

Many drug law reformers cite America's post World War One experiment with Prohibition as evidence for legalising all drugs. But, says **Mark Kleiman**, the reality behind an era popularised by mobsters and speakeasies tells a very different story.

Prohibition: a rum do

DID Prohibition work? That question is what the sophists and the scholastics used to call a 'topos' – a well-worn controversy, on which a student ought to be able to demonstrate his competence by reciting the familiar arguments on each side. It continues to be a topic of passionate debate, not because mid-20th century American history is suddenly back in vogue or because anyone proposes to re-prohibit alcohol, but because the history of the 18th Amendment and the Volstead Act is supposed to illuminate the current controversy about the laws controlling other intoxicants.

OLD AND NEW

There's much less than meets the eye to the analogy between what was called 'Prohibition' as applied to alcohol in the United States and the current 'prohibition' of the plants and chemicals covered by the US Controlled Substance Act, the UK Misuse of Drugs Act, the comparable statutes in other countries and various international treaties such as the Single Convention on Narcotic Drugs and the Psychotropics Convention. The laws are different, their enforcement is different, and the social circumstance is different. So the argument "X resulted from Prohibition, and Y resulted from Repeal; therefore, replacing drug prohibition with regulation and taxation will lead to replacing X with Y" does not hold water.

The international treaties require that the simple possession of controlled drugs for non-medical uses be made an offence, and most countries comply either by law or published policy or simply by established practice. The Noble Experiment, as Congress called Prohibition, never went that far. Between 1919 and 1933 it was entirely legal to possess and consume alcoholic beverages in the United States. All that Prohibition prohibited was their manufacture, transportation, and sale. Respectable citizens continued with impunity to consume what they pretended (or pretended to pretend) were their pre-Prohibition private stocks of liquor, and indeed 'private clubs' were allowed to store their members' bottles and to serve them from those bottles.

Alcohol Prohibition, then, resembled what is called decriminalisation when applied to, for example cannabis. In fact, it was much more liberal, because decriminalisation usually leaves the offence of possession on the books, merely making possession of a particular drug, typically cannabis, not an arrestable offence or not punishable by jail

time. Nor did drinkers face workplace drug testing or the level of social stigma attached to the use of illicit drugs today. Compared to the currently illicit drugs, alcohol was far more widely used before its prohibition. As a result, the Temperance movement never succeeded in making drinking seem weird, threatening or abnormal. Even before Repeal had taken effect, Franklin D. Roosevelt had a rum-runner delivering rye whiskey to the White House.

Nor was it only possession that was de-penalized under Prohibition. The Volstead Act left every citizen free to ferment his own wine and brew his own beer at home. I number myself among the supporters of applying such a policy to cannabis: continued prohibition of sale or exchange for value, along with permission for possession and production for private use and gratis distribution. That proposal is universally and correctly categorised as 'legalisation', albeit non-commercial legalization. It wouldn't satisfy the libertarians, but it's more than enough to outrage the true drug warriors.

Even the Volstead Act's prohibitions on commercial manufacturing and sale were only weakly enforced, especially toward the end of the Noble Experiment. The Prohibition Bureau of the Treasury was small and there was no equivalent of today's massive state and local drug enforcement effort. Under Prohibition, the price of alcoholic beverages roughly tripled. By contrast, illicit heroin and cocaine currently trade at multiples of 10 or 20 times their licit-market prices.

FEWER DEATHS

So what did this pseudo Prohibition of alcohol do? Most of the data we'd like to have doesn't exist: we don't know anything about drink-driving deaths or domestic violence, for example. What we do know is that deaths from cirrhosis of the liver – strongly correlated with continued heavy drinking by long-term heavy drinkers – fell by about two-thirds from their pre-WWI levels to the early-to-mid 1920s. They then came back up slowly as Prohibition fell apart as a practical matter in the late 1920s and was finally repealed in 1933. Most forms of alcohol were largely unavailable in the United States during WWI due to wartime shortages, so the relevant comparison is to the pre-war period.

So, contrary to popular belief, Prohibition did indeed reduce alcohol abuse, despite being a much looser control regime than the one created by our current drug laws. Nor did taxation and regulation

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Prohibition agents uncover \$300,000 worth of liquor from under a pile of coal in New York Harbour in 1932

turn out to be effective, low-cost substitutes for Prohibition as means of controlling problem drinking and drinking-related misbehaviour - as opponents of the current drug laws often assert would be the case were prohibition ended for today's illicit drugs.

ABUSE TODAY

About one-third of the total alcohol consumed in the United States is consumed by people who drink to excess. Among Americans with a diagnosable substance abuse disorder, not counting tobacco, alcohol is the primary drug of abuse in about seven-eighths of the cases. Roughly one American adult in 12 meets diagnostic criteria for alcohol abuse or dependency. Alcohol is second only to tobacco among drugs responsible for excess mortality, at about 100,000 deaths per year, 2.5 per cent of all deaths in the United States. Despite increasingly draconian laws against drunken driving, alcohol is present in about two-fifths of all highway fatalities. Of those in prison for violent offences, more than two-fifths report having been drinking when they committed the crime. No law or regulation forbids the sale of alcohol to those who have been convicted of drunken driving or drunken violence.

The ban on drinking by minors has led to a flourishing trade in false identification, and more than three-quarters of high-school seniors (18-year-olds) report having tried alcohol. So do 40 percent of eighth-graders (14-year-olds): that's more than twice as many as have used cannabis.

The economic and political power of the \$100 billion-per-year alcoholic beverage industry constitutes a major barrier to effective alcohol controls and to substantial increases in alcohol taxes. The current tax on the average drink (6oz of wine, 12oz of beer, or 1.5oz of distilled spirits, each containing about three-quarters of an ounce of absolute alcohol) is about ten cents, compared to an average cost imposed on non-drinkers of about a dollar.

Nor did Repeal even succeed in getting law enforcement out of the alcohol-control business. There are more arrests in the United States for violations of the alcohol laws (1.5 million arrests for drunken driving, drunk and disorderly behaviour, drinking in public, and drinking by minors) than for violations of the all of the controlled substance laws.

So while Prohibition is almost universally considered a failure, Repeal can hardly be deemed a success. The alternative to a total ban on the sale of alcohol proved to be, not effective control short of regulation, but effectively unlimited consumption, even by minors and those whose previous behaviour has demonstrated their inability to control their behaviour while under the influence.

PIPE DREAM

Legal alcohol accounts for more death, more illness, more substance abuse, more accidents, more arrests and more crimes than all the illicit drugs combined. And yet we are urged to apply to those other drugs the policies that have proven so grossly unsatisfactory when applied to alcohol. Unless and until we have demonstrated the political will and administrative capacity to get the alcohol problem under control, the argument for repealing the prohibitions on cocaine, heroin, and methamphetamine will carry little persuasive force.

It turns out that neither prohibition nor legalisation is a magic wand that can make drug problems disappear. Regulations and taxes, if they are stringent enough to change behaviour, are just as coercive, and just as much in need of enforcement, as are prohibitions. The pipe-dream of the drug policy reform movement - that the controlled substance laws will go the way of the 18th Amendment, and that as a result we will enter a Golden Age in which the prisons will empty out but substance abuse will not increase, or will even decline - has no relevance to the real world.

That doesn't mean that our current policies toward the currently illicit drugs are the right ones. They aren't. We could and should shrink the prison population and reduce crime and neighbourhood disruption by changing our enforcement strategies, our sentencing laws, and our approach to managing drug-involved offenders. Debating the history of Prohibition, as instructive and amusing as it may be, is no substitute for the hard, unglamorous work of designing and implementing practical policy reforms today. ●

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