

Attractions and Merits: Making the Case for the 21st Amendment

Joseph Ojih, PhD

Stratford University

Abstract

The aim of this paper is to appraise the 21st Amendment to the U.S. Constitution – an Amendment that repealed the 18th Amendment, which had mandated the Prohibition of alcohol production, distribution and consumption in 1920. Through a careful analysis of empirical and historical data, I was able to present a persuasive argument which showed that, in terms of crime reduction, tax revenue generation and the protection of the citizens' freedom of choice, the 21st Amendment can be considered a successful piece of government legislation. My arguments in this paper equally provided further evidence that the 21st Amendment model can be successfully applied to win the war on drugs since its central theme revolves around the adoption of more humane and effective ways of controlling and regulating alcohol use.

Introduction

According to the available published evidence, by the late 1800s, public opinion on alcohol and morality reached a frightening frenzy in the United States. This led to the formation of prohibition movements across the country – movements whose views are based solely on the premise that alcohol, specifically drunkenness, is a threat to the country. By 1920, the prohibition movements reached their apex, and the popularity of their activities led the U.S. Congress to ratify the 18th Amendment, which, in turn, prohibited the manufacture, distribution and sale of alcohol in the country.ⁱ It did not take a long time for the U.S. government to realize one disappointing fact: Prohibition proved too difficult to enforce. In addition, its intended effect of eradicating crime and other social problems was not achieved. Instead, Prohibition fuelled the growth of organized crime and made bootlegging of alcohol a lucrative business operation for crime syndicates. Thus, in a practical sense, the much-hyped crusade by the prohibition movements that banning alcohol will solve the country's social problems(including crime) did not jibe with the outcome of prohibition. Bowing to the pressures of widespread public disillusionment, the U.S. Congress ratified the 21st Amendment, which repealed Prohibition, in 1933.ⁱⁱ

After eight decades of implementing the provisions of the 21st Amendments, scholars have begun to ask questions which are of practical administrative interest and of great concern to scholars of policy science: Has the 21st Amendment achieved its intended purpose? Answering this question requires taking a brief look to some sequence of events that led to its ratification, starting with the inauguration of the Temperance Movement.

The Temperance Movement – From Cliché to Mission

The 1820s and 1830s are periods of intense religious revivalism in the United Statesⁱⁱⁱ. The religious revivalism of the era, which led to the formation of many prohibition associations, were inspired by the doctrines promoted by religious group whose main mantra was that alcohol consumption and the resulting drunkenness is a national curse. According to the available published evidence, the United States witnessed the first temperance legislation in 1838.^{iv} This legislation, which was a law made by the State of Massachusetts, prohibited the sale of spirits in less than 15-gallon quantities. The repeal of this law two years later did not discourage the State of Maine to pass a similar law prohibiting the sale of alcohol in 1846.^v By the time the U.S.'s controversial Civil War began in 1861 a number of other states had passed prohibition laws.

The Women's Christian Temperance Union(WCTU) of Ohio started calling for the abolition of the sale of alcohol as early as 1873^{vi}. Their crusade in that regard was given a boost by the even more powerful Anti-Saloon League(ASL) – a body that was founded in Ohio in 1893 which later expanded its operations nationwide. The ASL became so powerful that it started endorsing political candidates and lobbying for legislations against saloons. In the year 1906, the ASL launched an intensive crusade that led to a renewed call for state-wide prohibition legislation.^{vii} It should be noted here that, in terms of convincing people that eliminating alcohol from society would eradicate poverty and social vices(such as immoral behavior and physical violence), the prohibition advocates did an excellent job through their speeches, advertisements and public demonstrations at saloons and bars. One member of the temperance advocate, namely, Carrie Amelia Moore Nation(who was a native of Kentucky) became very popular during the era due to her violent tactics against alcohol, which she called the “evil spirits.” Her approach basically ignited a firestorm of activities aimed at banning alcohol use: She made powerful

protest speeches, broke the windows and the mirrors of many salons, and destroyed numerous kegs of beers and whiskeys with a hatchet. As a result of her activities, she was arrested numerous times and her salon-smashing campaign made her a household name across the country. It should be observed here that one important achievement of Carrie Moore and other prohibition advocates is that, through their activities, they were able to induce a collaborated and calibrated response to their demand for the banning of alcohol. Soon, the individual states in United States began to pass legislation that prohibits the sale and consumption of alcohol.

Prohibition Legislation – From States to Federal Level

Academic research confirmed that, by 1916, 23 of 48 states of U.S. had passed anti-salon legislation.^{viii} Some of these states prohibited the manufacture of alcohol in their domains. Meanwhile, in the U.S. political arena of that period, the participating politicians joined different groups popularly known as the “dry” members(that is, those congressional members who favored national prohibition of alcohol) and the “wet” members(that is, those of them that oppose alcohol prohibition). Unfortunately for the country, the dry members won two-third majority over the wet in the Congress after the congressional elections that year. Hence, on January 29, 1919, the U.S. Congress prohibited the manufacturing, transportation and sale of alcohol within the country through the ratification of the 18th Amendment - an amendment that became immediately effective in January 1920. In order to provide the government with the means for enforcing the 18th Amendment(that is, Prohibition), Congress also enacted the Prohibition Act, which was popularly called the Volstead Act – a name that was coined from that of its legislative sponsor, Representative Andrew J. Volstead of Minnesota.^{ix} It is noteworthy that the Volstead Act has some loopholes as well as some varying degrees of government support in the 1920s that did not only hamper its enforcement but also made it to become

merely an ideal than a reality. Notable among these loopholes are its provision that exempted the liquors used for medicinal, sacramental and industrial purposes and fruit or grape beverages prepared at home, from the ban. What is clear, however, is that during the short period that Prohibition lasted (from 1920-1933) United States experienced a period of gloom that was marked by a series of unanticipated consequences of the Act.

The Volstead Effect – Unanticipated Consequences

On the negative side, during the Prohibition era, the rate of bootlegging – the illegal manufacturing and the sale of alcohol – reached alarming proportion in United States. Independent studies suggests that the enforcement of Prohibition was generally much weaker in urban areas than in rural areas. The most frequently cited reason for this is that, compared to the rural U.S., the residents of the cities and urban areas had the majority of the population who opposed Prohibition. As the available literature on the effects of Prohibition makes clear, the most dramatic impact of the Act was that it fostered the growth of organized crime in the United States. Simply put, during that era, the production and sale of alcohol went further underground – a territory that was controlled by the Mafia and other gangs. With the flood of dollars from the sale of liquors, these doyens of the underground economy were able to transform their operations into a sophisticated criminal enterprise that reaped huge profits from the lucrative illicit liquor trade.^x

To make matters worse, the Mafia started sustaining the booming bootleg business by following one simple mantra: When you bribe the police and the politician with substantial amount of money, they will definitely look the other way. And that was exactly what happened during the Prohibition era. Several studies has generally verified that Mafia Dons like Chicago's

Al Capone emerged during this era as the most notorious advocate of this mantra, and, by taking care of the police and the politicians to look the other way, he was able to earn an estimated \$60 million per year from bootlegging and speakeasy operations which he controlled. In addition to bootlegging, the United States was facing more social problems during the 1920s(the Prohibition period): Gambling, prostitution and violent crimes reached new heights during that period. It is thus not surprising that a growing number of Americans at the time started blaming Prohibition for this widespread moral decay and disorder.

The message from this simple analysis is clear: Despite the fact that the legislation had the goal of doing the opposite – which was, to eradicate crime and other social evils – the American public started condemning it and perceiving it as a dangerous infringement on their freedom. Soon, the idea of Prohibition, once extolled, no longer impress the American populace due to its unexpected outcome.

Tempering Considerations and Calls for the Repeal of Prohibition

Even though public sentiments had turned against Prohibition by the late 1920s, there is, however, one important event that hastened its demise: the Great Depression. During the Great Depression of the 1930s, personal income, tax revenue, profits and prices dropped significantly. In addition, international trade plunged by more than 50 percent and, in United States, the unemployment rate reached 25 percent.^{xi} According to the available published evidence, the popular argument and rhetoric of that era was that the ban on alcohol is a bad legislation because it denied jobs to the unemployed and decreased the revenue that would have accrued to the government via the sales tax from alcohol. The public disillusionment with the Volstead Act was amplified by the activities of nonpartisan groups like the Americans Against Prohibition Association(AAPA) – a group that promoted the view that Prohibition is a harsh statute that

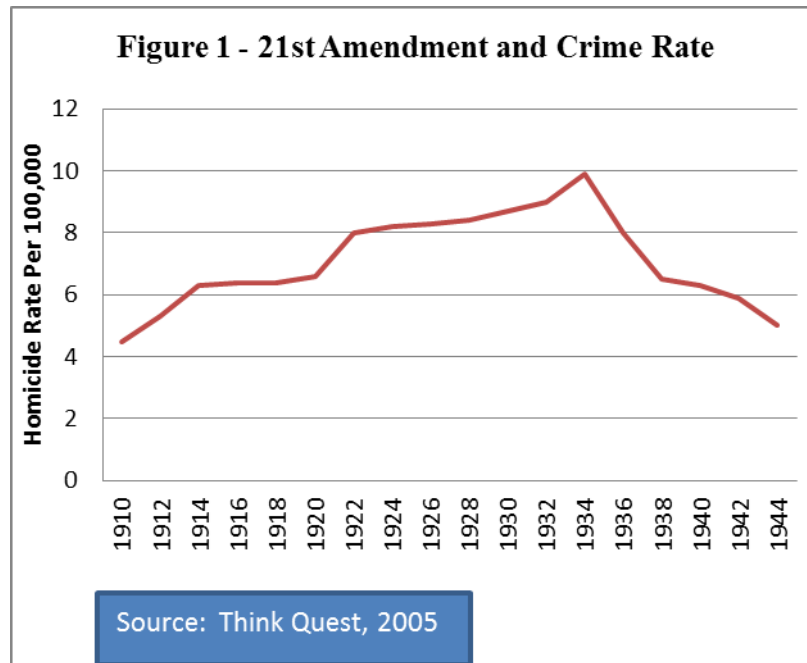
threatened Americans' liberties with respect to alcohol consumption^{xii}. Sensing this high level of public disillusionment, the Democratic presidential candidates Franklin D. Roosevelt included a plank for repealing the 18th Amendment in his 1932 campaign manifesto. These, in addition to his promise of a "New Deal", led to his victory that November – a victory that, in a sense, marked the beginning of the end to Prohibition.^{xiii} It is thus not surprising when, in February 1933, the Congress adopted a resolution that proposed the 21st Amendment to the constitution. The main provisions of the 21st Amendment are the repeal of both the 18th Amendment and the Volstead Act. One major challenge then was that the resolution required state conventions instead of state legislatures to approve the amendment. As a result of this challenge, the approval of the amendment became a piece meal process involving a one-state, one-vote referendum instead of a popular vote contest. The country, however, achieved the necessary majority to repeal the 18th Amendment in December 1933 when Utah became the 36th state to ratify the amendment. It should be noted here that even though a few states continued state-wide prohibition after 1933, all of them abandoned it by 1966. Since then, alcohol regulation and control in the United States had remained the prerogative of the local governments.

In the preceding sections, I have presented a brief historical background on the events that led to the 21st Amendment. I am now ready to extend this discussion by investigating two related questions: Has the 21st Amendment achieved its intended purpose? What are the key lessons from the 21st Amendment? The first question will be answered by presenting the positive impacts of the 21st Amendment in the following section.

The Positive Effects of the 21st Amendment

In my view, the first goal of the 21st Amendment, which is, to reduce crime and lawlessness, promote freedom of choice, and generate revenue for the government, has indeed been accomplished. To support my argument in this regard, I will present some of the positive effects generated from the repeal of Prohibition and the ratification of the 21st Amendment.

First, it is a *non sequitor* to hold that Prohibition(the 18th Amendment) actually made people to stop drinking. This is because the only achievement of Prohibition with respect to alcohol consumption is that it made people to drink less, and to do so surreptitiously. Given that Prohibition criminalized alcohol consumption, when it was repealed by the 21st Amendment, many people who were considered criminals by virtue of the fact that they drink alcohol suddenly became law-abiding citizens. Various published evidence amply testify that making alcohol legal produced one important effect: It made the overall crime rate (such as drunkenness, assaults, burglaries, and so on) to go down.^{xiv} From a quantitative standpoint, during the era of the Harrison Narcotics Act of 1914(which made narcotics prescribed by doctors legal) as well as during the pre-Prohibition era, the homicide rate in large U.S. cities was 5.6 murders per 100,000 people. This homicide rate rose to 10 per 100,000 as soon as Prohibition took effect.^{xv} This homicide rate represents a 79 percent over pre-Prohibition era. This important assertion may be clarified by taking a quick glance at figure 1. The results presented in figure 1 are striking: As noted previously, homicide rate reached a peak of 10 murders per 100,000 people in 1934 but



decreased sharply to 5 murders per 100,000 after 21st Amendment took effect by 1944, representing a whopping decrease of 50 percent. This results correlates with that of other researchers on the impact of the 21st Amendment. Here is an overly simplified explanation of a study taken in 30 U.S. cities on the effects of Prohibition and the 21st Amendment: In United States there was a 24 percent increase in crime rate between 1920 and 1921 – the beginning years of Prohibition. Several trends stand out from this figure – arrests for drunken driving increased by 81 percent, thefts rose by 9 percent and assaults and battery incidents rose 13 percent. In addition, the United States had only 4000 federal convicts (of which less than 3000 were housed in federal prisons) before Prohibition. But by 1932, which falls within the era of Prohibition, the number of federal convicts increased astronomically by 561 percent while the federal prison population increased by 361 percent. The interesting thing about this huge increase is that more than 67 percent of all prisoners in United States during this time, particularly in 1930, were convicted on alcohol and drug charges.^{xvi} In contrast, when 21st Amendment took

effect, the crime rate started to decline, as could be observed from figure 1. It would be logical, therefore, to suggest that reduced crime rate is one of the dividends of the 21st Amendment; and that this decrease in crime means that police resources can be focused on other types of crime that are not related to alcohol consumption, bootlegging and smuggling – an outcome that made U.S. a safer society.

Second, the 21st Amendment brought more tax revenue into the U.S. government coffers. Table 1 showed that, from 1977 through 2011, revenue from alcohol tax almost trebled, reaching a value of 176 percent.^{xvii} It is interesting to observe here that, since people were drinking secretly during the Prohibition era, they were not paying sales taxes on those alcoholic drinks because they were purchased illegally. So in addition to high crime rate, the United States was in the middle of the Great Depression by 1933 and the government needed the money from taxes on alcohol – an even more powerful reason for passing and ratifying the 21st Amendment.^{xviii} Hence, as a concession to practicality, I can infer here that among the positive effects of the 21st Amendment was that it provided the U.S. government with much needed tax revenue which it applied to stimulate the economy during the Great Depression.

Table 1- State and Local Beverage Tax Revenue, Selected Years 1977-2011

Years	Alcohol Tax Revenue (\$ 000)
1977	2,263,512
1982	2,946,833
1987	3,381,485
1992	3,882,309
1997	4,021,740
2002	4,600,156
2004	4,985,706
2005	5,125,140
2006	5,353,816
2007	5,606,480
2008	5,748,447

2009	5,898,696
2010	6,027,269
2011	6,240,300

Source: Tax Policy Center, 2013

The third impact of the 21st Amendment has to do with personal choice: It gave people the ability to make decisions for themselves with respect to alcohol use. The logic of this assertion runs as follows: Alcohol may not be healthy, but it is up to people to decide whether to drink it or not; and this decision should not be made by a third party. The fundamental lesson here is that each individual adult citizen's health is his/her business. This argument thus made Prohibition(the 18th Amendment) less attractive because it was promoting the opposite ideal. In view of this, it could be stated that the 21st Amendment gave back the American adults their right to make personal choices with respect to alcohol consumption rather than leaving that choice in the hands of strangers.

At this point we are ready to answer one question: Did the 21st Amendment achieve a second goal, which is, to encourage temperance? What is clear from table 2, which showed an increasing trend on alcohol use by the people in this age group, is that the 21st Amendment has not been successful in that regard(Note that the years of 1966-2002 were chosen instead of

Table 2 – Alcohol Use in Lifetime among Persons Age 12 to 17 and Persons Age 18 to 25 During the Years of 1966 to 2002 by Gender: Percentages Based on 2002 National Survey on Drug Use and Health

Year	Age 12-17			Age 18-25		
	Total	Male	Female	Total	Male	Female
1966	17.9	25.3	10.9	70.5	79.1	62.9
1970	20.8	27.4	14.2	75.3	83.8	67.5
1974	29.0	36.0	22.5	79.5	87.1	72.2
1978	29.2	36.2	22.7	82.5	89.3	75.8
1982	30.3	35.6	25.1	83.9	87.9	80.0
1986	30.6	36.7	24.5	82.2	87.2	77.6
1990	28.9	34.1	24.0	80.9	85.7	76.3
1994	28.1	30.9	25.2	81.8	86.4	77.2

1998	31.2	33.4	29.0	82.0	85.2	78.9
2002	43.4	43.4	43.4	86.7	88.0	85.4

Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies, National Survey on Drugs on Drug Use and Health, Washington, DC: U.S. Department of Health and Human Services, 2002(As Cited in Jurkiewicz & Painter,2008)

1934 because the impact of a public policy normally take decades to manifest). The main reason for this failure is simple: Alcohol control policies are designed to promote orderly, quiet, and socially acceptable production, sale, and consumption of alcohol, and not to stop drinking or enforce total abstinence. The significant point to remember here is that the decriminalization of most alcohol consumption, production and sale, and the creation of less restrictive laws on alcohol use produced another noticeable effect: It turned alcohol and its producers into a major industry – an industry that is so powerful that it has its own legitimate economic and business elites that has a keen interest in preserving profits via the maintenance of order and obedience to law.

Judged from the moral and practical perspective, reducing habitual drinking or prevention of alcohol use should be the role of nongovernmental and quasi-governmental agencies such as families, churches, and public health professionals. Hence it can be inferred that the creation of the National Institute on Alcohol Abuse and Alcoholism (NIAAA) in 1971 was a laudable and formal effort in that regard. Even though the NIAAA merely record the trends on alcohol consumption and alcoholism in general, one of its main goals is alcohol abuse prevention.^{xix} Of course both NIAAA and similar government agencies have been making serious efforts to promote health concerns related to alcohol consumption, on the positive side, there is strong popular support for these public health concerns(for instance drunk-driving laws and package labeling). However, all the potential impacts of these efforts are usually watered down by the

activities of the alcohol industry who constantly resist most efforts to diminish alcohol consumption.

While this paper is focused on the achievements of the 21st Amendment, what is certain is that U.S. experience after the implementation of its provisions can be extended beyond alcohol regulation in the country. In view of this, I will now presents some of the key lessons from the 21st Amendment in the following section.

Lessons from the 21st Amendment

The key lessons from the 21st Amendment are threefold. First, the amendment decriminalized alcohol production, distribution and consumption thereby reducing crime and violence. Hence it would be reasonable to stress that the 21st Amendment turned a crime-ridden problem of violence which, in the views of most people, is impossible to change, into something that is manageable, routine and socially accepted. Given this significant achievement, it should not be a surprise that most of the alcohol-related social policies in the U.S. are no longer about banning the product but about public health, with more emphasis being placed on controlling alcohol consumption so as to reduce the costs of health and insurance for the government and the insurance companies.

Second, the experience from 21st Amendment and other similar alcohol regulation policies in the United States are illustrative of the balance among competing interests. Broadly speaking, as with tobacco control, the 21st Amendment ushered in other state-by-state alcohol regulation policies that involve the establishment of an age limit, the collection of excise taxes, the regulation of sales, and the placement of restrictions for the sale, use and consumption of the product. It should be noted here that public health campaigns for tobacco have had not only an impact on consumers' behavior but had also resulted to declining sales of the product – a decline

that have been partially off-set by increased international sales. Hence it is not surprising that the alcohol industry in United States are wary of public health campaigns due to the fear of reduced sales as well as the fact that they may not have the opportunity to increase their sales internationally since many other countries will already have established international and domestic alcohol industries in their domains.

Third, experience from the 21st Amendment and other alcohol-related regulations can be applied in other areas of public policy: As a promising approach to illegal drug control. This is because the arguments for criminalizing narcotic drugs and their use – that they are immoral, addictive, can corrupt children and destroy families - are the same as those raised about alcohol during the Prohibition era. Hence it should not be a big surprise to any careful observer that prohibition policies on narcotics have produced many of the same evils experience during the era of alcohol Prohibition: Disrespect for law, organized crime and violence, adulteration, diseases, and increased law enforcement costs. The fundamental lesson here is that, just like with alcohol regulation, addiction and destruction of families would be likely to continue to occur when narcotics are decriminalized. However, it will be highly possible to use appropriate legislation and regulation to control the strength and availability of narcotics after they are decriminalized so as to decrease the likelihood of these negative consequences occurring as well as address their effects.

Conclusions

From an entirely practical standpoint, the success or failure of the 21st Amendment , in the end, can be distilled into one simple question: did it reduce crime and lawlessness, promote freedom of choice, and generate revenue for the government ? The analyses made on this paper showed that, when judged on the basis of this simple metric, the 21st Amendment has been a

resounding success. What this all mean is simple: Within this success lie self-evidence lessons that can serve as a reliable guide for drug policy debate in United States - a country which, even though it imposes on its citizens what may be termed the harshest penalties for drug possession and sales, had continued to record the highest rate of cocaine and marijuana use in the world.

References

-
- ⁱ History Channel(2013): *18th and 21st Amendments*. Retrieved November 16, 2013 from <http://www.history.com/topics/18th-and-21st-amendments>
- ⁱⁱ Fisher B. (2007): *The Supply and Demand Paradox – A Treatise on Economics*. North Charleston, South Carolina: Book Surge LLC.
- ⁱⁱⁱ U.S. History (2013): *Religious Transformation and the Second Great Awakening*. Retrieved November 16, 2013 from <http://www.ushistory.org/us/22c.asp>
- ^{iv} Blocker J.S., Fahey D.M., & Tyrrell R.I. (2003): *Alcohol and Temperance in Modern History*. Santa Barbara, CA: ABC-CLIO Inc.
- ^v Ibid
- ^{vi} Barrows S., Room R. (1991): *Drinking – Behavior and Belief in History*. Berkeley, CA: University of California Press.
- ^{vii} Szymanski A.E. (2003): *Pathways to Prohibition – Radicals, Moderates and Social Movement Outcomes*. Durham, NC: Duke University Press.
- ^{viii} Okrent D. (2010): *The Rise and Fall of Prohibition*. New York, NY: Simon & Schuster Inc.
- ^{ix} Padwa H., Cunningham J. (2010): *Addiction – A Reference Encyclopedia*. Santa Barbara, CA: ABC-CLIO Inc.
- ^x Reuter P. (2009): *The Decline of the American Mafia*. *National Affairs*. Retrieved November 21, 2013 from http://www.nationalaffairs.com/public_interest/detail/the-decline-of-the-american-mafia
- ^{xi} Smiley G. (2008): *Great Depression*. *The Concise Encyclopedia of Economics*. Retrieved November 25, 2013 from <http://www.econlib.org/library/Enc/GreatDepression.html>
- ^{xii} E-History (2013): *Clash of Cultures in the 1910s and 1920s*. Retrieved November 25, 2013 from <http://ehistory.osu.edu/osu/mmh/clash/prohibition/prohibition-page5.htm>
- ^{xiii} Coker J.W. (2005): *Franklin D. Roosevelt – A Biography*. Westport, CT: Greenwood Press.
- ^{xiv} Jurkiewicz C.L., Painter J.(2008): *Social and Economic Control of Alcohol – The 21st Amendment in the 21st Century*. Boca Raton, FL: Taylor & Francis Group.

^{xv} Think Quest(2005): *Crime Rate*. Retrieved November 26, 2013 from http://library.thinkquest.org/04oct/00492/Crime_Rate.htm

^{xvi} Ibid

^{xvii} Tax Policy Center(2013): *Tax Facts*. Retrieved November 30, 2013 from <http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=399>

^{xviii} Grover S.(2013): About the Positive Effects of the 21st Amendment. *EHow*. Retrieved November 27, 2013 from http://www.ehow.com/info_8104318_positive-effects-21st-amendment.html

^{xix} National Institute on Alcohol Abuse and Alcoholism(n.d.): *About NIAAA*. Retrieved November 30, 2013 from <http://www.niaaa.nih.gov/about-niaaa>