

Analyzing Debates About Prohibition and Its Enforcement— A Primary Source Activity

Prepared by Jake Kobrick

*For use in conjunction with “Olmstead v. United States: The Constitutional Challenges of Prohibition Enforcement,” by Richard F. Hamm, available at <http://www.fjc.gov/history/home.nsf>.
A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.*

Activity Objectives

By reading and analyzing primary source documents related to the *Olmstead* case and the enforcement of Prohibition, students will gain insight into the goals of Prohibition and the challenges of enforcing the Volstead Act and its ban on the sale of alcoholic beverages. Students will gain an understanding of the special burdens Prohibition placed on law enforcement agencies and the federal courts.

Essential Questions

- What were the challenges of enforcing a national ban on the sale of alcohol?
- How did the enforcement of the Volstead Act affect public support for Prohibition?
- What was the impact of Prohibition on the federal courts?
- What problems did the enforcement of Prohibition present for the courts’ established interpretation of the protections of the Fourth Amendment?

Issues Raised by the *Olmstead* Case

The prosecution of Roy Olmstead highlighted several issues related to enforcement of the Volstead Act. Bribery of state and local law enforcement officials was a key component of Olmstead’s bootlegging business, illustrating the widespread official corruption associated with Prohibition. The lack of adequate enforcement on the state level placed the bulk of the responsibility for enforcement on the federal government, a circumstance that created concerns about federalism, or the balance of power between the federal and state governments. Finally, the prosecution’s use of evidence obtained by wiretapping Olmstead’s phone sparked controversy regarding the impact of Prohibition enforcement on civil liberties.

Estimated Time Frame

Three 50-minute periods.

Recommended Prep Work

Students will need to be familiar with Prohibition generally, as well as with the specific events of the *Olmstead* case. Teachers should review “*Olmstead v. United States: The Constitutional Challenges of Prohibition Enforcement*,” by Richard F. Hamm, available online at [http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/\\$file/olmstead.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/$file/olmstead.pdf).

Make student copies of the following excerpts from the trial unit and the handouts attached to this activity. (*Note: All page numbers refer to the PDF copy of the unit.*)

Excerpts

1. “*Olmstead v. United States: A Short Narrative*” (pp. 1–11)
2. The Eighteenth and Twenty-First Amendments to the U.S. Constitution and the Volstead Act (pp. 44–47)
3. “Public Protection for Bootleggers,” “A Judicial Farce,” and “The Occasion Has Passed” (pp. 40–42)
4. “An Unusual Prohibition Victory” and Editorial by H.L. Mencken (pp. 68–70)

Handouts

1. Statements and Testimony Presented to a Subcommittee of the Senate Judiciary Committee, in *The National Prohibition Law: Hearings on Bills to Amend the National Prohibition Act*, 69th Cong., 1st sess., Apr. 5–24, 1926
 - a. New York District Attorney Emery Buckner
 - b. Judge Alfred J. Talley, New York State Court of General Sessions
 - c. Matthew Woll, American Federation of Labor
 - d. Mrs. Henry W. Peabody, Women’s National Committee for Law Enforcement
 - e. Reverends Parkes Cadman and Charles S. Macfarland, Federal Council of Churches
2. Worksheet for Document Analysis

Description of the Activity

After a brief review of the history of Prohibition and the *Olmstead* case, students will read several short documents relating to Prohibition and the problems stemming from its enforcement (or the documents may be assigned as homework). Students will then break into small groups in which they will draw on the information presented by the documents collectively in order to answer the questions

on the attached worksheet. The exercise will conclude with a whole-class debriefing section, after which the students will complete a short written homework assignment.

Day 1—Brief overview of Prohibition and the *Olmstead* case; students begin to read primary source documents.

Day 2—Students finish reading documents, then meet in small groups to discuss documents and begin worksheet.

Day 3—Students meet in groups to complete worksheet, then the whole class reconvenes for debrief and wrap-up, where students share their worksheet responses.

Homework—Have students write a short (two-page) essay on the question, “Why did Prohibition fail?”

Assessment

- Participation in small-group discussion
- Completed document analysis worksheet
- Final homework assignment

Alternative Modalities and Enrichment Activities

- Write an essay comparing Prohibition to the federal government’s current drug enforcement efforts
- Research a historical figure associated with Prohibition (e.g., Wayne Wheeler, Al Capone)

Involving a Judge

Invite a judge to discuss the challenges faced by the federal judiciary in the enforcement of federal drug laws. How does the prevalence of drug cases affect courts’ ability to attend to other work? What special challenges does the enforcement of drug laws present for protection of civil liberties? What factors do judges take into account in sentencing those convicted of drug-related offenses?

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 7 – The Emergence of Modern America (1890–1930)

Standard 3A: The student understands social tensions and their consequences in the postwar [World War I] era.

Standards in Historical Thinking

Standard 2: Historical Comprehension

- A. Identify the author or source of the historical document or narrative and assess its credibility.
- C. Identify the central question(s) the historical narrative addresses.
- F. Appreciate historical perspectives.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past.
- D. Evaluate alternative courses of action.
- E. Formulate a position or course of action on an issue.

Handout 1

Statements and Testimony Presented to a Subcommittee of the Senate Judiciary Committee, in The National Prohibition Law: Hearings on Bills to Amend the National Prohibition Act, 69th Cong., 1st sess., Apr. 5–24, 1926

Emery Buckner, New York District Attorney (pp. 97–98)

I inquired not only from the United States but from the three assistant United States attorneys who were dealing with all kinds of prohibition matters . . . if in that vast horde of violators there were any of what I would call important defendants, or any violators on a large scale. I found there were none.

Federal judges have told me . . . that the whole atmosphere of the Federal Building was one of pollution, that the air of corruption had even descended into the civil parts of the courts, and reports were made to the senior United States judge of attempts to bribe jurymen even in the toilets of the building.

I found out that the United States commissioner . . . was throwing out 85 per cent or 90 per cent of the cases that were brought before him in that way, and that the balance were held for trial. Being held for trial means that the assistant United States attorney, whose duty it was to start the machinery for United States district court proceedings, had to sign his name and write on two or three lines the name of the defendant, on a mimeographed complaint, to start proceedings in the United States court.

I hunted up this assistant United States attorney and asked him a question something like this: When a man is held to-day, Wednesday, how long is it before you start the machinery in the United State court proper for prosecution. . . . He told me that he was five months behind. In other words, he being on the fifth floor of the Federal Building and the United States court office being on the third floor of that same building, it took him five months to fill out two lines of a mimeographed form, and send it down two floors in the building, the congestion of business was so great.

Judge Alfred J. Talley, New York State Court of General Sessions (p. 143)

One of the most imposing promises made by the friends of prohibition before the eighteenth amendment was that by abolishing drink crime would be decreased to a minimum. That promise has not been fulfilled. Crime has increased in such amazing proportion that it has become the dominant consideration of most of the State and municipal governments of the Nation. A national crime commission of distinguished men from every section of the country has been formed, and a bill is

now pending in the New York legislature which has to do with the appointment of a joint committee, to be joined by citizens to determine the cause and possible remedies to reduce the tremendous wave of crime that is sweeping not only the country but New York as well.

I need not quote statistics to the committee, I am sure, to demonstrate that this is the most lawless country on the face of the earth. I go a step further. I assert that prohibition is one of the largest contributing factors to that dreadful condition, by reason of the conceded failure or inability of Federal and State authorities to enforce the law; it has created a disrespect for law which, starting with prohibition, has gone all along the line.

Matthew Woll, American Federation of Labor (pp. 278–79)

This spirit of distrust is wearing the spirit of resentment and intolerance. This feeling is engendered by the ever more vigorous efforts made to throw aside the safeguards with which the individual has been surrounded to protect him from undue and unjust prosecution and punishment on the part of the Government, supplemented by the glaring malfeasance of those in public office. Trust and confidence is being rapidly undermined in those charged with the executive, judicial, and legislative functions of government, those charged with administering the affairs of government.

The general impression prevails among all classes of our citizenship that the eighteenth amendment and the Volstead law, with its interpretation by courts and the enforcement by governmental agencies, has reached almost limitless bounds. The search and seizure provisions of this law are simply appalling and are violative of the very spirit of the fourth amendment.

No law has ever caused so much dissatisfaction. Millions of homes have been turned into breweries and distilleries. Children who never knew the taste of liquor now have little difficulty obtaining it.

Enforcement officers have become agents provocateur. Bribery, when obtaining liquor is concerned, has become a fixed practice—and is no longer considered one of the most detestable of criminal offenses.

There is likewise the impression and firm conviction that Congress, in enactment of the Volstead law, did not follow the spirit of the eighteenth amendment. It was believed that the eighteenth amendment was merely a declaratory and an enabling act and that the several States of the Union would be accorded their State rights to determine the question of what constitutes an intoxicant beverage. The Volstead law not only undertook to determine the conditions that would constitute a crime but defined an intoxicant beverage to such an extent that every State has

been denied the right and opportunity of determining this question and at the same time enable it to provide adequate means for the enforcement of such a law. Indeed it is the overwhelming opinion and judgment that Congress deliberately undertook to destroy State rights and substitute therefor domination by the National Government.

Mrs. Henry W. Peabody, Women's National Committee for Law Enforcement (pp. 666–67)

We represent here to-day not only organizations of women, but, as a whole, we represent the home, the school, the church, and we stand firmly for no amendment to the eighteenth amendment. We hold the Constitution of the United States inviolate. We stand for no modification of the Volstead Act, but rather a strengthening. We stand for strict law enforcement, with the removal of all men who do not strictly enforce the law.

We believe that in the greater part of the territory of this country the law is observed as well as any law. Having traveled in various parts of this country we did not observe more drinking than ever. We find conditions vastly improved. Health, as testified to by the insurance companies; morals, as shown by the statements which will be produced later; and certainly the economic condition, on the word of our Secretary of Commerce, seem to have justified prohibition.

The conditions in States like New York and Maryland, where there is no State enforcement law, which is required by the eighteenth amendment, framed to secure concurrent action, are bad. The only remedy, it seems to us, as women, is not a change of law which is satisfactory to the majority of the States, but to do what the Constitution requires to make the law enforceable. That would remove very many of the offenses which are piled up to prove that the Nation is not appearing to enforce its laws.

As women, we know the old saloon and the wreckage in homes and lives of boys, men, and women. While the vote for the eighteenth amendment was the vote of the men—it was also the vote of the women who had prayed and worked for protection from this ancient evil. We had thought it settled, and perhaps for that reason and believing in the Constitution, we have not done as much as we should have done to see to the enforcement of the law. Perhaps we as women, not being in the position to select men who should administer these laws, trusted too much and needed the awakening which has come. We are convinced that we have a good law—a righteous law—written into the Constitution of the United States—that it does not in any way affect the personal liberty of well-doers—those loyal to the highest interests of the country and the great majority of the people.

We are not satisfied that the law is being enforced in all places. We are sure it will be when the Nation has had time to adjust itself. In a well-regulated home it is the policy of a mother to work faithfully and patiently, knowing that perfect obedience requires law and discipline. It is never the policy of a good mother or teacher to say the children are disobedient—therefore let us give in to them and let them do as they like.

Reverends Parkes Cadman and Charles S. Macfarland, Federal Council of Churches (pp. 765–66)

The support of national prohibition by the Federal Council of the Churches rests upon four fundamental considerations.

First. The belief that in dealing with gigantic social evils like disease or crime, individual liberty must be controlled in the interest of the public welfare. Second. The belief that the liquor traffic is beyond question such an evil. Third. The conviction that no plan less thoroughgoing than prohibition is sufficient to eradicate the evils of the liquor traffic. Fourth. The evidence of history that other methods of attempting to control the traffic have failed and that prohibition, despite inadequacies of enforcement, is succeeding better than any other program.

...

The policy of prohibition was not adopted hastily nor was it foisted upon the country by a puritanical minority. It was first voted in most of the States separately and then nationally, because the people had become convinced that the liquor traffic was a social evil of such magnitude that it had to be destroyed. The eighteenth amendment was made a part of the Constitution by the regular methods which the founders of the Republic devised with a view to making the amendment to the Constitution difficult rather than easy. Yet this amendment was adopted more promptly than any other change in the Constitution ever proposed.

The reasons which led to prohibition not only remain to-day but have been reinforced by the experience of other nations. The social peril of alcoholism is becoming a growing concern to statesmen throughout the world. If serious evils have sprung up since prohibition, they are far less than the evils which arose from the liquor traffic prior to the amendment. The liquor traffic with the accompanying saloon was allied with political corruption, crime, gambling, and prostitution. It meant the wreckage of men and the degradation of families, which social workers and ministers saw constantly in their daily work. It produced needless inefficiency in industry. . . .

The one path of advance is for all good citizens personally to observe the law and to support the great enterprise, born of the idealism of the people, of com-

pletely ridding the Nation of as demoralizing a business as the liquor traffic has always proved itself to be. Least of all should our prohibition law be changed in response to the cry of those who by their own disrespect for the law are preventing it from receiving a fair trial or who, because of their special interest in the return of the liquor traffic, are artificially stimulating an agitation for changing our present law. The call of the hour is for such a thoroughgoing work of moral persuasion and legal enforcement as will give the policy of prohibition an adequate opportunity to demonstrate its full value to the Nation and to the world.

Handout 2

Worksheet for Document Analysis

1. Based on what you have read about the Olmstead case and the testimony presented to Congress in 1926 (and selecting excerpts of the documents you have read to support your answers), briefly describe:
 - a. The challenges of enforcing Prohibition.
 - b. The effect of Prohibition enforcement on the federal courts.
 - c. The problems Prohibition enforcement presented for the courts' established interpretations of Fourth Amendment protections.
 - d. How Prohibition enforcement created tensions between federal and state authorities.
 - e. How the methods used to enforce Prohibition affected public opinion of the law.
 - f. Why some who opposed a ban on alcoholic beverages were nevertheless concerned about the problems with Prohibition enforcement.
2. What arguments were made in favor of strengthening Prohibition enforcement rather than repealing the law?