

# Early History of U.S. Drug Laws (1898-1933)

by Bob Ramsey

*The roads to Hell and unlimited (unconstitutional) government are paved with good intentions. Every so often, folks just like your and me decide they are so smart and self-righteous, that they can solve “problems” with unconstitutional laws.*

*Drug laws are a good example. Constitutional crimes consist of damage to another person or another person’s property. Use of marijuana or cocaine may harm the individual user, but don’t normally damage another person or property. Hence consensual drug use is not a constitutional crime. Nevertheless, some self-righteous individuals decided to save us from ourselves and instituted a series of unconstitutional drug laws and penalties. But after two generations of our “holy drug war”, do we have less drugs or more police?*

*We can debate whether the original motivations to pass our drug laws were benign or cynical. But one thing’s sure: no matter why a law was passed — even if that law is soon seen to be impractical, unreasonable, or even irrational — government will expend endless taxpayer energy, wealth, resources and individual liberties to, somehow, somehow prove the law “works” rather than admit that law was stupid, destructive and call for its repeal.*

*Why is it so difficult repeal stupid laws? Because most modern laws*

*serve special interests (a limited constituency) rather than the General Welfare of the American People. As a result, most modern laws aren’t mere expressions of moral right and wrong. They are charters for private interests and government bureaucracies who profit from the law’s existence. This article illustrates that unconstitutional laws have self-serving constituencies who fiercely and effectively defend the laws that feed them at their neighbors’ expense.*

I believe it is impossible to enforce a law that attempts to control any private behavior in which a significant portion of the population chooses to participate. I don’t plan to discuss the reasons why this is so, but to describe how each failed attempt to enforce Prohibition laws has led to further erosion of individual liberties. The bottom-line? For over eighty years we’ve attempted to give an ever-expanding number of police agencies enough power to do the impossible. In the process, we’ve come dangerously close to destroying America.

I will describe a historical thread of U.S. government attempts to improve society by controlling the inside of people’s bodies. Trying (or pretending to try) to extinguish a market for certain agricultural products has created coun-

terbalancing incentives for criminal activity in both the private sector and government. Each failure to achieve the stated goal of “national purity” has fueled cries for more intrusive government powers and caused some very alarming trends.

## ***In the beginning***

The first federal law that regulated consumable products was the Pure Food and Drugs Act of 1906. But the first time Congress involved itself in drug laws was after the ten-week Spanish-American War in April - July of 1898. After winning this war, Congress became responsible for the first time for a colonial empire that included the Philippines. Instead of being mere servants of a self-sufficient American people, Congress suddenly became the paternal master of millions of “ignorant savages” who were virtual wards of the state.<sup>1</sup>

And so for the first time, Congress was forced to deal with a “drug policy”. The former Spanish government of the Philippines had a two-part drug policy: 1) government controlled the sale of all opium; and 2) you could only buy opium if you were Chinese. Obviously, the U.S. should have continued, modified, replaced or abandoned that policy. Instead, America simply ignored this curious situation until the Filipinos rebelled in February 1899, causing us to take colonialism more seriously. Few Americans realize that there was a 28-

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month Philippine war involving 50,000 U.S. troops, who killed 200,000 to 600,000 people before we convinced the Filipinos we were their best friends.<sup>2</sup>

The McKinley administration sent the Republican Party's rising star, Howard Taft, to the Philippines to straighten out the mess. Taft was an energetic and able administrator who established civil rule and began economic development. His experience in tackling public problems both in the Philippines and as President from 1909-13 is of special interest, since he later became Chief Justice of the Supreme Court from 1921-30, where he served through most of Alcohol Prohibition.

In 1902, Taft established a commission to study the opium policy inherited from the Spanish.<sup>3</sup> The commission's leader was Reverend Charles Henry Brent, a missionary in the new U.S. possession. Brent was soon named Episcopal Bishop of the Philippines and ministered to its newly appointed American rulers. He thus became one of the first Americans in this century to discover that expanding government made for some very exciting

career advancement opportunities. Brent studied the situation and came up with a plan to continue the Spanish policy, except with a three-year phase-out period to humanely wean the Chinese of their habit. But when Taft asked Congress to pass an implementing law, reformers heard about it. They were outraged that the US government would promote this horrible habit in a helpless population, and persuaded Congress to insist on total opium prohibition.

In trying to stop opium imports, Rev. Brent learned that most of the opium came from Hong Kong, some 350 miles away, and quickly surmised that opium traffic was international and could only be addressed internationally. So he began advocating an international conference on opium, which won acceptance largely because other nations also wanted to break British dominance of opium trade with China.

In 1909, a small international commission met in Shanghai, attended by the countries most active in Far East trade. It settled little, but gave reformers a picture of each participant's motives. The British and Dutch were making money; the French didn't care. Indeed the British stated that opium smoking was the Chinese equivalent of drinking liquor or beer, and they had no problem with it. The Chinese wanted to show they were not to be taken lightly, and the Americans were seeking their place as an international power. A larger convention was scheduled in the Netherlands at The Hague for 1910, and was to include all the major world powers. But nations like Italy, Turkey, Germany and Switzerland dragged their feet, and the next conference was delayed.

## Assumptions in the early 1900s

Things have changed so much since 1900 that today it's difficult to comprehend what a free market used to be like. In the late 1800s and early 1900s, a uniformed federal agent might bring heroin to your door that you had ordered from Sears Roebuck . . . along with the rest of your mail.

Even the wording of the Food and Drugs Act of 1906 (the first Congressional attempt to regulate consumable products) is telling. Its literal intent was to "assure the customer of the identity of the product purchased, not of its usefulness." In those days Congress didn't consider its place was to judge for the American people what was useful or not. Knowing just the components of a product was a major step in helping the people make informed decisions.

The law called a product "misbranded . . . if the package fails to bear a statement of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, chloral hydrate, or acetanilide."

Obviously, back in 1906, Congress took for granted the legality of a free market in all drugs.<sup>4</sup> In fact, when the Food and Drugs Act was passed in 1906, it was estimated that 3-5 percent of the adult U.S. population used opiates regularly, mostly in patent medicines whose contents were a trade secret. When people were informed as to the contents of their favorite remedies, many people quit using them. The percentage of Americans habitually using opiates fell to about one percent — virtually the same as it is today if you include users of both illegal and medically

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prescribed opiates – but without a police state. And this was in a socio-political climate where just about everyone had some kind of opium preparation in their medicine cabinet, used it at least occasionally for headaches or diarrhea . . . and must have known feeling of an opium “high”.

### **The pause that refreshes**

Spanish Conquistadors found the Peruvian natives chewing coca leaves when they arrived in 1530. The Spanish encouraged the practice since it made the Indians work longer in the silver mines with less food.

Refined cocaine became generally available to Americans in the early 1880’s. At first, it was greeted with great enthusiasm. Pure and cheap, it was at often given to workers in Southern cotton fields to increase productivity. A Pope and a US president endorsed coca products. The original 6.5 ounce bottles of Coca-Cola contained about one grain of cocaine (an aspirin tablet is five grains.)

Although Sigmund Freud wrote enthusiastically about the benefits of coca use, after two years he decided it was better left alone. By 1905 it was considered to be a social problem. Cocaine seemed to make people feel “worthy”. One New York politician complained “It makes working men feel like millionaires — which they’re not!” Especially alarming to Southerners was that it seemed to make a Black man feel just as good as a White man. When Southern politicians instinctively objected to federal drug legislation on State’s Rights grounds, they were quickly brought around by sensational stories about cocaine-crazed Negroes

raping White women.<sup>5</sup>

### **Transition time - 1913-1920**

In the early 19-teens, the US’s new role as a colonial and world power made Americans think of themselves more as a nation than a collection of states. An example of the new “national” thinking came in 1911, when a certain War-of-1898 Naval-hero-turned-Congressman named Richmond P. Hobson whipped up enthusiasm among the Anti-Saloon League (ASL) for National Alcohol Prohibition via a Constitutional Amendment.<sup>6</sup> Until then, Prohibitionists had worked one state at a time — but sometimes states repealed liquor laws the ASL had worked very hard to pass. And it drove the Prohibitionists nuts that anyone could order liquor from out-of-state through the U.S. Mail or the Railway Express Agency. A constitutional amendment was very appealing. It would be impossible to repeal, and would cover the whole country at once.

In 1913, our form of government was changed fundamentally in at least three ways, all of which were centralizing influences: We instituted a central bank called the Federal Reserve. We changed the mode of electing Senators. Formerly Senators were elected by a State’s legislature; the loss of this power not only eliminated federal accountability to State governments, but also made State legislatures less relevant. And then there’s the big one, something the original Constitution had specifically forbidden: the Income Tax.

The income tax did many things, but one of its immediate effects was to break the power of the liquor industry. Through the 1800s, liquor taxes had pro-

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vided as much as half of all federal revenues. Now, thanks to the income tax, government could do without the alcohol tax. Congress could afford morality without worrying about the arithmetic. And there was another wonderful feature. For the first time it became practical to enact a “tax” law that didn’t generate revenue.

Remember that international Opium conference that didn’t happen in 1910? Well, America pressed the issue, and Hague conventions on opium were held in 1911, 1913, and 1914, slowly making progress toward a treaty whereby signatories would “endeavor” to control their own traffic in opium and cocaine. Delegates from forty-four nations signed the treaty, which would take effect when ratified back home, supposedly by the end of December, 1914.<sup>7</sup> However, few nations ratified because three days after the convention adjourned in June of 1914, Archduke Ferdinand was assassinated in Sarajevo, kicking off World War One.

But the US didn’t enter the war for almost three years. In 1914, alcohol – not war — was the big issue. Narcotics was an afterthought. In May of 1914,

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the House of Representatives scheduled a debate on a Constitutional amendment prohibiting alcohol for the following December, seven months away.

The December 22nd, 1914, alcohol debate may not have been the social event of the season, but it was close. The House was almost evenly divided for and against, as were both parties. Everyone knew the amendment wouldn't pass because a 2/3 majority is required. Both sides allotted tickets to the house gallery, which was jammed and noisy. Attendees draped the chamber with banners like at a football game. The Women's Christian Temperance Union and the Anti-Saloon League marched down Pennsylvania Avenue to the House Chamber carrying a petition with six million signatures and piled it on the Speaker's desk. The debate lasted over thirteen hours, and fills 125 pages of fine print in the Congressional Record.<sup>8</sup> All the good and bad arguments for and against prohibition are in there, and they are well stated, as you might expect when seasoned debaters have seven months to prepare.

Compare all this grand activity

with the vote eight days earlier on the Harrison Narcotic Law: it passed by voice vote after announcement that the committee had referred it favorably as a fulfillment of treaty obligations. At the time it was considered a record-keeping act, not a prohibition law. It took the form of a nominal tax, supposedly generating just enough revenue to support its own administration, on commerce in the specified drugs, with detailed record keeping. Its passage didn't even make the newspapers. The *New York Times* first mentioned the law in a legislative summary three weeks later.

But the Treasury Department seems to have thought it was a prohibition law. I don't know when they started arresting people, but they must have jumped on it like a chicken on a June bug. The law took effect on March 1st, 1915, and the first court judgement was handed down in May. The US District judge in Pittsburgh held the prosecution of addicts invalid,<sup>9</sup> saying an addict was not required to register under the law, so he could hardly be held to possess narcotics illegally. Another case in Memphis found it was acceptable to pre-

scribe unlimited quantities of narcotics as long as the required records were kept.<sup>10</sup> The Supreme Court virtually struck down the law in June, 1916, saying Congress certainly did not intend "to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal."<sup>11</sup>

Treasury agents backed off until the nation entered the Great War in 1917.

In August of 1917, Congress passed a wartime act giving the President power to control all "necessaries" for national defense.<sup>12</sup> This power was immediately used to shut off grain and sugar supplies to brewers and distillers, giving us de facto alcohol prohibition throughout the war. Since a wartime prohibition was already in place, Congress was on a roll and sent an official Prohibition amendment to the State Legislatures in December. The required 37 states ratified it in just over a year. The 18th Amendment was declared ratified on January 16th, 1919, to take effect in one year.

Within days, anxious to avoid driving boozers to switch to narcotics, Congress modified the 1914 Harrison Act to close loopholes. This time the Supreme Court agreed. Less than three years earlier, the court had said Congress never intended to make criminals out of any American who happened to possess some form of opium. Since it had just required a Constitutional amendment to ban alcohol, you might imagine the court would tell Congress to go get another amendment if it wanted to ban something else. But now it gave the opium user short shrift in handing down twin 5-4 decisions on March 3rd, 1919.<sup>13</sup>

First the court answered a complaint out of Memphis that the tax was not really a "tax" but a "prohibition", which was unconstitutional. It was decided the Harrison Act *was* a "tax" (and therefore constitutional) even though it had purposes *other than raising revenue*.

In the second case, a doctor was charged with prescribing opiates to an addict with no intention of curing him. The justices now said prescribing maintenance doses of morphine was "so plain a perversion of meaning that no discussion of the subject is required". (Curi-

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ously, while the court asserted that "no discussion of the subject was required", the court was nevertheless split 5-4 in its decision.)

Although Alcohol Prohibition soon commanded the nation's attention, it was during the four-year transition from 1919-1923 when Americans lost the right to control their own medical treatment.

The revised Harrison law allowed only physicians (not pharmacists) to prescribe narcotics "in the course of their professional practice only." For the first time, druggists could only dispense on a *doctor's* prescription. Treasury agents immediately began harassing doctors who did not adhere to the Internal Revenue Bureau's strict definition of what constituted "professional practice". During the early 1920s, doctors were targeted for intimidation. Each year, about 200 doctors were convicted, and "charges were dropped" against about 30,000 more when they agreed to "co-operate". I don't know how many U.S. doctors and pharmacists there were in the early 1920s, but when 177,000 of them were threatened with jail, the word

got around that prescribing narcotics could be hazardous to their health.<sup>14</sup>

With the AMA leading the charge, doctors fought bitterly to preserve their freedom to treat patients as they thought best. The question was finally settled by a Supreme Court case about alcohol prescriptions. A group of New York doctors led by the Dean Emeritus of the College of Physicians and Surgeons of Columbia University<sup>15</sup> sued the government over the federal maximum prescription of medicinal alcohol, which was one pint in 10 days regardless of the ailment. The doctors claimed the rule was arbitrary, hence unconstitutional. The court ruled that the 1.6 ounce-per-day figure was based on a survey of doctors, hence not arbitrary, and further declared that "the practice of medicine is always subject to the police power of the state." Here the word "state" referred to the federal government. After that, most doctors became politically docile, compliant, and "correct".

Thus, in the ten-year period from 1914 to 1924, Americans went from being in absolute command of their own medical treatment, with doctors and pharmacists among their *options*, to a condition where medical doctors controlled the people, and the federal government controlled the doctors.

### **Alcohol Prohibition - 1920-1933**

Alcohol prohibition began with great expectations at midnight, January 16th, 1920. New York City's Park Avenue Hotel held an elaborate mock funeral for John Barleycorn with comical eulogies and painted-on tears. But elsewhere that Friday, in churches across the nation, people stayed up past their bedtimes to celebrate their final victory in a struggle begun by their grandparents.<sup>16</sup>

Alcohol was scarce for a while, but entrepreneurs soon stepped up to the plate. Americans were not used to sneaking around, and law enforcers had not learned to suspect them. One early smuggler was a cab driver who simply drove his clearly marked New York City taxi 350 miles north to Canada, loaded up all the whiskey it could hold, and drove back to New York with cases of whiskey plainly visible through the windows. (Smuggling and government sus-

picious have come a long way since 1920.)

But suppliers quickly became more sophisticated. George Remus was a criminal defense lawyer in Chicago who knew how to work the law.<sup>17</sup> He moved to Cincinnati because of its proximity to established distilleries in Kentucky and Tennessee, and bought up most of America's best-known whiskey brands. Then he bribed officials to get "medical" permits to ship from his warehouses. By the end of 1922 - in just 35 months - Remus made \$40 million (\$700-800 million in current dollars). His network of bribes included \$500,000 to the U.S. Attorney General. Once a detective in Cincinnati recorded him passing out bribe money to forty-four public officials in one afternoon, but for some reason the Cincinnati DA refused to indict.

Millions of people were violating the law discreetly. But hundreds of thousands of people were thumbing their noses at the law, which outraged those who had worked to create it. They demanded enforcement to "git tuff", and soon *serious* enforcers appeared.

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With Prohibition an embarrassing failure, law enforcers soon began crying for stronger laws to accomplish their impossible task. And lots of them made very creative interpretations of existing laws in their attempts to keep up with bootleggers. The Supreme Court quickly became involved in constitutional issues. President Harding appointed William Howard Taft (who learned the “drug policy” business in the Philippines in the early 1900’s) as Chief Justice. Taft had opposed the 18<sup>th</sup> (Prohibition) Amendment, but was committed to making it work. As the former Governor General of the Philippines, and as President, he understood the importance of having the tools to do the job.

In 1922, the court decided a case where the state of Washington had convicted a bootlegger; then Seattle’s federal prosecutor convicted him again for the same acts.<sup>19</sup> The court decided that since the Prohibition Amendment says “The Congress and the several states shall have concurrent power to enforce this article,” obviously each is independent of the other. They found unani-

mously that this did not violate the Fifth Amendment’s guarantee against double jeopardy. Under this same legal concept, the Los Angeles police who were acquitted of beating Rodney King while he was down . . . were later convicted for violating his civil rights by beating him while he was down.

A 1921 case dealing with searches worked its way to the Supreme Court in early 1925. Two federal agents in Michigan saw some guys driving by from whom they had previously, though unsuccessfully, tried to buy liquor. Without a warrant, they stopped and searched the car, and — lo and behold — found sixty-eight bottles of liquor.<sup>20</sup> The justices found, 7-2, that the 4<sup>th</sup> Amendment only forbids “unreasonable” searches and seizures, and that these officers had acted “reasonably”.

This illustrates an important aspect of Prohibition violations, and “consensual” crimes in general. Before Prohibition, police fought the kind of crime where people would like to pay them for hanging around. After Prohibition passed, they were trying to stop the kind of crime where people would like to pay them to stay away.

Police discovered that, when the supposed “victim” willingly (even eagerly) participates in the “crime”, he didn’t call the cops, so normal (constitutional) law enforcement procedures simply didn’t work. To have any chance of success, the definition of “reasonable” police action had to change drastically. Though the word did not exist at the time, police became “proactive” -- they’d catch criminals *before* they were known to have committed a crime.

And police became very proactive. Another landmark case also came out of Seattle in 1925. Roy Olmstead and seventy-four codefendants were convicted of running a major operation smuggling Canadian liquor.<sup>21</sup> The evidence was obtained by tapping their phones, which was against Washington State law. The defense complained the evidence was illegally obtained, and should be thrown out. Indeed, Prohibition agents did not deny they had knowingly broken the law hundreds of times over a period of months. The Supreme Court Justices nearly came to blows over

this one, but the conviction was upheld by a five-to-four vote.

All four dissenting justices contributed to the dissenting opinion. This happens to be the case that contains the Louis Brandeis quote Timothy McVeigh cited at his sentencing hearing. Since McVeigh didn’t get it quite right, I’ll repeat it here:

“In a government of law, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

In 1932, another Supreme Court decision was handed down regarding an accused bootlegger from Eureka, California. James Dunne<sup>22</sup> was accused of possessing liquor, selling liquor, and possessing liquor for sale. He was acquitted of the first two charges, but found guilty of the third. His lawyers appealed, saying — wait a minute, the evidence is the same on all charges, how can he be not guilty of possession, not guilty of selling, but guilty of possession for sale?

Taft was gone. This was Justice Holmes’ last case before retiring, and he delivered the 8-1 decision. The court decided that each count must be considered separately, and “Consistency in the verdict is not necessary.”

Up to that time, it was unusual to bring multiple charges against a defendant. However, this decision gave prosecutors the green light to pile on as many charges as they could think of, in hopes something would “stick”. In the decades since, this has become a fine art. Last year I read of a case where one county official in south Texas was acquitted of bid-rigging charges. He allegedly arranged \$25,000 in bribes on several contracts with a total value of one million dollars. The newspaper said, “if convicted on all charges, he faced up to 570 years in prison and millions of dollars in fines.” The possibility of sentencing a man to five *centuries* longer than he could possibly live illustrates the potential abuse and absurdity of “multiple

charges” – but, perhaps he’d get a few centuries off for good behavior.

### Prohibition’s repeal

Everyone knows Prohibition was repealed, but not many people realize that repeal was an extraordinary event. No other Constitutional amendment has come close to being repealed. Why did so many people change their minds?

There had always been a vocal minority who opposed Prohibition “for reasons other than their own thirst.” The most influential, the Association Against the Prohibition Amendment, or AAPA, was formed a few weeks before the 18<sup>th</sup> Amendment was ratified, by Captain William H. Stayton a 58 year old lawyer, businessman and former Navy officer. He plugged along for several years, writing letters and making speeches, with little effect.

But events slowly added members to the “Repealer” ranks. Henry Joy, the president of Packard Motor Company, who had been very active in the Anti-Saloon League, lost enthusiasm for the “Dry” cause the second time Treasury agents came onto his property and broke down his elderly watchman’s door to look for beer. However, he rejoined the Repealers after a duck hunter in a small boat was killed near Joy’s riverfront mansion. A federal agent on the shore hailed the hunter to stop and be searched for booze. The hunter’s outboard motor prevented him from hearing, and the officer picked him off with his rifle as he put-putted by.<sup>23</sup>

Wealthy industrialists had worked for Prohibition expecting to profit from a sober workforce. But as Prohibition wore on, they not only found drunkenness increasing but bullets flying. By 1926, Captain Stayton found influential people asking what they could do to help. He reported meeting some “serious businessmen” in Detroit who nodded agreement when one of them declared:

“The people are not very much interested in the question of wet and dry, but they are very much interested in the question of the form of government under which they shall live. They realize that Prohibition is not a real disease, but merely a symptom of a very great and

deep-seated disease – the disease of . . . centralization of government from Washington . . . that extends now into our home and to the dinner table. . . . If we have five more years of this curse, there will be fighting in the streets of American cities.”<sup>24</sup>

But they were just shouting at the wind. Although repealers’ numbers were growing, the Dry’s weren’t worried. Four years later (1931), a Dry Texas senator boasted: “There is as much chance of repealing the 18<sup>th</sup> Amendment as there is for a hummingbird to fly to the planet Mars with the Washington Monument tied to its tail.”<sup>25</sup> Many people considered Prohibition to be a natural by-product of Women’s Suffrage, and this senator was confident America’s Mothers were on his side.

But many mothers were seeing the same things as those men in Detroit. Mrs. Pauline Sabin was active in Republican politics, and had just about decided National prohibition was a disaster.<sup>26</sup> Police records showed drunkenness among children and teenagers had increased tenfold. The Salvation Army reported young girls were coming into their rescue homes 8-10 years younger than before.<sup>27</sup> Sabin saw Prohibition was breeding corruption and hypocrisy, undermining American youth, and destroying the cherished principles of personal liberty and decentralized government. She later recalled the moment she decided to fight Prohibition. She was sitting in a congressional hearing when the president of the WCTU shouted “I represent the women of America!” Sabin thought to herself, “Well, lady, here’s one woman you *don’t* represent.”

She worked hard to elect Herbert Hoover, but then in his inauguration speech he vowed to fight harder to stop liquor. In May 1929, she resigned from the Republican National Committee and rounded up two dozen of her society friends to form the Women’s Organization for National Prohibition Reform.

Miss Sabin was a veteran of charity work and the society pages, and quickly made it fashionable to oppose Prohibition. In three years her organization grew to 1.5 million members and finally did Prohibition in. When the women rebelled, and Republican women

at that, Prohibition was doomed.

Nevertheless, there was still the problem of incumbent politicians who had (between drinks) strongly supported Prohibition for many years, and who had voted in 1929 to “get tough” by increasing penalties by a factor of ten. Somebody had to protect them from the political consequences of changing their minds.

Their problem was solved when someone actually read the Constitution and discovered it provides *two* ways to propose amendments and *two* ways to ratify them. Amendments can be ratified either by state legislatures or by special state ratification conventions. By using the option of state *conventions*, every Congressman was able to stand up proud and righteous, and vote — not to repeal Prohibition — but to “let the people decide” this issue once and for all. State legislators were off the hook too, since special elections were held where communities voted by secret ballot to send either a wet or dry delegate.

The 21<sup>st</sup> (Repeal) Amendment was sent to the States in February of 1933. It wasn’t ratified until December 5th, but Congress passed the ‘Beer Bill’ in April,

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declaring that 3.2 beer was not intoxicating, hence not illegal. So the end of Alcohol Prohibition is generally seen as April 4th, 1933.

### **Laws repealed, powers remain**

As a result of a misguided attempt to establish both alcohol and drug prohibitions, there were several important cases – especially during WWI — in which the supreme court abandoned previous stands for liberty and affirmed very strong police and prosecution practices. If the court had not felt compelled by WWI and other political pressures to support Prohibition, these cases might have been decided differently.

It might have been advisable for the 21st (Repeal) Amendment to reaffirm some of the previous assumptions about state and federal roles in government. For example Congress was careful to frame the Harrison Act as a tax, something Congress had Constitutional authority to do. The “concurrent power” clause of the 18<sup>th</sup> Prohibition Amendment even gave Congress, for the first time, reason to pass criminal laws.

But repealers were just trying to stop a juggernaut, and they couldn't risk failure by trying to pass an amendment with a laundry list restating basic rights. As a result, although Alcohol Prohibition ended, the increased police powers it spawned remained in place.

Prohibition showed dramatically how well-meaning people can make a bad situation worse when they try to use the law to control human nature. While alcohol Prohibition has been repealed, its powers live on in the current drug laws. The biggest difference

in the two regimes is that other drugs are a minor problem compared to alcohol. It has been possible to manipulate what people believe about “controlled substances” because so few have nearly as much first hand experience with them as with alcohol. And unlike our grandparents in the 1920s, today's people have no pre-prohibition experience of freedom for comparison.

Drug prohibition has grown slowly enough that we are like the frog in water that is heated slowly. We could have jumped out easily if we noticed soon enough, back in the 1930s, but now it will be more difficult to escape the cumulative oppression. If it's not too late, perhaps we will again experience the greatest blessing of Prohibitions — the process of ending them, since all prohibitions ultimately cause Americans to re-examine the fundamental purposes of law and government, and to stop pushing them so far past the point of diminishing returns.

*The roads to Hell and big government may be paved with good, even dreamy, intentions. But the road to freedom and prosperity is maintained by the hard work of folks who study and apply the Constitution. The problem with a pavement of “good intentions” is that it's almost always a one-way street and once on it, it's extremely difficult to get off or change direction.*

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<sup>1</sup> Beth, L.P. “Development of the U.S. Constitution, 1877-1917” - Harper and Row, New York, 1971, pp.161-62 (cited in Musto)

<sup>2</sup> Linn, Brian McAllister “The U.S. Army and Counterinsurgency in the Philippine war, 1899-1902” - U. of N. Carolina Press, 1989

<sup>3</sup> Musto, David F, M.D. “The American Disease - Origins of Narcotic Control” - Oxford University Press, 1973, 1987 p. 25

<sup>4</sup> Szasz, Thomas S. “Our Right to Drugs” - Praeger, NY 1992

<sup>5</sup> “Negro Cocaine ‘Fiends’ New Southern Menace” - New York Times, Sunday Feb. 8, 1914 [http://www.druglibrary.org/schaffer/history/negro\\_cocaine\\_fiends.htm](http://www.druglibrary.org/schaffer/history/negro_cocaine_fiends.htm)

<sup>6</sup> A short article about Hobson by this author is available online at: <http://www.druglibrary.org/schaffer/history/>

<sup>7</sup> Musto, p. 53

<sup>8</sup> Congressional Record, House, 63rd Congress, pp. 495-620

<sup>9</sup> *U.S. v. Jin Fuey Moy*, 225 Fed. Rep 1003 (13 May, 1915)

<sup>10</sup> *U.S. v. Friedman*, 224 Fed. Rep 276 (1 June, 1915)

<sup>11</sup> *U.S. v. Jin Fuey Moy*, 241 U.S. 394 (6 June, 1916)

<sup>12</sup> Food Control Act (cited in Musto, p327 n28)

<sup>13</sup> *U.S. v. Doremus*, 249 U.S. 86 (3 March, 1919) *Webb et al v. U.S.*, 249 U.S. 96 (3 March, 1919)

<sup>14</sup> Annual reports of the Commissioner of Prohibition for Fiscal Years ending June 30th

<sup>15</sup> Kyvig, David E. “Repealing National Prohibition” University of Chicago Press, 1979 *Lambert v. Yellowley et al.*, 272 U.S. 581

<sup>16</sup> Coffey, Thomas M. “The Long Thirst - Prohibition in America: 1920-1933” ch 1

<sup>17</sup> Coffey - A summarization of Remus' career is available online at: <http://www.druglibrary.org/schaffer/GENERAL/remus.htm>

<sup>19</sup> *U.S. v. Lanza*, 260 U.S. 377 (cited in Kyvig)

<sup>20</sup> *Carroll et al v. United States*, 267 U.S. 132 (cited in Kyvig)

<sup>21</sup> *Olmstead et al v. United States*, 277 U.S. 438 and 485 (cited in Kyvig)

<sup>22</sup> Mencken, H.L. “Mr. Justice Holmes” book review in the American Mercury, May, 1932. (Mencken does not give a case cite, but says it was decided January 1, 1932)

<sup>23</sup> Kyvig ch5 p74

<sup>24</sup> Kyvig ch5 p73

<sup>25</sup> Senator Morris Sheppard, Associated Press dispatch, September 24, 1930 (cited in Kyvig Introduction, p2)

<sup>26</sup> Kyvig ch7 pp 118-27

<sup>27</sup> Fisher, Irving “The Noble Experiment” - Professor of Economics, Yale University 1930 pp 39-42

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