



## July 2019 Newsletter

### Why are Alcohol Regulations Primarily "State-based"? By Pamela S. Erickson

**Prohibition ended with the adoption of the 21st Amendment to the U.S. Constitution. It also gave the primary responsibility for alcohol regulation to the individual states. Why was that?**

**1. Greater state/local authority.** In writing the text of the 21st Amendment, Congress recognized that states need greater authority to deal with alcohol issues that affect their citizens. That was affirmed by the recent Supreme Court case, *Tennessee Wine and Spirits Retailers Association v. Thomas*. In writing for the majority in that case, Justice Alito stated that Section 2 "was adopted to give each State the authority to address alcohol related public health and safety issues in accordance with the preferences of its citizens..."

#### 21st Amendment, U.S. Constitution

**Section 1.** The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

**Section 2.** The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

**Section 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Alcohol harm is usually manifested in local communities via public order problems with licensed premises, drunk driving, underage drinking, addiction, crime, employer lost productivity and family problems. Most of these issues are not federal problems, but local in nature. States and local communities need

tools to deal with these issues. They do that by laws/regulations, licensing, and enforcement.

**2. Greater flexibility.** If you have a community problem with alcohol, would you want to call on the federal government for help? Of course not. The federal government is enormous, there are many priorities and sometimes you can't even get a phone call or email through. This isn't a criticism of federal employees who often try their best to be helpful, it is just the nature of a large enterprise with authority over the entire country.

The 18th Amendment was very inflexible. It simply prohibited the manufacture, sale and transportation of "intoxicating liquors." While it did seem to reduce drinking rates and quell public order problems, it spawned a problem of organized crime. It was also poorly enforced, creating a flourishing underground market. Eventually, it became wildly unpopular.

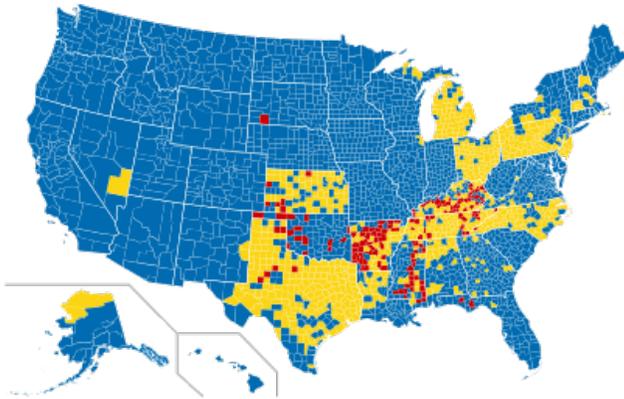
Even Congress couldn't change it. They did attempt to alleviate the situation by allowing the consumption of beer in April 1933. They did that by passing legislation declaring that 3.2% beer "non-intoxicating!"

#### 18th Amendment

**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of **intoxicating liquors** within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**3. A better fit with local cultural norms.** Congress came to recognize that states and their communities varied dramatically regarding alcohol and its place in

the culture. After Prohibition was repealed, some states remained dry for many years. The last state to end their state-based Prohibition was Mississippi in 1966. Today, you still have a web of local jurisdictions that are dry. A visual example is the map below which depicts dry, wet and partially dry jurisdictions.



Map showing ■ dry (red), ■ wet (blue), and ■ mixed (yellow) counties in the United States as of May 2019

**4. A law that lacks public support is usually not very effective. State-based alcohol regulation enjoys major public support.** As stated earlier, federal Prohibition became wildly unpopular. On the other hand, state-based regulation enjoys high support. A recent survey by the Center for Alcohol Policy found very high support for the "right of individual states to set their own laws and regulations" about alcohol. Not only is the support strong, but increasingly so. In 2008, 70% agreed with that statement and in 2019, 83% said they agreed-- a 13% increase.

**5. A single "big idea" rarely works to cure a major social problem.** America is known for its practicality. Prohibition went against the grain as it was a single measure applied equally to all states and localities. It has worked better when states and communities work together to develop a system that is a series of practical concepts that are effective, yet can be changed over time. This is particularly important as there is an increasing amount of good science that shows what policies are most effective in quelling problems. There is new research which suggests that a series of strong policies, working together, is more effective in reducing various alcohol issues such as drunk driving and excessive drinking. Researchers have developed an "alcohol policy score" and have found states with a higher score have fewer problems.

**But, state-based regulation does have conflicts and difficulties, primarily when businesses want to operate across state lines.** Because alcohol

regulation is "state-based" companies that operate in national or regional markets face a different set of regulations in each state. This can make their business more difficult. It also makes regulatory enforcement more difficult as state regulators have little practical ability to take legal action against an out-of-state entity. This is a growing issue which continues to generate court cases.

**Article I, Section 8, Clause 3**

The Congress shall have Power [...] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

However, it is important to remember that alcohol is no ordinary commodity and actually creates great harm resulting in an estimated 88,000 deaths annually. Annual costs for deaths and other harms is \$249 billion, according to the Centers for Disease Control and Prevention. State-based regulation allows local and state communities to directly address their problems with alcohol. Thus, a certain amount of inconvenience for interstate business may be justified.

**Sources:**

Map credit: This file was derived from: USA Counties with FIPS and names.svg., Public Domain, <https://commons.wikimedia.org/w/index.php?curid=18798115>.

<http://healthyalcoholmarket.com/pdf/NewsletterJune2019.pdf>

<https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm>

Stahre M, Roeber J, Kanny D, Brewer RD, Zhang X. [Contribution of excessive alcohol consumption to deaths and years of potential life lost in the United States.](#) *Prev Chronic Dis* 2014;11:130293.

Sacks JJ, Gonzales KR, Bouchery EE, Tomedi LE, Brewer RD. [2010 National and State Costs of Excessive Alcohol Consumption External.](#) *Am J Prev Med* 2015; 49(5):e73–e79.

"Alcohol, No Ordinary Commodity," Second Edition, Thomas Babor, et al, Oxford University Press, 2010.