be extremely thought-provoking. When deregulation began in the 1960's, the United Kingdom experienced a sharp increase in alcohol consumption. Further efforts geared toward expanding the sale of all forms of alcohol in grocery stores in recent years has only helped to fuel the consumption trends [8]. As large-chain grocery stores begin selling more forms of alcohol, the deregulated competition drives the price lower. Lower prices typically attract those individuals that were mentioned previously (young and underage patrons) for being more inclined to abuse alcohol and participate in risky behaviors after having consumed. It has become cheaper to drink at home as opposed to drinking at bars where underage consumption can be severely restricted, if not eliminated. These low prices also make it more affordable to consume large quantities which contradict the goal of regulation to

moderate consumption. By maintaining regulation, states can leverage a multi-pronged approach as they have the resources to do so. In fact, the World Health Organization echoes this sentiment in their suggestion to, “utilize complementary system strategies that seek to restructure the total drinking environment...more likely to be effective than single strategies.” [8]

Simply put, when left to their own devices, individual companies cannot effectively manage the safe production, consumption, and enforcement of drinking laws. As companies consolidate, it discourages competition and leaves consumers with fewer options. A state-supported hierarchy is required to provide adequate resources to address problems and maintain standards. Although we share many similarities with the United Kingdom, one area where we must differentiate ourselves is regulation of the alcohol market and the continuation of the three-tier system.

Conclusion: A Law Ahead of its Time

History, as is often said, has a unique way of repeating itself. Many parallels can be drawn between the prohibition on alcohol in the early twentieth century and that of the ongoing debate surrounding the legalization of marijuana. Both issues were and are highly contentious and polarizing topics. Driving marijuana “into the dark” is resulting in some of the same crime trends as seen during The Failed Experiment. It remains to be seen whether or not this country will follow a similar path with regulating marijuana as they did with alcohol. However, if an action is taken to legalize, our legislators would do well to pattern their approach after the Twenty-First Amendment. They should give each state authority over how to best enact laws that fit each state while holding producers, distributors, and retailers accountable for their actions. After exploring the unintended consequences from the Prohibition era, the benefits of the three-

tier system, and the effects of deregulation, I can safely agree that the Twenty-First Amendment has achieved its intended purpose. As we take a moment to remember the 80th anniversary of this historic legislation, we should be thankful that those who were entrusted to lead our country had the courage and foresight to provide a framework that protected our people while fostering open market competition and industry accountability.

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