

No one today must search long or hard to find examples of the horrible consequences of alcohol abuse. Excessive drinking had, in fact, been a serious issue throughout the 19<sup>th</sup> and into the 20<sup>th</sup> century of American history. In that sense, it is easy to understand the motivation behind the 18<sup>th</sup> Amendment. Going into effect in January of 1920, the 18<sup>th</sup> Amendment prohibited “the manufacture, sale, or transportation of intoxicating liquors.” To enforce the 18<sup>th</sup> Amendment, Congress passed the Volstead Act, which defined “intoxicating liquors” as anything ingestible with more than 0.5 percent alcohol. Prohibition did cut the flow of alcoholic beverages in the United States by at least 50 percent but fell far short of eliminating drinking and created other problems as well. Public disenchantment with prohibition was clear long before the 1920s were over. In 1933, with the ratification of the 21<sup>st</sup> Amendment, the 18<sup>th</sup> Amendment was repealed.

Why was prohibition deemed a failure? During the 1928 presidential campaign, Herbert Hoover had pledged to establish a prohibition study commission. Early in 1931, the commission’s report came out and made the following points: Drinking had increased since 1920, large-scale bootlegging (illegal liquor traffic) had coincided with official corruption, an associated upsurge in crime had overburdened the judicial and penal systems, the states had neglected to do their part to support enforcement, and society’s respect for law in general had weakened. Furthermore, “The report conveyed an underlying sense of skepticism as to whether prohibition could ever be made to work.” (David E. Kyvig, *Repealing National Prohibition*, 2<sup>nd</sup> edition, Kent State University Press, 2000, page 113.)

In 1930, Senator Millard Tydings of Maryland published a short book about prohibition’s failure. Tydings was a conservative Democrat. As a conservative of the libertarian variety, he “believed that individuals and states had the right to choose their destinies, and that those rights were fundamental to the American political tradition.” He “regarded the Eighteenth Amendment as encroachment on states’ rights and on individual liberties. Local areas should be free to choose...” (Caroline H. Keith, *For Hell and a Brown Mule: The Biography of Senator Millard E. Tydings*, Madison Books, 1991, pages 169, 173.) In the concluding portion of his book, which is provided below, Tydings reveals the root cause of prohibition’s failure.

### **Millard Tydings on Prohibition**

*(Before and After Prohibition by Millard E. Tydings, MacMillan, 1930, pages 123-131.)*

...Through the adoption of the Eighteenth Amendment, Congress, for the first time, was given the power to deal exclusively with a local rather than a national matter. In fact, the Amendment went far beyond merely giving Congress the power over this historically local problem; rather, it set up a drastic limitation upon the powers of Congress, the powers of the States and the powers of the people themselves, and laid upon Congress and the States concurrently the duty of enforcing that prohibitory limitation.

Even if we had never had the experience of national prohibition to prove it, the results which were certain to follow the command to apply this revolutionary policy to diverse communities is a matter of plain common sense. If there is not—at the least—a strong and

active majority sentiment in each community demanding the enforcement of such a law, it cannot be enforced from the outside by any means short of the complete subjugation of the local spirit of independence.

And when the law prohibits such intimate things as personal appetites, easily gratified in secret, it must have an almost complete local support—a support which makes any violator of it a social outlaw among those with whom he associates—if it is to have any real effect. Everyone can think of many laws which are effective or useless, accordingly as this social pressure is applied or not.

Certainly no one will deny today that there are large and populous sections of the nation where no such social outlawry is visited upon the person who drinks alcoholic beverages. Undoubtedly, there were many local communities, and perhaps a few States, where such a dominant and active opinion against this age-old custom did exist before national prohibition. And just to the extent that such sentiment did exist, these sections were predominantly dry in habit under the local laws which embodied the local sentiment.

It was not primarily the law, but rather the sentiment, which accomplished the results. And it must be obvious that any such sentiment, to have any effect, can be exercised only locally. The social scorn of a Kansan toward a New Yorker for using alcoholic beverages is just as ineffective as is the scorn of a New Yorker toward a Kansan for prohibiting himself from such indulgence.

All this is so commonplace that it would hardly seem necessary to detail it. Yet it is plainly the root cause of the whole tragic debacle which has followed the adoption of national prohibition. The object of prohibition plainly was to stop people from drinking, by prohibiting the manufacture, sale, importation or transportation of drink. But people are not going to stop drinking, as we knew even before national prohibition, simply because a law says they should. If moral force—the exercise of social opinion—does not make them stop, physical force must be used.

Where is this physical force to come from? Plainly, in a nation of 120,000,000 people, scattered over an area of 3,000,000 square miles, the force must be predominantly supplied by the local enforcement authorities—the local police, the local courts and the local juries.

But the police, the courts and the juries are the servants and reflectors of local sentiment, rather than that of remote localities or States. Thus, even though a law may have a national majority behind it, local sentiment, if predominantly different, will not only refuse cognizance to such a law but will actively support resistance to it. And who can doubt, after reading American history and the Declaration of Independence, that it was exactly this spirit of local resistance to law applied by remote authority which caused the founding of our nation in the beginning?

It seems unlikely that national prohibition has ever enlisted a national majority of people who will actively exert social censure against non-observers, wherever they may be found. But even if it had, we would certainly not find the presence of that active attitude of censure

in remote localities working with any effect upon such populous and resistant centers as New York, Chicago, Philadelphia, Boston, Baltimore, St. Louis, New Orleans, San Francisco and a score of other metropolitan districts, containing among them perhaps a full third of the nation's population.

As a result, we get a mild form of rebellion among great masses of the people; a rebellion all the more effective because these masses are closely integrated and able to support each other with all the moral force at their command. In at least nine States this rebellion appears to be State-wide. Thus many States, including some of the most populous, have either repealed or refused to enact State enforcement codes, refused to ratify the Amendment, or have expressed themselves in opposition by referendum.

The police, the courts, the prosecutors and sheriffs who are elected to office by these resistant communities naturally conform to local rather than remote sentiment in carrying out the provisions of a national act which they find in conflict with the wishes of the taxpayers and voters who put them in office and pay their salaries. And if the people in many of these very populous sections are hostile to the spirit and purpose of prohibition, how can it be made anything more than a dead letter in such sections?

Yet, this is the exact situation which confronts the nation today. Many local governments are strongly opposed to prohibition. Therefore, their officers either wink at violations of the law, making no active effort to enforce it, or they may even use moral force against it. How, in the face of this admitted opposition from millions of people, can anyone believe that this law can ever be enforced merely by passing a few more harsh and stringent acts? If supreme national necessity dictated the application of more force; if the safety of the nation itself depended upon obtaining a general obedience to this law; there probably would be a demand for use of all the force the nation can command. But no such demand has any general support, showing clearly the agreement of Congress and of the prohibition supporters themselves in the view that the nation's life does not hang upon enforcement of this law. And with this fact being true, the net result of additional harsh statutes, practically impossible of general enforcement, is only an increase rather than a disappearance of the spirit of rebellion.

Prior to national prohibition, the number of places in which liquor was sold was being steadily decreased. The people were voting the traffic out of legal existence in one community after another, and succeeding in enforcing their prohibitions to whatever extent dominant local sentiment existed. If we had continued with this local, county and State prohibition, and with the then increasing social repugnance to general drinking, it seems quite probable that the traffic in alcoholic beverages would have been much farther curtailed today than it was when the other method of treating the problem was adopted.

But when we adopted this revolutionary new method, it is now plain, we struck a death blow at this trend toward temperance and curtailment. When we destroyed the right of each community to work out the problem in its own way and its own time, as dictated by local knowledge of how far and how fast to go, we also destroyed the spirit of local cooperation and good will. The prohibition advocates frequently assert that they enforced

prohibition upon sections that were not ready for it because liquor from these sections kept seeping into the States that were dry by State or local enactment. But the result of national prohibition seems to have been the making of even these dry States wetter than they were before.

If the control of the liquor traffic—which still flourishes—were returned to the States, it is my belief that while conditions immediately following the change might not be ideal, over a period of years we could curtail the areas in which it would be generally demanded and sold, make and enforce more stringent regulations regarding its sale, restore the popular trend toward temperance, and generally come upon a period of moderation and popular acquiescence, with beneficent results for the whole nation.

As a matter of logic, it seems clear that the people of New York, Illinois, Wisconsin and other resistant States have as much right to enforce their wishes regarding the traffic in liquor as have those of Kansas, Georgia, Oklahoma and other dry States. These States have a perfect right to have State prohibition if their people wish it; conversely, the people of these other States have a right to use other means of meeting the problem within their borders if they so desire.

In conclusion, it appears plain that the reason why national prohibition has failed to attain the success promised by its advocates is because we are attempting to settle what is essentially a local question by a rigid national decree. We have violated the philosophy of the Constitution under which we have lived for 150 years and under which our country has reached an eminence far beyond any conception which its founders could have imagined.

We have set the precedent of taking over local problems and dealing with them from Washington—a precedent which, over the course of a hundred years, may easily end in national disaster. Already, the introduction of this one strange principle into the Constitution, and the efforts to make it effective, is beginning to destroy the life and force of other sections of the fundamental law upon which our nation functions.

Without setting up any particular remedy, it is plain that the way to escape both the evils of national prohibition and of the traffic in and the abuse of alcohol is not through giving the Federal Government more and more power, not through harsher and more stringent laws; not through putting more and more people in jail; but by giving back to the States and their people their former power to work out their own answers to these problems.

If we have any faith at all in the American citizen, whether he live in New York City or Topeka, in Baltimore or Seattle, we must believe that eventually, through trial and local interest, he will attack the evils of his community as he himself knows them, and eventually solve them. The nation cannot do this for the local community, nor can communities in one section do it for others far removed. Rather, each community must—and if given the opportunity, will—do it for the nation. Such was our practice in all our history before national prohibition, and it was a practice that was generally successful. Give the settlement of local problems back to the localities concerned, and our history of previous success will continue.