



Written by [Steve Byas](#) on March 9, 2020

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Problematic Prohibition

January 17 marked the 100th anniversary of the beginning of National Prohibition, the so-called Noble Experiment that demonstrates the failure of the progressive political philosophy that made it possible, illustrating the truth of conservative scholar Russell Kirk's assertion in his book *The Politics of Prudence*: "Any public measure ought to be judged by its probable long-run consequences, not merely by temporary advantage and popularity."



The 18th Amendment, which prohibited the "manufacture, sale, or transportation of intoxicating liquors," was quite popular when it sailed through Congress in 1918, and was quickly ratified by the requisite number of states in 1919. The Volstead Act implemented the enforcement structure for National Prohibition, and National Prohibition would remain in effect until the passage of the 21st Amendment, which repealed the 18th, in 1933.

Even then alcohol abuse had a long sordid history, and state efforts to curtail it could be traced back well into the 19th century. Maine was the first state to ban the sale of alcohol in 1851, based on studies by Portland businessman Neal Dow, who claimed there was a link between booze and family violence, crime, and poverty.

When it comes to individuals' welfare, we often hear the argument that the federal government has to "step in" because states have failed to act, but in the case of alcohol, the fact is that states were often prevented from acting by federal courts. In 1886, Iowa restricted the importation of liquor into the state, but in *Bowman v. Railway Company*, the Supreme Court declared Iowa's actions unconstitutional. The court reasoned that since Congress had failed to use its power to regulate the interstate trade of liquor, then Congress desired that liquor crossing state lines was meant to remain unregulated. This left state governments that desired to prevent liquor shipments into their "dry" states impotent to stop it.

Today, the common perception is that Prohibition was mainly the result of a religious crusade, something also believed by some in the early 1900s. At the time, prominent religious skeptic H.L. Mencken castigated National Prohibition as simply the work of "ignorant bumpkins of the cow states."

A Progressive Cause

But as historian Larry Schweikert noted in his book *A Patriot's History of the United States*, "Only after Prohibition failed was there a deliberate effort to reinterpret the essentially Progressive flavor of Prohibition as the work of wild-eyed Christian evangelists."

In contrast, Richard Hofstadter, in his Pulitzer Prize-winning *The Age of Reform*, called it an "injustice" to hold Progressives responsible for National Prohibition. Yet, Hofstadter conceded that "leading Prohibitionists had often been leading reformers," citing socialist Upton Sinclair's *The Wet Parade*, an anti-liquor book.



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David Shannon, writing in *Between the Wars: America, 1919-1941*, argues, “Prohibition had a strong attraction for middle-class reformers” who saw it as their place to help poor whites, many of whose limited incomes went for booze. He does not discount the work of the Women’s Christian Temperance Union (WCTU) and the Anti-Saloon League, but says that they “found the climate of opinion quite favorable [for Prohibition] during the Progressive Era.”

Historian Clarence Carson, writing in *The Growth of America, 1878-1928*, said it was the triumph of the Progressives that made such a drastic act as National Prohibition possible, arguing that the Progressives “were undergirded by a belief in the possibility and desirability of making over society by regulation and law.”

This compulsion of Progressives to tell others how to run their personal lives preceded them taking up the Prohibitionist cause. As Schweikert explained in *A Patriot’s History of the United States*, Progressives had first made an enemy of soft drinks in general, and Coca-Cola in particular. He called the efforts to go after Coke “a test run for the 18th Amendment.” Today’s Progressives retain this impulse. One only need cite the efforts of former New York Mayor Michael Bloomberg to restrict the amount of soda pop consumed in his city, as well as his “National Salt Reduction Initiative” (he compared salt to “asbestos,” according to a recent article in *National Review*) and his founding and financing the anti-gun group Everytown for Gun Safety.

Other recent Progressive efforts to strip Americans of their liberty to make such personal choices include seat belt laws, pushing for non-meat diets, and attempts to dictate what type light bulb consumers purchase. The list only seems to keep growing.

The Progressive Era held sway during first two decades of the 20th century, and attempted to overturn the founding principles of the United States. It included among its champions Democrats such as Woodrow Wilson and Republicans such as Theodore Roosevelt, and exhibited great faith in the power of the government — especially the federal government — to improve society by the passing of laws and increased regulation of society. In a nutshell, the Progressives assured the public they could keep the government in check at the ballot box. By way of contrast, the Founders of America generally feared governmental power (e.g., Washington even reputedly compared government to fire — a dangerous servant and a fearful master — and Jefferson contended that government needed to be kept on a chain, that chain being the U.S. Constitution).

The Progressive approach, of course, should raise the question as to who is going to keep public intentions in check, and prevent them from infringing on the individual liberty and property of citizens who are in the minority. After all, a citizen should be able to express unpopular views or practice an unpopular religion. Or drink a soda pop without first seeking permission from government.

Perhaps nothing better illustrates the Progressives’ optimism than the attempt of government to improve society through National Prohibition of alcohol. As Paul Johnson wrote in *A History of the American People*, “The imposition of Prohibition, and its failure, illustrates perfectly a number of important principles in American history. First, it shows the widespread belief in America that utopia can be achieved in the here-and-now and the millennium secured in this world.”

Photo: Library of Congress

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Prohibition and Organized Crime

And Prohibition highlights the unintended negative consequences of social-control laws. One failure often cited about National Prohibition is the growth and acceleration of organized crime. John Torrio provided illegal liquor in Chicago from 1920-1924, making so much money that he opted to retire back to Italy with \$30 million, when he was almost killed by a rival gang. He was succeeded by one of his lieutenants in crime, Al Capone. A onetime bouncer in a brothel (where it is believed that he contracted the syphilis that eventually killed him), Capone eventually made his way to Chicago, where he became a favorite of Torrio.

It is estimated that Capone profited around \$60 million per year by providing bootleg whiskey. Many small-time bootleggers who refused to buy liquor from him were killed in bombings or shootings with Thompson submachine guns. To help his public image, Capone often made donations to private charities, including a soup kitchen in Chicago.

Ultimately, however, Capone was rightly more associated with extreme violence. In an attempt to eliminate competition by the “North Side gang” led by rival gangster Bugs Moran, Capone had seven of its members slaughtered in the infamous “Saint Valentine’s Day Massacre.” While neither state nor federal law enforcement was ever able to convict him for his multiple crimes of murder, or selling booze, he was eventually convicted for income tax evasion in 1931.

After all, Capone had paid no taxes on all that illegal money.

In 130 known gangland killings in Chicago from 1926-27, the Chicago police department made no arrests.

But gangland slayings associated with Prohibition were not the only negative consequence of the Progressives’ Noble Experiment. As Shannon notes, bootleggers often obtained grain alcohol (drinking alcohol) from industrial alcohol that contained undrinkable alcohols or other poisons, but failed to remove all the poisons, often resulting in blindness, paralysis, and even death. (Similar tragic stories about poisoned products are often told of illegal drugs sold on the streets today.)

As Johnson explained, “Prohibition was a characteristically 20th-century exercise in social engineering which ended by doing unintended, enormous, and permanent damage to society.” Another negative effect was the placement of the power of regulation of such things as alcohol in the hands of federal authorities, instead of leaving such power in the hands of states and their local governments, as was intended by the Constitution.

Damaging Limited Government

In the early 1900s, it was still generally understood that the federal government could not exercise a power unless it had been enumerated in the Constitution, largely in Article I, Section 8. As James Madison explained, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce.... The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State.”

This well-accepted wise political philosophy is why in 1918 it was still considered necessary to enact an



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amendment to the Constitution to give the federal government the additional power to regulate alcohol. Of course, today's Progressives do not even bother with constitutional amendments. If they desire to do something, they just do it. One might recall House Speaker Nancy Pelosi asking, "Is that a serious question?" when someone asked her what part of the Constitution gave Congress the power to order someone to buy health insurance.

Unlike Prohibition, no amendment was added to the Constitution giving the federal government the power to enact legislation criminalizing the use of certain drugs. But aided by today's lack of understanding of constitutional principles, the feds are waging a war against drugs anyway. And this war is being carried out in much the same manner as the federal war against alcohol use in the 1920s, with many of the same negative results: violence, the disregard of property rights and civil rights, and the corruption of law enforcement.

Rampant corruption was just one cause of the inability to enforce National Prohibition. In some cases, states simply did not want to cooperate with federal officials, either because it was unpopular to do so in their communities, or because they were too busy working to fight their own non-alcohol crimes, such as murder, robbery, and rape. Often, when distributors of illegal liquor were charged, juries would not convict. Oddly, even many who publicly supported National Prohibition were frequent customers of bootleggers.

Some chalk this up to the phenomenon that many in society like "Feel Good Laws" — statutes that do very little to control an activity, but it just makes them "feel good" that society has made a statement against this or that vice, or other social problem. As Will Rogers (the most popular movie star of the decade) joked, "Mississippi will vote dry and drink wet as long as it can stagger to the polls."

The Drive for Repeal Grows

Over the course of the 1920s, National Prohibition became increasingly unpopular. By 1928, the Democratic Party had adopted a platform calling for its repeal and nominated an openly "wet" politician, who favored legalizing liquor, as their presidential nominee — New York Governor Al Smith. Smith did not win, but the tide was clearly running against the Progressives' Noble Experiment.

Moreover, with the onset of the Great Depression, the revenue coming into the federal Treasury through its taxation of legal business activity and income was drying up, and the lure of extracting some additional revenue from the sale of intoxicating beverages was powerful. Morals taking second place to revenues is not new, of course. King James I of England dropped his initial opposition to legal tobacco in his kingdom when he was told that it would provide a rich source of revenue.

By 1933, the 21st Amendment repealed the 18th. But the way in which the 21st Amendment was ratified provides us with another warning for our time. The Constitution provides two ways to propose an amendment (either a two-thirds majority vote of each house of Congress, or via a national convention) and two ways to ratify. All 27 amendments have been proposed by a two-thirds vote of each house of Congress, and all but the 21st have been ratified by three-fourths of state *legislatures*. Instead, the 21st was ratified by three-fourths of state *conventions*.

This is instructive. Advocates of using the constitutional convention method (sometimes referred to as a Convention of the States) to propose adding amendments to the Constitution discount fears that such a convention could become a "runaway" convention, passing amendments that could curtail free speech or the right to keep and bear arms, restricting religious liberty, or even replacing the entire



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Constitution. Proponents argue that three-fourths of state legislatures would never ratify such unpopular amendments. They overlook amendments that three-fourths of the state legislatures should not have ratified such as the 16th (income tax) Amendment, and they have more confidence in the state legislatures than I do.

But according to Article V of the Constitution, it is the *Congress* that determines the ratification method, not the state legislatures. Just imagine if Congress opted to send amendments such as repealing the Second Amendment to the states, stipulating that such an amendment be considered by a state *convention*, rather than by state *legislatures*. Are we willing to trust that those who want to preserve religious freedom, freedom of speech, or the Second Amendment would make up the majority either at a national convention or in the various state conventions? With the power of the media, the popular culture, and left-wing billionaires, are we willing to risk these precious liberties in our present society?

As the late Supreme Court Justice Antonin Scalia so wisely opined, the 21st century is just not a good century in which to write a Constitution.

In his book *Roosevelt to Roosevelt: The United States in the Twentieth Century*, Dwight Lowell Dumond noted that the Congress reasoned that the repeal of Prohibition had a better chance of success in state *conventions*, rather than through state *legislatures*. Not only did Congress make that decision under Article V of the Constitution, but, as Dumond explained, they chose to *allow* the states to arrange the time and method of holding the conventions. In other words, Congress could have simply *dictated* the time and the method of holding such conventions, including how such delegates were to be selected.

Our unhappy experience with National Prohibition is a powerful lesson from history — a lesson that should guide our public-policy decisions today. History teaches us the truth of the wise words of President Warren Harding, who in 1920 summed up his rejection of the Progressive Era that produced National Prohibition: “All human ills are not curable by legislation.”

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