2014

Milk and Other Intoxicating Choices: Official State Symbol Adoption

Ryan A. Valentin
University of Kentucky College of Law, ravale2@uky.edu

Click here to let us know how access to this document benefits you.

Follow this and additional works at: https://uknowledge.uky.edu/law_facpub
Part of the State and Local Government Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Law Faculty Publications at UKnowledge. It has been accepted for inclusion in Law Faculty Scholarly Articles by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
MILK AND OTHER INTOXICATING CHOICES:
OFFICIAL STATE SYMBOL ADOPTION

Ryan Valentin*

I. INTRODUCTION

Every fall, I ask my first year Introduction to Legal Research students: “What is the official drink of the Commonwealth of Kentucky?” Every year, without fail, the most common answer to this question is “bourbon”. The second most common answer is “Ale-8-One”. Both answers are obvious, reasonable, and culturally conscious. Both answers are also incorrect. Upon elimination of the usual suspects, most students are at a loss to venture another guess. When there is a rare third attempt the answer tends to be “water” – also incorrect. If not bourbon, soda, or a liquid essential to life as we know it, what, then, is the official drink of the Commonwealth of Kentucky? In a word: Milk.

How does it come to be that Kentucky, the foremost bourbon producing state in the country (and the world for that matter), chooses milk as its official state drink? What does it mean when Ale-8-One, a beverage having historical ties and iconic status within the Commonwealth, is not granted such a distinguished honor? What motives are at play when milk, a beverage so pedestrian it happens to be the official state beverage of the vast majority of official-beverage-adopting states, is selected? Do the symbols states officially adopt matter? If official state symbols do matter, what factors for adoption should be considered and by whom?

Although the practice of adopting official state symbols is widespread, little has been written on what legislators, when tasked with choosing a state symbol, should take into consideration. An examination of select official state symbols of the Commonwealth of Kentucky will contribute to an understanding of what

---

1. Described as having a mild ginger flavor, Ale-8-One is a soft drink native to Kentucky. The KENTUCKY ENCYCLOPEDIA 11 (John E. Kleber et al. eds., 1992).
2. Ky. REV. STAT. ANN. § 2.084 (West 2013) (Milk is named and designated as the official state drink of Kentucky).
3. For a complete list of citations to official state beverages please see Appendix A: Official Beverages by State.
4. Historically the perception has often been no. “[I]t is precisely because many people think that such proposals don’t really matter that the selection of a particular flower, bird, snack, or bug is seen as a suitable activity for a cohort of children.” Kerry Dobrański & Gary Alan Fine, The Native in the Garden: Floral Politics and Cultural Entrepreneurs, 21 SOC. F. 559, 569 (2006).
official state symbols are, the purpose they serve, the qualities they should reflect, and how the value of symbols adopted may be improved through the application of standard best practices.

II. OFFICIAL STATE SYMBOLS

A. Defined

Official state symbols are representations of particular qualities or attributes of a state, as adopted through a democratic process, that connect people to place. This definition is derived from consideration of each term in the phrase. For purposes of this paper, the terms official and state have simple meanings. Official means "authorized or approved by a proper authority." The mechanism by which most states adopt official symbols is through the passage of legislation. Any symbol adopted by a state through a proper authority, especially by legislative process, is deemed official.

State means a community of people politically united under a common government administered by a body of elected officials. Although this definition and some examples below include activities at a national and international level, the primary focus here is on any of the fifty United States. The state of Kentucky is used extensively for demonstrative purposes.

The meaning of the term symbol is a bit more complicated. Many disciplines have developed descriptions for the term. A symbol has been described as "a person, object, image, word, or event that evokes a range of additional meaning beyond and usually more abstract than its literal significance;" "a word or an image . . . implying something more than its obvious and immediate meaning;" and "only the vehicles of communication . . .
not [to] be mistaken for the final term, the *tenor*, of their reference."\textsuperscript{15} As a whole is greater than the sum of its parts,\textsuperscript{16} what makes a symbol a symbol is the attribution of meaning beyond a representative word or image.

A series of representations are made when we attach an external meaning to a word.\textsuperscript{17} For example, "the verbal symbol ‘cat’ is a group of black marks on a page representing an image or memory representing a sense experience representing an animal that says meow."\textsuperscript{18} Such symbols "stand for and point to things outside the place where they occur . . . the word ‘cat’ is an element in a larger body of meaning [and] not primarily a symbol ‘of’ anything, for in this aspect it does not represent, but connects."\textsuperscript{19} Taking this observation further, "[w]hen effective, symbols can embody an emotional and thoughtless linkage to [a] place."\textsuperscript{20} Due to their gestaltic nature, symbols are powerful, having the potential to create a viscerally innate connection between people and place.\textsuperscript{21} Although this symbol theory is derived from the literary criticism context,\textsuperscript{22} the same concept of symbol as connection beyond representation is applicable within a legal framework. Statutes are the literary device by which representatives communicate information about the symbol to the masses, not the symbol itself.

Official state symbols are commonly created through the same legislative processes as all legislation.\textsuperscript{23} Although most state symbols end up codified within a state’s statutory scheme, there are a few exceptions. Some official state symbols fall short of codification and remain un-codified resolutions.\textsuperscript{24} Still other official state symbols are created by gubernatorial designation, avoiding the legislative process altogether.\textsuperscript{25}

\textsuperscript{15} JOSEPH CAMPBELL, THE HERO WITH A THOUSAND FACES 236 (1973) (emphasis original).
\textsuperscript{16} See ARISTOTLE, METAPHYSICS 1045a (Hugh Tredennick trans., 1989) ("In all things which have a plurality of parts, and which are not a total aggregate but a whole of some sort distinct from the parts, there is some cause.").
\textsuperscript{17} NORTHROP FYRE, ANATOMY OF CRITICISM: FOUR ESSAYS 73 (1967).
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Dobransky & Fine, supra note 4, at 562 (noting the dualistic nature of symbols as "simultaneously trivial and significant. These emblems are potent but discretionary.").
\textsuperscript{21} See id. at 561.
\textsuperscript{23} See generally Rosenthal, supra note 5 (explaining the process of how state symbols are selected).
\textsuperscript{24} The designation of Conecuh Ridge Alabama Fine Whiskey as Alabama’s official state spirit was not codified by the Alabama Code Commissioner and remains an un-codified resolution. See 2004 Ala. Acts 04-97.
\textsuperscript{25} Nebraska permits its governor to designate official state items without legislative approval. See NEB. REV. STAT. ANN. § 90-119 (West 2013).
Statutes come in a variety of flavors and those codifying symbols are a particular sort. Applying to an entire community and relating to the public at large, official state symbols are public rather than private law. By definition many symbol statutes are special, as opposed to general or local, as they often relate to particular persons or things of a class. Finally, symbol statutes tend to be permanent rather than temporary in nature.

As official state symbols are typically created through the same legislative process as other legislation, the same primary ingredients are required: time and money. Adopting state symbols through an expensive bureaucratic process creates a presumption that such symbols have value. Why else would legislators spend often limited resources adopting them? Attributing value to official state symbols due to the circumstances of their creation does not fully explain their purpose, however. Adopting symbols merely for the sake of having official state symbols is not self-justifying. After all, "[t]he idea of a statute without an intelligible purpose is foreign to the idea of law..." If official state symbols must have an intelligible purpose in order to exist, what purpose do they serve? What do official state symbols do?

26. See Earl T. Crawford, The Construction of Statutes 101 (1940). "Generically, all statutes may be classified as public or private, or general or specific, or local. Public statutes may be further classified with reference to duration into temporary or perpetual statutes; as to their effective date into prospective or retroactive statutes; as to the nature of their operation into directory or mandatory, remedial, declaratory, permissive, prohibitive, perceptive, and repealing statutes; and as to their form into affirmative or negative statutes." Id.

27. See id. ("A public act is a universal rule that regards the whole community, or relates to the public at large.").

28. See id. at 102.

29. See id. at 103. ("A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.").

30. See id. ("[A] local act is one whose operation is confined to the property and persons of a limited portion of the state." Id. Although most official state designations are special, there are statutes that appear to be special-local hybrids as they relate to a particular thing of a class and are confined to a geographical area. See Ky. Rev. Stat. Ann. § 2.270(2) (West 2010) (designating the Switzer Covered Bridge in Franklin County as the official covered bridge of Kentucky).


32. See id. at 103-04. Permanent acts are "not limited to a particular term of time but... continues in force until it is duly altered or repealed" whereas "a temporary act is one whose life or duration is fixed for a specified period of time at the moment of its enactment, and continues in force, unless sooner repealed, until the expiration of the time fixed for its duration." Id.

33. See generally Rosenthal, supra note 5.

B. Purpose

The simple answer is that “on their surface, symbols don’t ‘do’ anything. And in fact many symbols – at least for most of the time – do not receive public attention.” However, just beneath the surface, official state symbols serve significant state interests by what they are designed and intended to do. The primary functions of official state symbols are to legitimize state power, promote state commerce, and create state allegiance.

The flower is a commonly adopted symbol serving these state interests. Consider the status of the Flanders poppy in Britain. Adopted by the British Legion as its official symbol, the Flanders poppy has proven valuable in legitimizing state power. Symbols “can provide a material basis for reinforcing identification every day, especially at moments when neighbors come together. Communities may be imagined, but the reality of treasuring one’s lilac, camellia, and peony provides a real pleasure that suggests that the state springs from the very soil.” The perceived legitimacy of the state is nurtured by associating the state with the natural order. If the same source of power responsible for the divine right of kings is credited with creation of the earth, the divinity and thus legitimacy of the state is not too far a leap.

Symbols help states accomplish the goal of promoting commerce. “Lawmakers hope that symbols will provide an advertisement for the state, its citizens, products, and industries.” The poppy has certainly achieved these goals and more. From its beginning in the 1920s, the poppy has become “one of the most respected charity appeals in British history.” Making up part of the income for the Royal British Legion the poppy has grown in both popularity (with sales in the first year of £106,000 to nearly £36.7m in 2011) and controversy.

35. Dobransky & Fine, supra note 4, at 562.
36. See id. at 560. “States are always interested in creating affiliation as essentialist and inherent, and symbols in their small and taken-for-granted way cement this allegiance.” Id.
37. For an excellent examination of the poppy’s transformation from symbol of forgetfulness to one of remembrance see Jennifer Iles, In Remembrance: The Flanders Poppy, 13 MORTALITY 201 (2008).
38. Dobransky & Fine, supra note 4, at 582.
39. See James I, Speech to the Lords and Commons of the Parliament of White-Hall (Mar. 21, 1610) (“The State of Monarchie is the supremest thing upon earth: For Kings are not onely Gods lieutenants upon earth, and sit upon Gods throne, but even by God himself they are called Gods.”). The Royal British Legion is a charity organization serving the Armed Forces of the United Kingdom. See id. at 218.
40. Dobransky & Fine, supra note 4, at 560.
41. See Iles, supra note 37, at 206-07.
42. See id. at 201.
43. Id. at 205.
The Flanders poppy has also facilitated citizen allegiance to the state. As "one of the most enduring and powerful symbols of remembrance of the war dead in Britain" 48 . . . [the poppy is] a summarizing sacred symbol . . . able to synthesize a mass of complex ideas and feelings, and encourage an all-or-nothing emotional allegiance to the whole package." 49 Apparently, "somebody" is the proper answer in turning the question "who wants flowers when you’re dead?" 50 Apparently, the living do. Extending to the public the opportunity to select an official flower symbol further benefits the state by encouraging allegiance from historically disenfranchised members 51 and those yet to be fully vested in the political process. 52

III. STATE SYMBOL QUALITIES

In the spring of 1918 the United States was fully engaged in war. As casualties mounted and public sentiment grew, a call for the adoption of a national floral symbol was made. 53 The purpose was to crystallize national sentiments and demonstrate America’s aesthetic taste by adopting an “emblem . . . [of all that is] noble and good in the nation.” 54 While other countries had a national flower at the time, the United States did not. England had the rose, France the Fleur-de-lis, Scotland the thistle, and Japan the chrysanthemum. 55 Noting its many qualities, an attempt to make the wild columbine the national flower of the United States is made. 56

Although the wild columbine was ultimately not adopted as the national floral symbol, 57 the enumerated qualities a symbol should possess in order to be eligible for the honor are still worth considering today as they were nearly 100

47. See Ashling O’Connor, England 1 Fifa 0: Team to Wear Poppies,, THE TIMES, Nov. 10, 2011, at 3.
48. Iles, supra note 37, at 201.
49. Id. at 206.
51. See Dobransky & Fine, supra note 4, at 564. “[S]electing a state flower was seen as a proper act for women and children; these symbols would bind citizens to a state in which they lacked political rights.” Id.
52. Rosenthal, supra note 5, at 35 (“Legislators are especially responsive to proposals put forth by kids, since they realize how difficult it is to get young people to participate in the political process. What better way to promote civic education, they feel, than to give children ‘hands-on experience’ of the legislative process.”). 53. See Albert A. Hansen, A National Floral Symbol, 47 Sci. 365, 365-66 (1918) (arguing for the adoption of the wild columbine as the national floral symbol).
54. Id. at 365.
55. Id.
56. See id. at 366.
57. The flower commonly known as the rose was adopted as the national floral symbol of the United States in 1998. 36 U.S.C.A. § 303 (West 2013).
years ago. In deciding whether to adopt a new state symbol, legislators should determine whether the proposed symbol is: beneficial, indigenous, accessible, and aesthetically pleasing. Adding to this list an evaluation of exclusivity and historical cultural value, a framework of qualities that legislators should strive to apply during their deliberative process is created. Although few proposed symbols will exhibit each and every quality, legislators should make their best effort to adopt symbols reflecting as many qualities as possible while being mindful that subjectivity is an underlying issue.

A. Beneficial

Not only should the adoption of problematic symbols be avoided, legislators should seek out symbols with potential economic benefit to the state. Initially this may appear to be an obvious notion because states are aware of how nationwide perception can directly impact their economy. The commercialization of both official and unofficial state symbols by the tourist industry is evident by “what is sold in tourist shops, vacation destinations, and airports.” However, states do not regularly or systematically engage in an economic impact analysis of every official state symbol adopted. Some legislators have lamented the loss of potential revenue for failing to fully leverage the opportunity symbol adoption could provide. If state promotion is one goal of spending time, money, and other resources adopting official symbols, legislators should formally engage in a critical analysis of the potential economic impact any proposed symbol is likely to have.

58. Hansen, supra note 53, at 366.
59. Dobransky & Fine, supra note 4, at 566.
60. See id. (“Few flowers meet all of these criteria, and so those who propose – or oppose – a state flower draw upon potential themes. These become the resources that cultural entrepreneurs use to argue that their choices deserve to be institutionalized.”).
61. See Hansen, supra note 53, at 366. The national flower “should not be a troublesome weed in any sense of the word.” Id.
62. “Mass perception affects how those across the country see Wisconsin, which, in turn, can have an effect on our economy.” Joseph Kapler, Jr., On Wisconsin Icons: When You Say “Wisconsin”, What Do You Say?, 85 THE WISCONSIN MAG. OF HIST. 18, 28 (2002).
63. Id. at 29.
64. If states performed this analysis it would appear in the legislative history of every state symbol. Although speculation or general discussion of the economic impact may take place, an official report, issued by experts researching the potential economic benefit of a particular symbol, rarely exists.
65. See Howard Fischer, Bill on Official State Gun Likened to ‘Advertisement’, ARIZ. DAILY STAR, Mar. 14, 2011, at A5 (recognizing that the state was facing a $1.1 billion deficit next budget year, Arizona state senator Adam Driggs thought the state should get the “equivalent of naming rights” for adopting a brand name symbol).
B. Indigenous

Legislators should consider the indigenousness of a proposed symbol because the weakest symbols tend to be those branded as non-indigenous. Although such symbols can become official, making a case to adopt such symbols is more difficult because the community views them as invaders or worse. By contrast, symbols perceived to be or confirmed as indigenous are easier to adopt because their origins are not suspect. The challenge here is determining what qualifies as indigenous. How far back does a symbol’s history have to reach in order to be considered native?

C. Accessible

When it comes to state symbols, the issue of accessibility should be assessed. Accessibility permits all the citizenry an opportunity to participate, which in turn reinforces the interest of the state. Designation of a symbol having a rare or endangered status is potentially problematic because increased attention to an already compromised symbol may hasten its ultimate demise. Additionally, if a symbol is not widely available, access is limited and de facto adoption in the community is less ensured. The latter concern can be mitigated by adopting symbols that are economically beneficial and indigenous.

D. Aesthetic

Symbols should also be aesthetically pleasing. Economists and psychologists have demonstrated that attractive people earn more, get hired more quickly, tend

66. See Hansen, supra note 53, at 366. “The plant should be native and fairly common in all parts of the country.” Id.
67. See id.
68. See Dobransky & Fine, supra note 4, at 567. Where a proposed symbol is “supported by a powerful and well-connected industry, region, or group within the state, the forces supporting natural nativeness can be overcome.” Id.
69. Id. at 575. Characterized as a Yankee invader in Alabama, the goldenrod was no longer a ‘native’ plant “but was itself an invader, penetrating and threatening the South as General Sherman had nearly a century earlier.” Id.
70. Id. at 578 (noting that the Zinnia elegans was characterized as a foreigner, infiltrator, window box spy, and floral Mata Hari).
71. Id. at 582 (“If a plant has grown in a place in the course of the memory of those alive, it may be constituted as native. Botanical time and cultural time are not the same.”).
72. See id. at 581.
73. Hansen, supra note 53, at 366 (“A national flower should be easy of cultivation in all regions of the United States.”).
74. See id. (noting that a national flower should be native and fairly common in all parts of the country).
75. Id. (“When a plant becomes well known, there is created a tendency toward the extinction of that species because of the abnormal demand thus created.”).
to hold positions higher up the corporate ladder, and bring in more money to their companies – all of which make them more valuable assets.\textsuperscript{76} By adopting attractive symbols, states could benefit from the same advantages. The challenge here is identifying attractiveness, which is often subjective. Legislators should make a conscious effort to capture the aesthetic zeitgeist of their constituency by considering the tastes and sentiments of the community they represent.

\textit{E. Exclusive}

States should strive for exclusivity in that the symbols are unique to the adopting state.\textsuperscript{77} This is different from being indigenous. A symbol may be indigenous to multiple states, diluting its potential potency.\textsuperscript{78} A symbol may be exclusive where claim to the symbol is limited to the citizenry of the state through an originator or monopolistic theory.\textsuperscript{79} Alternatively, the call for exclusivity may be satisfied where an otherwise common symbol has a superlative nature.\textsuperscript{80} A state claiming a biggest, smallest, tallest, shortest, or other notable status satisfies the exclusivity requirement.\textsuperscript{81}

\textit{F. Historic Cultural Value}

A proven pedigree is the final quality legislators should look for in a symbol.\textsuperscript{82} Although a symbol may embody some or all of the qualities mentioned above, if it lacks a historical connection to the culture, acceptance by the community could be problematic because the symbol may be viewed as not being truly representative.\textsuperscript{83} Those making a case for a symbol’s adoption will “attempt to demonstrate that the symbol has a core and unshakeable connection to place or

\textsuperscript{77} Dobransky & Fine, \textit{supra} note 4, at 566.
\textsuperscript{78} See Lawrence Barish, \textit{Coining Wisconsin: The Work of the Wisconsin Commemorative Quarter Council}, \textit{The Wis. Mag. of Hist.}, Autumn 2004, at 16, 22 (noting that a council responsible for creating a design for the Wisconsin quarter rejected prospective symbols because they were not unique to and informational about Wisconsin).
\textsuperscript{80} See id. at 19 (noting that the Department of Treasury approved the use of historically significant buildings as a potential design for state coins).
\textsuperscript{81} See id. at 24 (“The agriculture design, jointly submitted by the Cheesemaking Center Inc., and Rose Marty of Monticello, reflected Wisconsin’s status as America’s Dairyland with a design consisting of the head of a cow, a wheel of cheese, and an ear of corn.”).
to cultural values” to avoid this problem. How historic and culturally connected a symbol must be to qualify is difficult to determine.

IV. STATE SYMBOL CONSIDERATIONS

Over several decades, Kentucky’s General Assembly has enacted legislation designating a variety of items as official symbols of the Commonwealth. Do these official state symbols accurately reflect the connection people share with the state? Or do the Commonwealth’s official symbols continue to reflect confusion about the state’s identity that has existed long before the Civil War? What best practices should be put in place to ensure symbols achieve state goals and reflect the qualities noted above? When evaluating proposed symbols, legislators should consider context, evaluate connotation, engage in consultation, assess categories, and be open to change.

A. Context

Of the over twenty statutes Kentucky has created to name and identify official symbols, some fit iconic imagery associated with the state better than others. The most obvious and reasonable choices appear to simply be codifications of conspicuous symbols commonly associated with Kentucky. Thoroughbreds, coal, Bluegrass music, My Old Kentucky Home, Blue Moon of Kentucky, Appalachian dulcimers, cardinals, Kentucky agates,

84. Id.
85. E.g., KY. REV. STAT. ANN. § 2.080 (West 2013) (codifying the State bird). One of the earliest official state symbols is the state bird, the Kentucky cardinal (Cardinalis cardinalis). Id. See also KY. REV. STAT. ANN. § 2.081 (West 2013) (codifying the adoption of the honey bee as the State agricultural insect).
86. MARYJEAN WALL, HOW KENTUCKY BECAME SOUTHERN 205 (2010) (“Kentucky had never been entirely of the South – or entirely of the North. . . . It fell somewhere between the geographic, ideological, and economic characteristics that had differentiated North from South.”). This characterization is further exemplified by Kentucky being the birthplace of both Abraham Lincoln and Jefferson Davis. Abraham Lincoln’s Birthplace, NATIONAL PARK SERVICE, http://www.nps.gov/abli/index.htm (last visited September 18, 2013).
87. KY. REV. STAT. ANN. § 2.087 (West 2013) (codifying the State horse).
88. KY. REV. STAT. ANN. § 2.094 (West 2013) (codifying the State mineral).
89. KY. REV. STAT. ANN. § 2.102 (West 2013) (codifying the State music).
90. KY. REV. STAT. ANN. § 2.100(1) (West 2013) (codifying the State song).
91. KY. REV. STAT. ANN. § 2.100(2) (West 2013) (codifying the State song and bluegrass song).
92. KY. REV. STAT. ANN. § 2.103 (West 2013) (codifying the State musical instrument).
93. KY. REV. STAT. ANN. § 2.080 (West 2010) (codifying the State bird); see BENJAMIN F. SHEARER & BARBARA S. SHEARER, STATE NAMES, SEALS, FLAGS AND SYMBOLS: A HISTORICAL GUIDE 149 (1987) (“Beginning in 1926, when Kentucky officially named the handsome redbird or cardinal as its state bird, campaigns were launched nationwide until each state had selected at least one favorite bird as its avian symbol.”).
MILK AND OTHER INTOXICATING CHOICES

and tulip poplars\textsuperscript{95} are all designated as official symbols and reasonably associated with either Kentucky specifically or include Kentucky regionally.

Officially enacted, but less obvious (and perhaps less reasonable) Kentucky symbol choices include: fresh-water pearls,\textsuperscript{96} goldenrod,\textsuperscript{97} blackberries,\textsuperscript{98} brachiopods,\textsuperscript{99} viceroy butterflies,\textsuperscript{100} gray squirrels,\textsuperscript{101} and honey bees.\textsuperscript{102} Not exclusive to Kentucky or its geographic region, all of these symbols can be found in many parts of the United States. The adoption of common symbols results in a loss of opportunity to identify the uniqueness of the state and contribute to the cultivation of a marketable image.

Legislators should first consider whether a symbol makes sense within the context of the state. Suppose the Commonwealth wants to adopt a sports car as an official state symbol. What sports car should it adopt? How about the Ferrari? Beautiful, exclusive, and expensive the Ferrari was a popular choice in the 1980s. The Ferrari even uses a horse for a symbol\textsuperscript{103} and who doesn’t think of horses when they think of Kentucky? In 2010, Kentucky did adopt a “state sports car” but it wasn’t the Ferrari – it was the Corvette.\textsuperscript{104} It makes sense that, within the context of the Commonwealth, if any sports car was going to be adopted it was going to be an American icon built exclusively in Bowling Green, Kentucky.\textsuperscript{105}

B. Connotation

Prior to adoption, careful consideration should be given to whether a symbol has a positive, neutral, or negative connotation. Preference for positive attributes should be given over neutral. Negative attributes should be avoided. In 1997, Congress passed the State Commemorative Coin Program Act in order to honor and promote knowledge of the states, modernize coinage, raise revenue, and encourage the collecting of “memorable tokens of all the States for the face value of the coins.”\textsuperscript{106} The designs were not to be “frivolous or inappropriate.”\textsuperscript{107} The

\begin{thebibliography}{9}
\bibitem{94} KY. REV. STAT. ANN. § 2.091 (West 2013) (codifying the State rock).
\bibitem{95} KY. REV. STAT. ANN. § 2.095 (West 2013) (codifying the State tree).
\bibitem{96} KY. REV. STAT. ANN. § 2.092 (West 2013) (codifying the State gemstone).
\bibitem{97} KY. REV. STAT. ANN. § 2.090 (West 2013) (codifying the State flower).
\bibitem{98} KY. REV. STAT. ANN. § 2.089 (West 2013) (codifying the State fruit).
\bibitem{99} KY. REV. STAT. ANN. § 2.082 (West 2013) (codifying the State fossil).
\bibitem{100} KY. REV. STAT. ANN. § 2.083 (West 2013) (codifying the State butterfly).
\bibitem{101} KY. REV. STAT. ANN. § 2.085 (West 2013) (codifying the State wild animal game species).
\bibitem{102} KY. REV. STAT. ANN. § 2.081 (West 2013) (codifying the State insect).
\bibitem{103} 3 ENCYCLOPEDIA OF CONSUMER BRANDS 144 (Janice Jorgensen ed. 1994) (noting that Ferrari started using the cavallino rampante or “prancing horse” in the 1920’s).
\bibitem{104} KY. REV. STAT. ANN. § 2.106 (West 2010) (codifying the State sports car).
\end{thebibliography}
main issue for one state was whether the quarter design should "highlight an immediately recognizable and significant aspect of the state or . . . reflect a theme that, while not as well known, tells a story and educates the public about [the state's] traditions, culture, and history."\(^{108}\) Kentucky adopted a state quarter design that ticked all the boxes. A Thoroughbred racehorse stands behind a four-board horse fence, with Federal Hill, a Bardstown home said to have inspired the Stephen Foster song My Old Kentucky Home, in the background.\(^{109}\) The design avoids being viewed as frivolous or inappropriate while being immediately recognizable and educates others about the state.

The unique opportunity presented by the state quarter design is due to the nature of currency. Currency circulates widely and is, by definition, valuable as a medium of exchange.\(^{110}\) Many who find advertisements attached to the doors of their homes or pinned beneath the windshield wiper on their car quickly dispatch the ephemera. However, the discovery of a single bill or coin is considered a fortuitous find by many and quickly pocketed. The state quarter serves as a low-cost, assured way for a state to promote itself through its symbols on a regular basis to millions of individuals, many of whom would have never thought of the state otherwise. If the goal is to incentivize people to pay attention to a symbol, put the symbol on something of value, put it on currency.

If agreeing on a positive symbol is unlikely, a neutral symbol should be considered. In Oregon, a newspaper solicited readers' suggestions for the new state quarter design.\(^{111}\) A leaping salmon, Crater Lake, Mount Hood, and a covered wagon were selected as finalists among themes that also included gambling, slugs, and explorers Lewis & Clark.\(^{112}\) Ultimately, Oregon selected Crater Lake National Park — a reasonably neutral motif especially when compared to one reader's suggestion that the quarter feature a solitary tree stump.\(^{113}\)

Negative attributes of a state should not be adopted as official symbols. In the Commonwealth, high rates of diabetes, lung cancer, illiteracy, and poverty have been identified as "Kentucky uglies."\(^{114}\) Such attributes, even if true, are facially negative and should not be appropriated for official symbol purposes. Sometimes negative attributes like those noted above are easy to identify.

\(^{107}\) Barish, \textit{supra} note 78, at 17 ("Public Law 105-124 decreed that our nation's coins and currency must reflect dignified designs of which the citizens of the United States can be proud.").

\(^{108}\) \textit{Id.} at 22.

\(^{109}\) Bob Driehaus, \textit{Kentucky Quarter Debuts This Week}, \textit{CINCINNATI POST}, Oct. 15, 2011, at 2K.

\(^{110}\) BLACK'S LAW DICTIONARY 411 (8th ed. 2004).

\(^{111}\) Karen McCowan, \textit{The Flip Side}, \textit{REGISTER-GUARD Nov.} 9, 2003, at 1L.

\(^{112}\) \textit{Id.}

\(^{113}\) \textit{Id.}

other times making this determination can be a challenge as the nature of a symbol is often subjective, depending largely on the perspective of the symbol advocate or opponent. This subjectivity is illustrated where some states, in searching further afield for symbols, are adopting official state weapons, garnering the praise of some and the ire of others.

Several states, including Kentucky, have adopted an official weapon. Opinion was mixed when Utah made the decision to adopt the Browning M1911 as its official firearm. Those in favor of adoption suggest the symbol is an appropriate and fitting tribute to John M. Browning, the gun’s iconic Utah inventor. Others noted the gun is an implement of freedom that has defended America for 100 years and can be used for purposes other than killing people including self-defense, as a collector’s item, or a paperweight. One senator argued that having a state gun “might prompt students to go to the library and learn more about the weapon and the history of the Browning family.”

Utahns opposed to adopting the weapon as an official state symbol noted semiautomatic pistols are the weapons of choice for those committing massacres and it would be inappropriate for the state gun to appear in coloring books. Others thought it insensitive to adopt a state gun considering the recent violence in Arizona. Such sentiments, however, did not sway Arizona which, on April 28, 2011, named the colt single action army revolver its official state firearm.

Regardless of whether or not a state should adopt a weapon as an official symbol, the debate over the Browning M1911 provides an opportunity to consider the types of questions legislators should be asking. What do politicians want their states to be known for? Who is the primary audience for learning

---

115. KY. REV. STAT. ANN. § 2.156 (West 2013) (codifying the Kentucky Long Rifle as the official State weapon).
118. Id.
121. Davidson, supra note 117.
123. Id. (referring to the death of six people in Tucson and the serious wounding of Congresswoman Gabby Giffords on January 8, 2011).
125. Davidson, supra note 117 (noting that the State of Utah does not want to be known for its state gun).
about state designations? To what degree is this symbol exclusive? Is a balancing among selected state symbols called for? What type of message is being sent to those outside the state?

C. Consultation

Experts, particularly those employed by the state, should be consulted when drafting legislation. Effective July 15, 1998, coal was named and designated as the official mineral of Kentucky. Nearly two years later to the day, Kentucky agate became the official rock of Kentucky. Kentucky is one of the largest producers of coal in the United States and the Kentucky agate can be found in several counties throughout the state. Upon first impression, both coal and the Kentucky agate are reasonable choices for official state symbols.

The problem arises in the title designation. Technically, coal is a rock, not a mineral, and Kentucky agate is a mineral, not a rock. In the preamble to the Act, the state noted that the "designation of a state rock will promote interest in geology, the hobby of mineral collecting, and the lapidary arts." One geologist suggested the state should call a rock a rock and a mineral a mineral if it wants to promote an interest in geology. This initial and subsequent mistake could have been avoided had the General Assembly consulted the Kentucky Geological Survey prior to the adoption of this legislation.

Just as the "history of what the law has been is necessary to the knowledge of what the law is," the history of a potential state symbol is critical to determining the appropriateness of official adoption. Failure to be fully informed about a symbol results in inaccurate language. In order to avoid folly, expert advice and guidance should be sought prior to the advancement of

126. Montero, supra note 116 (noting children are the primary audience for learning about state designations).
127. Gehrke, supra note 120 (noting state can claim a connection to the gun's inventor and designer that no other state can claim).
128. See id. (noting weapons or guns especially are so demonized by certain elements of society that adoption as an official state symbol adds a balance).
129. See id. (noting an official state weapon is not the right message to send to states).
130. KY. REV. STAT. ANN. § 2.091 (West 2013) (codifying the State mineral).
131. KY. REV. STAT. ANN. § 2.091 (West 2013) (codifying the State rock, effective July 14, 2000).
133. WARREN H. ANDERSON, ROCKS AND MINERALS OF KY. 37 (1994).
136. Mead, supra note 134.
139. Dobransky & Fine, supra note 4, at 559-60, 571, and 581.
proposals for new state symbols. Even though experts may not always agree, their advice should be solicited in order to avoid blatant mistakes. When experts offer advice sua sponte, it should be thoughtfully considered. Legislators should make every effort to be precise in meaning, whether such precision comes by resolution or the correction of statutory language.

D. Category

Recently, Kentucky adopted the honey bee as the official state agricultural insect. Of the states with honey bee colonies in 2010, only one, Vermont, had fewer colonies than Kentucky. Why would Kentucky adopt the honey bee? The adoption of the honey bee relates, at least in part, to a finding by the General Assembly that the reclamation of coal mine sites can benefit from pollinator habitat sites. Consecutive sections of the same bill designate the honey bee as the official state agricultural insect and find pollinators beneficial to mine site reclamation. This perceived link to mining earned the honey bee a top spot in the Commonwealth.

States miss opportunities to promote the superlative nature of common symbols. The honey bee, although common throughout the United States, has the potential to become an apt and powerful symbol when a state is the largest producer of honey in the country. From 2000 to 2010, California and North Dakota have vied for the spot of top honey producer with North Dakota leading

140. Id. at 571 (noting that after a New Hampshire committee became deadlocked on trying to select the state flower, it decided to bind itself to the recommendation of two local botanists only to find that the botanists could not agree on a state flower).


143. U.S. DEPT. OF AGRIC., NAT'L AGRIC. STAT. SERV., AGRIC. STAT. BD., HONEY 3 (2011) (noting that Kentucky, Virginia, and West Virginia had five honey producing colonies each, Vermont had four).

144. KY. REV. STAT. ANN. § 350.097 (West 2010) (“These sites are an important conservation resource which will encourage and protect the habitat for pollinators like honeybees, bumble bees, and other bee species.”).


However, neither California nor North Dakota have adopted the honey bee as an official state symbol. California adopted the dogface butterfly (Zerene eurydice) several decades ago as its official state insect. North Dakota adopted the convergent ladybug (Hippodamia convergens) as its official state insect in 2011 after the lobbying efforts of an elementary school second grade class proved persuasive. Unlike the dogface butterfly, which is at least endemic to California, the convergent ladybug is found throughout the United States. Although the ladybug lobbyists in North Dakota noted myriad ways in which the insect benefits farmers, adopting the honey bee as the official state insect would have highlighted North Dakota’s dominance in honey production.

Qualification of a symbol by placement in a category creates opportunity for states to adopt more symbols. By qualifying the honey bee as an agricultural insect and also adopting the viceroy (an insect that falls into the butterfly category), Kentucky has made room for the adoption of even more insects. Although California and North Dakota already have state insects, California could place the dogface butterfly into the “official state butterfly” category and North Dakota could place the lady bug into the “official state beetle” category. Each could also adopt the honey bee under the agricultural or some other qualification. In doing this, states more precisely describe the symbols adopted, open the field to even more possibilities, and seize an opportunity to capitalize on a symbol that represents the state at a market level.

149. N.D. CENT. CODE ANN. § 54-02-19 (West 2011) (“The convergent lady beetle, hippodamia convergens, commonly known as a ladybug, is the official insect of the state of North Dakota.”).
150. CAL. GOV’T CODE § 424.5 (West 1995).
152. Tamara McNeiley, Ladybugs Are Good for N.D., BISMARCK TRIB., Feb. 23, 2011, http://bismarcktribune.com/news/opinion/mailbag/article_48d36e48-3ed9-11e0-8b99-001cc4002e0.html; Dobransky & Fine, supra note 6, at 567 (“[C]hoosing a state flower has been seen as an appropriate act for women and children, impetus often has come from these groups. In 13 states, decisions were based entirely or in part on the votes of schoolchildren.”).
155. McNeiley, supra note 152.
156. See KY. REV. STAT. ANN. § 2.083 (West 2013) (adopting a state butterfly).
157. Perhaps the lightning bug or cicada could vie for the honor of official insect. Or the woolly worm, to which an annual festival is devoted in Beattyville, Kentucky. Festivals and Events, WELCOME TO BEATTYVILLE, LEE COUNTY, http://www.beattyville.org/tourism/festivals-and-events/ (last visited September 21, 2013).
E. Change

State adoption of official symbols, including songs, occurs throughout the United States and such adoptions have the potential to powerfully connect a people to a place. In Lexington, Kentucky, just before the velvet curtain is drawn away for a Summer Classics movie, the audience members at the Kentucky Theatre rise, remove their hats, and sing *My Old Kentucky Home.* The Kentucky General Assembly noted that *My Old Kentucky Home* has "immortalized Kentucky throughout the civilized world, and is known and sung in every State and Nation." Whether you have lived an entire lifetime in Kentucky or are just visiting, it is difficult to stand in a crowd singing this song and not feel a present connection to the Commonwealth’s past – real or imagined. The same song opening movies at the Kentucky Theatre and heard at the Kentucky Derby is also the official state song of the Commonwealth. Few songs are as near and dear to the hearts of Kentuckians as *My Old Kentucky Home.*

However, no amount of tradition, affection, or deference to artistic intent was enough to prevent a substantive change to the song. In 1986, the General Assembly recognized “the style and verbiage used by Foster while penning ‘My Old Kentucky Home’ was contemporary of the era which included the tragic division of Americans in the Civil War.” The original words, as Stephen Foster wrote them, were: “Tis summer, the darkies are gay.” No longer acceptable, resolutions from both the House and Senate replaced the word “darkies” with “people”. Changing a symbol in an effort to conform to contemporary standards of propriety is not a call for the implementation of revisionist history. Other symbols that reflect moments from our collective past, where reasonably considered benign, should be left intact.

158. GREGORY A. WALLER, MAIN STREET AMUSEMENTS 212-14 (1995). Following an overture from the Wurlitzer organ, the audience first sang My Old Kentucky Home at the Kentucky Theatre’s grand opening in 1922. The Kentucky Theatre’s “Mighty Wurlitzer Theatre Pipe Organ” is the official theatre pipe organ of the Commonwealth of Kentucky. KY. REV. STAT. ANN. § 2.104 (West 2013).

159. STEVEN A. CHANNING, ENCYCLOPEDIA OF KENTUCKY 6 (2000).

160. KAREN CERULO, IDENTITY DESIGNS: THE SIGHTS AND SOUNDS OF A NATION 165 (1995) ("The conditions of change are narrow and highly restrictive. In lieu of the right provisions, national symbols, like the nicknames and mementos of our personal histories, cling to that which they signify – their bonds not easily severed, their meaning not easily forgotten.").


163. Periodically members of the Kentucky General Assembly will make an attempt to remove the “dueling” language from the Oath of Office. For now the language remains, reminding us of
conveys "connotations of racial discrimination that are not acceptable in our present day," legislators should be open to the idea of changing symbols that trample on the sensibilities of the citizenry.

Being open to the idea of change is not easy and can often be quite difficult. Those involved with an ever-changing official flag of the State of Georgia know this all too well. With three different versions of its flag since 1956 alone, it is likely there have been more versions of the Georgia state flag than that of any other state. "The contentious flag issue led to the defeat of one governor [Barnes] (in 2001), embroiling both him and his successor in bitter political controversies marked by legislative arm-twisting [sic] and backroom deal-making." Although actual change can come with high cost, if legislators want official symbols to fulfill state purposes, they must not shy away from new ideas and changing perspectives.

V. OFFICIAL STATE DRINK OF KENTUCKY: DOES IT DO A BODY (POLITIC) GOOD?

Perhaps most peculiar of all Kentucky state symbols is the official state drink. Many unfamiliar with Kentucky’s official state symbols may be surprised or even perplexed to discover milk is the official state drink. However, Kentucky is not alone in its official drink preference. Of the twenty-eight states adopting an official beverage, twenty-one (seventy-five percent) have selected milk. Having defined what official state symbols are, determined the purpose they serve, noted the qualities they should exhibit, and the considerations made Kentucky’s past without causing any great harm. See, e.g., Jack Brammer, Lawmakers duel over wording in state oath, LEXINGTON HERALD-LEADER Nov. 18, 2009, at A5.

165. Dobransky & Fine, supra note 4, at 570 (“Legislators who lack personal or professional stakes in such issues may find that replacing a state symbol is more trouble than it is worth.”).
168. Id. at 84.
169. KY. REV. STAT. ANN. § 2.081 (West 2010) (“Milk is named and designated the official state drink of Kentucky.”).
170. Coffee milk, a beverage made by combining milk with coffee syrup, is included as a milk-based beverage and is the official state drink of Rhode Island. Nebraska and South Carolina are included as both states have more than one official beverage including milk. Appendix A, supra note 3.
171. Appendix A, supra note 3.
when evaluating a symbol’s adoptability, should milk continue to be the official state drink of the Commonwealth?

A. A Brief Legislative History of Milk as Official Drink in Kentucky

How did milk become the official drink of Kentucky? Often “individuals or groups, operating out of their own interests and relying upon a set of material concerns, social connections, or cultural capital draw on accepted rhetorical themes to make the case for a symbol.” Effective June 20, 2005 milk was named and designated as the official state drink of Kentucky. Sponsored by a dairy farmer senator, the Bill passed the Senate with 37 yea’s, 0 nays, and no abstentions. The Bill then passed the House with 88 yea’s and 5 nays. The entire process transpired over the span of 34 days from the introduction of Senate Bill 93 to being signed by the Governor. Much like the florist specializing in zinnia seeds pushing for the zinnia, or the peony grower pulling for the peony, it is no surprise to see a dairy farmer leading the charge to officially recognize milk.

The preamble to the Act noted many benefits of milk production to the Commonwealth, including: milk production and the manufacture of dairy products are major contributors to the economic well-being of Kentucky agriculture; there were 1,614 dairy farms in Kentucky in 2002-2003, with a milk production value of $213 million; the 2005 Dietary Advisory Committee increased the recommendation for dairy foods from 2-3 servings in the 2000 Guidelines, to 3 servings of low-fat and fat-free dairy foods every day; milk is an invaluable source of calcium, B vitamins, protein, and other nutrients such as phosphorous, magnesium, potassium, riboflavin, and vitamins A and D; milk and milk products promote and maintain strong bones and good health.

The language of the milk statute (a single sentence consisting of twelve words) is also

---

172. Dobransky & Fine, supra note 4, at 561 (“If the symbol is not seen as divisive (e.g., dividing regions of the state), and if no group opposes the adoption of the proposed symbol, then the process of selection will be smooth.”).


179. Dobransky & Fine, supra note 4, at 576 (“In 1931... the zinnia was selected as the state flower [of Indiana], suggested by another popular legislator, apparently a florist who sold zinnia seeds.”).

180. Id. at 579 (In 1957 Indiana changed the state flower with the help of Representative Baker who “was the largest peony grower in the state and owned three large nurseries near Fort Wayne.”).

relatively short. Its pithiness combined with a public perception of milk’s virtues and innocuous nature may further help to explain its passage with little opposition.

Any choice has the potential to be controversial. Although milk faced little opposition in the Kentucky General Assembly, nationally the idea of milk as healthy food has been met with opposition. A variety of organizations, including the Physicians’ Committee for Responsible Medicine and People for the Ethical Treatment of Animals, are dedicated to shaping a different public view of dairy products. These groups disagree with the position that milk promotes a healthy lifestyle.

Many are familiar with the “got milk?” campaign on billboards across the United States. Billboards have also been used to depict milk in a less flattering light. From “the Grim Reaper with a wedge of cheese on its head with the words ‘Cheese can sack your health’” near Wisconsin’s Lambeau Field, to linking milk consumption to autism in children, Ben & Jerry’s co-founder Ben Cohen’s heart surgery, and Baskin-Robbins co-founder Burt Baskin’s death are often referenced in the “is milk good or bad?” debate.

Assuming the above noted virtues of milk outweigh the criticisms, should this have been enough to elevate milk to official state drink status? How does it measure up to bourbon, an obvious contender? The following is a case study for bourbon as official state beverage applying the adoptive qualities and considerations described above. Although it is rare for a symbol to exhibit all the qualities, a strong showing is acceptable and should be preferred.

186. Rickert, supra note 184.
187. Salahi, supra note 184.
189. Id. (noting Baskin died of a heart attack at 59).
190. John Robbins, Diet for a New America 110 (1998) (John Robbins, heir apparent and abdicator of the Baskin-Robbins empire, arguing the costs of milk are too high.).
B. Adoptive Qualities of Bourbon

1. Economically beneficial

Bourbon production and the manufacture of bourbon products are major contributors to the economic well-being of Kentucky.\(^{191}\) A January 2012 report, produced for the Kentucky Distillers’ Association, found the bourbon industry was comprised of 18 major distilleries, employing around 3,100 people, and had an annual payroll of about $246 million.\(^ {192}\) For fiscal year 2010, the estimated annual Kentucky tax on the production and consumption of distilled spirits was $126 million.\(^ {193}\) What bourbon may lack in nutritional value is made up for by the estimated dollars\(^ {194}\) spent by nearly 23,000 Kentucky Bourbon Trail (KBT) passport holders.\(^ {195}\) Participants who complete the KBT by having their passport stamped at each of the seven distillers along the trail receive a KBT t-shirt.\(^ {196}\) All are strong reasons for Governor Beshear to note the bourbon industry gives him “a sales tool that is second to none” in his efforts to create jobs for Kentucky.\(^ {197}\) Recognizing bourbon as the official drink of Kentucky would give the Governor an even sharper marketing tool.

2. Indigenous

The status of bourbon as indigenous spirit of the United States is widely recognized. The term ‘bourbon’ is federally regulated in that it “shall not be used to describe any whiskey or whiskey-based distilled spirits not produced in the United States”\(^ {198}\). Several agreements, including the North American Free Trade Agreement,\(^ {199}\) United States-European Union Agreement on Nomenclature of

---

192. Id. (This amount excludes fringe benefits.).
193. Id. at 24.
194. Id. at 41. Although data is limited, the estimated economic impact per 1,000 passport holders is about $585,000. Id.
195. Id. at 39. Between August 2007 and November 2011 there were 22,770 Kentucky Bourbon Trail passport holders. Id.
198. 27 C.F.R. § 5.22(b)(1) (2012)
199. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 319 (1993) (“Canada and Mexico shall recognize Bourbon Whiskey...as [a] distinctive product[s] of the United States. Accordingly, Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey...unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey...”).
Distilled Spirits, and the United States-Australia Free Trade Agreement recognize bourbon whiskey as a distinct product of the United States. Although the individual responsible for producing the first bourbon is open for debate, historians place its origin firmly within the United States in what is now Kentucky.

3. Accessible

With approximately 4.7 million barrels aging in 2010 alone, bourbon is abundant in Kentucky and accessible to those of legal drinking age. Providing even greater access to the bourbon industry, approximately 400,000 people visited the KBT in 2010, which attracts more and more visitors every year. The Trail has grown recently with the addition of the Craft tour which features the efforts of smaller, artisan distillers. If the tour just begins to whet the taste for bourbon, several drinking establishments throughout the Commonwealth serve bourbon in abundance. Recognized as one of the best bourbon bars in the world, the Horse & Barrel in Lexington offers patrons an opportunity to join the Bluegrass Bourbon Club. Upon completion of their education, which entails the imbibing of fifty-plus bourbons (not all in one sitting), members’ names are immortalized on a plaque. The annual Kentucky Bourbon Festival in Bardstown is recognized as the official bourbon festival in Kentucky. Not of legal drinking age but still interested? Consider participating in the Bourbon

201. United States-Australia Free Trade Agreement, U.S.-Austl., May 18, 2004, Side Letter, Distinctive Products, available at www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file778_3889.pdf ("... Australia shall not permit the sale of any product as Bourbon Whiskey ... unless it has been manufactured in the United States according to the laws of the United States governing the manufacture of Bourbon Whiskey...and complies with all applicable U.S. regulations for the consumption, sale, or export as Bourbon Whiskey.

202. See supra notes 198-200.

204. Id. at 38.
205. Coomes, supra note 191, at 7.
207. Janet Patton, Bourbon Trail sees 15% jump in visitors, LEXINGTON HERALD-LEADER, Jan. 29, 2013, at C5 (noting over a half-million people visited the Kentucky Bourbon Trail in 2012).
208. Truman, supra note 197.
211. Id.
212. KY. REV. STAT. ANN. § 2.400 (West 2010).
Chase, an annual 200-mile run along the KBT. Additionally, a variety of bourbon-based products such as chocolate, sauces, and smoked sea salt are widely available.

4. Aesthetically pleasing

Anyone experiencing the unique landscape of Kentucky firsthand, even if their heart has been hardened by the world, would agree that “heaven must be a Kentucky kind of place.” If Daniel Boone were to visit today, he may very well find the bourbon distilleries that dot the countryside to be beautiful indeed. Of particular interest would be those recognized on the official list of the Nation’s historic places worthy of preservation. Of the twelve Kentucky distilleries listed on the National Register of Historic Places, Labrot & Graham's Old Oscar Pepper Distillery in Woodford County is notable for its restored historic buildings. Home to Woodford Reserve, this distillery features several restored buildings, uses traditional copper-pot stills, and is among some of the oldest operating distilleries in Kentucky.

Those interested in exploring the ways in which bourbon is appealing by way of the applied aesthetics field note receptivity, quality in manufacturing, taste profile, and the association of ideas with the psychology of taste as enhancing the consumer experience. "Deeply important in our making a selection and then experiencing the whiskey is the story that our minds will associate with that particular label, the story of how it was made, the story of where it was made, the story of what happened in the past when drinking it and with whom we drank.

213. The 200-mile race is sold out, but everyone’s welcome at after-party, LEXINGTON HERALD-LEADER, Sept. 28, 2012, at T5.


215. Often attributed to Daniel Boone, noted explorer and settler of what is now Kentucky, this sentiment may be apocryphal.


218. Id.

The environments, accoutrements, and stories associated with bourbon have the potential to produce a pleasing aesthetic that is carried in the mind everywhere.

5. Exclusive

Although Kentucky does not produce every ounce of bourbon in the world, it comes close. Approximately ninety-five percent of global bourbon production comes from the Commonwealth. The General Assembly, in recognizing the importance of the bourbon industry to the Commonwealth, passed legislation to ensure certain standards are met for products labeled Kentucky. Label disclosure of original distilling location has been required where bourbon whiskey is distilled in one state and then redistilled in Kentucky. The superlative claim relating to production volume, coupled with regional geographic-indication protections, satisfy the exclusivity requirement for most intents and purposes.

6. Culturally and historically valuable

To people outside the Commonwealth, bourbon is synonymous with Kentucky. To many citizens of Kentucky, bourbon is a way of life. A visitor declaring Jack Daniels as their favorite Kentucky bourbon is committing a fatal social blunder. Although all bourbon is whiskey, not all whiskey is bourbon. Jack Daniels is the latter. It is also made in Tennessee. Bourbon is also a key ingredient in a mint julep, the quintessential Kentucky libation. With

---

220. Id. at 135 (crediting David Hume’s philosophy of the association of ideas as giving “a far more insightful and plausible account of what goes on when we select and drink a whiskey”).
221. Coomes, supra note 191, at 1.
223. Rev. Rul. 54-416, 1954-2 C.B. 470 (“‘Sour Mach Bourbon Whisky’ may not be produced by a distiller in Illinois and transferred to a distiller in Kentucky for redistillation without substantial change and, after storage and bottling, be labeled as ‘Kentucky Bourbon Whisky’ without indication of Illinois origin and with redistiller’s name and address stated on the label as the name and address of the distiller.”).
224. See Coomes, supra note 191, at 1.
227. See id.
228. JOE NICKELL, THE KENTUCKY MINT JULEP 3 (2003) (“The essential mint julep is made with bourbon and mint syrup poured over ice and garnished with a sprig of fresh mint.”).
thoroughbred racing being the primary draw for tourists and locals alike, approximately 120,000 mint juleps are sold during Kentucky Derby weekend.229 Bourbon is an essential ingredient in Kentucky culture.

Historically, bourbon has been valued by some of Kentucky's most venerable figures. During the 1950's, Old Crow solicited any and all historical records linking their product to famous people.230 Many popular stories associate bourbon with Henry Clay who was among several individuals identified through this advertising campaign effort.231 Tales attribute the measure of his political success to the size of his bar bill,232 and describe him shipping barrels of bourbon to his Senate office in Washington, D.C.,233 and recording his recipe for the mint julep in his diary.234 The verifiability of such anecdotes varies considerably. However, Henry Clay did write a letter to his son discussing, among other things,235 his instructions to have a barrel of old bourbon delivered to a Dr. H.S. Levert of Mobile.236 The status of bourbon as the native spirit of the United States along with its deep cultural and historical roots in Kentucky make it the reasonable choice for the official state beverage.

230. Old Crow Almanac, LIFE, April 9, 1956, at 161 ("Snoopers, Peepers, Paul Pry's and Sam Spy's win $250. Old Crow will pay you $250 for every accepted, authentic historical fact relating Old Crow to famous men of the past. Look in newspapers, books, old letters and personal diaries. Write: Old Crow Historical Bureau, 149 Madison Ave., New York 16, N.Y."); Old Crow Almanac, LIFE, April 21, 1958, at 61 ("Money on your mind? History in your attic? Put them all together they can spell $250.00 for you. Look through old trunks, attics, newspapers, family papers, diaries for documented information relating James Crow's whiskey to famous 19th Century Americans. Acceptable material will be paid for by the undersigned with 250 lawful and legal U.S. dollars. Old Crow Historical Bureau 149 Madison Avenue, New York, N.Y.").
231. See e.g. Old Crow Almanac, LIFE, April 21, 1958, at 61 ("A Precious Cargo for Sen. Henry Clay . . ").
232. Duane Bolin, Kentucky Profiles: Compromising Secret, KY. MONTHLY, Nov. 2011, at 12 (noting Mr. Clay's compromisers were always agreeable when they were well lubricated).
233. James Crow, Whisky Maker, The Man Who Reduced Distilling to a Science in Kentucky in the Thirties, THE SUN, Sept. 5, 1897, at 6 (noting that "[f]or many years there was treasured in Versailles as a relic an old letter from Henry Clay to his friend [James] Crow ordering a barrel of his wonderful elixir to take to Washington with him to lubricate the wheels of Government.")
234. See Nickell, supra note 228, at 31 (citing a newspaper article and personal correspondence with a director at the Kentucky Derby Museum, claiming the recipe is "historically authoritative, from the diary of the Great Compromiser himself, Henry Clay").
235. Letter from Henry Clay to his son (Oct. 14, 1845) (available at University of Kentucky archives) (discussing how Henry Clay is going to take care of various debts incurred by his son).
236. Id.
C. Adoptive Considerations

1. Context

Does the designation of milk as official state drink make sense within the context of Kentucky? Milk is not the first thing that comes to mind when people think of Kentucky because milk does not fit within the context of what many envision when it comes to the Commonwealth. Unlike bourbon distilleries, dairy farms are located throughout the United States. In 2008, three years after Kentucky adopted milk, the state was not even close to being a top milk producer in the United States with only 90,000 milk cows. That same year, twenty-two other states had more milk cows.

If milk as official state drink does not make sense in Kentucky, where does it make sense? Wisconsin. Wisconsin adopted milk as their official state beverage with good reason. In 2008 Wisconsin had 1.25 million milk cows. "Wisconsin is known as 'America’s Dairyland,' and . . . license plates have been telling everyone that since 1940. [The] official symbols bolster the idea: milk is the official beverage, and six breeds of purebred dairy cows constitute the official state domesticated animal." Dairy themes were the most popular submission when it came to designing the Wisconsin state quarter which ultimately featured an ear of corn in addition to a cow and block of cheese. "Mass perception affects how those across the country see Wisconsin, which, in turn, can have an effect on [Wisconsin’s] economy." When milk is adopted as the official state drink of Kentucky it may represent something, it may connect to something, but that something is not a representation or connection to the Commonwealth. Milk as official state drink makes better sense within the context of Wisconsin, not Kentucky.

240. Id.
244. Barish, supra note 78, at 20-21 (noting that of the over 9600 design submissions for the Wisconsin state quarter, the category with the most submissions, over 2,000 or 22 percent of all entries, was ‘dairy’, which included designs featuring milk, cheese, or cows).
245. Id. at 24; see also Kapler, supra note 62, at 21 ("Wisconsin produces 15 percent of the nation’s milk... and 30 percent of the cheese.").
2. Connotation

Whether a product, either milk or bourbon, has a positive, negative, or neutral connotation is difficult to objectively determine. Milk may be positive to dairy farmers and those who enjoy dairy products. It may be negative to those who associate cow milk with poor health or are involved in the promotion of a competing industry. To many, milk may be neutral. The same may apply to bourbon. Bourbon may be positive to those associated with its production, marketing, distribution, and sale. Negative associations with bourbon may be attributed to juvenile misadventure or collateral problems such as drunk driving, alcoholism, and health-related concerns – attendant issues with the irresponsible use of any intoxicating beverage, not just bourbon.

3. Consultation

Experts from the dairy or spirits industry would likely champion the official adoption and recognition of their respective products. However, in light of the adoptive qualities of milk and bourbon along with the context and connotation considerations noted above, what would experts in marketing select to promote the state? Charged with marketing the Commonwealth to increase tourism, the Kentucky Tourism, Arts & Heritage Cabinet divided the state into nine regions and named each according to its attributes. Only the terms bourbon, horses, and bluegrass were named attributes in more than one region. No regional name noted milk or any dairy product as an attribute. These regional designations, developed by experts to promote the state, serve as an indicator of bourbon’s value to the Commonwealth.

4. Category

Would a categorical approach be a reasonable way to resolve this issue? Instead of having one official state beverage, why not have several qualified drinks within the beverage category? Legislatures have used the categorical

---

247. See Leigh Hornbeck, *Dairy Dilemma*, TIMES UNION, Ap. 10, 2013, at F1 (noting recent study found women who eat high-fat dairy products after they are diagnosed with breast cancer are at a higher risk for death).


250. See id.

251. See id.

252. See id.
approach in the past and Kentucky could theoretically have an official state drink, spirit, and soda. As there is precedent for adoption of a spirit as an official symbol, Kentucky would not be alone if it were to adopt bourbon. Alabama adopted Conconehu Ridge Alabama Fine Whiskey as the official spirit of Alabama. Since there are a multitude of bourbon producers marketing their product under an even greater number of labels, adoption of bourbon generally, rather than endorsing a specific brand, would best serve the industry as a whole.

For teetotalers, a reasonable alternative to bourbon as the official drink of Kentucky exists: Ale-8-One. Bottled in Winchester, Kentucky since 1926, "A-Late-One" claims to be the only soft drink invented in Kentucky still in existence. The soft drink as official beverage also has precedent. In 2005, the state of Maine adopted Moxie as the official state soft drink.

In 2013, the Kentucky General Assembly considered a bill that would designate Ale-8-One as "the official Kentucky original soft drink." Intervention by a major soda corporation with significant lobbying resources resulted in the passage of an amended version of the bill. The issue had to do with the terms "the" and "official." The corporation contacted the bill's sponsor noting it had started bottling soda in Kentucky before Ale-8-One.

---

253. See Rosenthal, supra note 5, at 36 ("When brought to a vote, however, legislatures are adept at compromising interests. That is no doubt why Tennessee had two official fish, a commercial fish and a game fish, three official insects and two state rocks.").


255. See MICHAEL R. VEECH, KENTUCKY BOURBON WHISKEY: AN AMERICAN HERITAGE 98-99 (2013) ("Heaven Hill, which has built a substantial portfolio through in-house development and outside acquisition of a variety of bourbon labels, even sells bulk whiskey to high-end organizations interested in their own private label.").


260. Interview with DeAnne Elmore, Marketing and Public Relations Director, Ale-8-One (July 2, 2013).

261. Audio tape: Hearing on various proposed legislation, including HB 205, held before the House State Government Committee, Committee Chair Rep. Yonts, and the Commonwealth of Kentucky (Feb. 21, 2013) (on file at the Legislative Research Commission).


263. The House Standing Committee on State Government handles "[m]atters pertaining to the sovereignty and jurisdiction of the Commonwealth; the General Assembly, its committees, officers and service agencies; redistricting; the Governor; the Lieutenant Governor; administrative organization; administrative regulations; administrative agencies; Department of Law; constitutional offices; state personnel; state retirement systems; public property and public printing; public officers, their terms, appointments, fees, compensation, removal, oaths and bonds; public information; disaster and emergency services; state and regional planning; libraries; archives and
the language substitution. Ultimately, “the” was changed to “an”, the term “official” was deleted, and Ale-8-One was designated as “an original Kentucky soft drink”. This result is peculiar. As originally drafted, the term “the” reasonably qualified either the entire sentence generally or the term “official” specifically, not the term “original” which was qualified by the term “Kentucky.” Although the corporation had a valid claim of bottling in Kentucky prior to Ale-8-One, it could not claim its current product line was original to Kentucky, nor did it have a basis to claim it was official. Ale-8-One may have been able to obtain official status had the bill language tracked that of milk: Ale-8-One is named and designated as the official state soda of Kentucky.

Qualifying symbols provide a state with an opportunity to honor a variety of unique qualities. The potential downside with this approach is having so many symbols that the individual identity the state is trying to establish and market is lost in an attempt to satisfy a plethora of special interests. Concerned about the proliferation of state symbols, Texas lawmakers set out to change the manner in which official symbols are adopted. Citing steep competition between towns for official designations and an ever growing list of state symbols, the legislation calls for proposed symbols “to be filed as bills instead of resolutions, which would require additional scrutiny from lawmakers, including committee hearings.”

Ultimately, the language adopted by the Texas legislature addresses both state symbols and place designations. Proposed state symbols must specify an item’s historical or cultural significance to the state and may not be a commercial product, an individual, an event, or a place. Proposed place designations may


264. Interview, supra note 262 (“Ok. I’m trying to get this docket down to two bills. Representative Mayfield I’m going to do yours next. You’ve got about two minutes. Representative Mayfield has a committee sub. Because of the issues of the official soft drink is named - the amendment calls for it to be named and designated as an original Kentucky soft drink. The sub is being passed out. Is there a motion on the committee sub? Mr. Kearny motions on the committee sub. Is there a second? Representative Brad Montell. Motion is to adopt Ale-8-One as an original Kentucky soft drink. Representative Mayfield you’ve got about forty-five seconds.”).

265. Id. Rep. Mayfield noted had the term “official” been retained, a variety of soda producers would likely have objected.


267. See BENJAMIN F. SHEARER & BARBARA S. SHEARER, STATE NAMES, SEALS, FLAGS AND SYMBOLS: A HISTORICAL GUIDE 108 (1987) (supporting the idea that only symbols adopted through the legislative process are deemed official).

268. See David Tarrant, Texas is Big on Symbols, DALLAS MORNING NEWS, Mar. 14, 2001, at 1C.


not be assigned to more than one event or location, must include relevant historical or cultural information, and be supported by a local chamber of commerce or elected governmental body.272 Except for re-designation by the legislature, a sunset provision ensures place designations expire on the designation’s 10th anniversary.273

5. Change

Are Kentuckians open to change when it comes to their official state drink? At times Kentuckians have been open to change when it comes to state symbols,274 and at other times not so much.275 Some citizens of the Commonwealth have called for a change to Kentucky’s official state slogan – currently “Unbridled Spirit” – to “Kentucky Kicks Ass” suggesting the “time is right for a more democratic (little “d”, not big “D” or big “R”) slogan, something that bubbles up, trips off the lips, [and] sings to the subversive soul”276 - essentially what milk does not do (and what bourbon would do) as the official state drink.

Symbols “work best when . . . they serve as the metaphorical reflections of the properties of the population they reflect.”277 In 2005, when milk became the official drink in Kentucky,278 it was suggested, “the measure would also help promote healthier lifestyles.”279 In a 2012 ranking of overall health among the fifty states, Kentucky ranked near the bottom at 44.280 A report that same year noted “Kentucky is predicted to jump from a 30 percent adult obesity rate in 2011 to 60.1 percent in 2030.”281 Symbols should reflect what a state has accomplished, not what a state hopes to accomplish sometime in the future.

274. See Ky. Rev. Stat. Ann. § 2.100 (West 2010) (noting the modern version of “My Old Kentucky Home” was adopted during the 1986 Regular Session of the General Assembly by the House of Representatives in House Resolution 159 and the Senate in Senate Resolution 114 substituting the word “people” for the word “darkies”).
277. Dobransky & Fine, supra note 4, at 578.
280. UNITED HEALTH FOUND., AMERICA’S HEALTH RANKINGS, A CALL TO ACTION FOR INDIVIDUALS AND THEIR COMMUNITIES, 14 (2012).
Failing to celebrate and promote that which makes Kentucky unique, particularly by adopting highly pedestrian symbols such as milk, squanders opportunities to capitalize on that which makes the Commonwealth special. This failure causes the de facto adoption of the proposed state slogan in that “Kentucky kicks ass. Often, unfortunately, its own.”\textsuperscript{282} Kentucky’s failure to be united in embracing and honoring its uniqueness will contribute to its falling behind.\textsuperscript{283}

VI. CONCLUSION

States reasonably aspiring to legitimize power, promote commerce, and create allegiance through the adoption of official state symbols should use the following considerations to inform the decision making process. Official state symbols should go beyond merely representing an idea, as symbols fundamentally do, by making connections between people and places. In order to reach full potential, state symbols should bind residents’ perceptions to the state and be readily associated with the state by non-residents. This is particularly important where populations trend toward diversity as they do in the United States.\textsuperscript{284} Prior to the adoption of a proposed state symbol, legislators should consider whether the symbol merely represents a place, or goes further by connecting people to the state. Only symbols that do the latter should be adopted.

Adoption of ordinary symbols is potentially harmful to states on several levels. A state failing to embrace and honor its character through the adoption of symbols reflecting unique and positive qualities squanders opportunity to capitalize on individuality. At best this loss manifests itself as casting a state in a mediocre light. At worst this failure creates a space for a state’s shortcomings to become its identity. States should resist the temptation to adopt symbols that fail to reflect a state’s qualities and should avoid holding on to official symbols that fail to reflect a state’s positive attributes.


\textsuperscript{282.} Tom Eblen, Knowing their Ads from Hole in Ground – Idea with Flair Meets Blank Stares, LEXINGTON HERALD-LEADER, Jan. 6, 2013, at C1.

\textsuperscript{283.} See KY. REV. STAT. ANN. § 2.020 (West 2010) (The seal of the Commonwealth shall have upon it the device, two (2) friends embracing each other, with the words “Commonwealth of Kentucky” over their heads and around them the words, “United We Stand, Divided We Fall.”); see also Shearer & Shearer, \textit{supra} note 287, at 21 (“A motto might be considered a terse statement, sometimes humorous, sometimes serious, that describes a certain spirit of the bearer. State mottoes, whether in English, Latin, French, or Spanish, or a native American Language, express simply the character and beliefs of the citizenry.”).

\textsuperscript{284.} See Dobransky & Fine, \textit{supra} note 4, at 581 (“[I]dentification with one’s landscape is a source of unifying ties in diverse societies. Native rootedness can serve as a metaphor for the expertise of collective identification.”).
If the law is always “approaching, and never reaching, consistency . . . forever adopting new principles from life at one end, and . . . always retains old ones from history at the other, which have not yet been absorbed or sloughed off” 285 it is imperative states remain vigilant in vetting the appropriateness of symbols prior to adoption and continue monitoring their viability afterwards. Prior to adoption, states should consider whether a proposed symbol reflects the following qualities: indigenousness, aesthetic appeal, uniqueness, availability, potential economic impact, and cultural-historical value.

Finally, states should consider the following questions: Does this symbol make sense in this context? What connotations are associated with this symbol? Have experts on the subject matter been consulted? Have the opinions of experts been given serious consideration and sensible deference? Is the symbol too general? If so, should the symbol be qualified in some manner? For official state symbols currently in use, a process of reevaluation in light of the above considerations should occur by replacing symbols where a more qualified candidate can be identified. Ultimately, a state should strive towards harmonization amongst its official symbols. Adoption of state symbol statutes that are in pari materia should result in the creation of an indelible state identity in the minds of citizens and non-citizens alike.

## APPENDIX A: OFFICIAL BEVERAGES BY STATE*

<table>
<thead>
<tr>
<th>STATE</th>
<th>BEVERAGE</th>
<th>CITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama**</td>
<td>Conecuh Ridge</td>
<td>H.J. Res. 100, Reg. Sess. (Al. 2004); 2004 Ala. Acts 103</td>
</tr>
<tr>
<td></td>
<td>Whiskey Whiskey</td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>none</td>
<td>See Alaska Stat. §§ 44.09.010-.09-140 (West 2013)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Milk</td>
<td>Ark. Code Ann. § 1-4-112 (West 2012)</td>
</tr>
<tr>
<td>Delaware</td>
<td>Milk</td>
<td>Del. Code Ann. tit. 29 § 312 (West 2012)</td>
</tr>
<tr>
<td>Georgia</td>
<td>none</td>
<td>See Ga. Code Ann. §§ 50-3-1 - 50-3-100 (West 2012)</td>
</tr>
<tr>
<td>Iowa**</td>
<td>none</td>
<td>See Iowa Off. Reg. (Redbook)</td>
</tr>
<tr>
<td>State</td>
<td>Designation</td>
<td>Reference</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Milk</td>
<td>Miss. Code Ann. § 3-3-29 (West 2012)</td>
</tr>
<tr>
<td>Nebraska**</td>
<td>Kool-Aid, Milk</td>
<td>Gubernatorial Designation of Kool-Aid (May 21, 1998)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gubernatorial Designation of Milk (Sept. 10, 1998)</td>
</tr>
<tr>
<td>New Jersey</td>
<td>none</td>
<td>See N.J. Stat. Ann. §§ 52.9a-1 – 52.9a-9 (West 2013)</td>
</tr>
<tr>
<td>New Mexico</td>
<td>none</td>
<td>See N.M. Stat. Ann. §§ 12-3-1 – 12-3-19 (West 2012)</td>
</tr>
<tr>
<td>New York</td>
<td>Milk</td>
<td>N.Y. State Law § 82 (McKinney 2012)</td>
</tr>
<tr>
<td>N. Dakota</td>
<td>Milk</td>
<td>N.D. Cent. Code Ann. § 54-02-12 (West 2012)</td>
</tr>
<tr>
<td>Ohio</td>
<td>Tomato juice</td>
<td>Ohio Rev. Code Ann. § 5.08 (West 2012)</td>
</tr>
<tr>
<td>Oregon**</td>
<td>Milk</td>
<td>S.J. Res. 8, 69th Leg., Reg. Sess. (Or. 1997)</td>
</tr>
<tr>
<td>S. Dakota</td>
<td>Milk</td>
<td>S.D. Codified Laws §§ 1-6-16 (2012)</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Milk</td>
<td>Tenn. Code Ann. § 4-1-331 (West 2012)</td>
</tr>
<tr>
<td>Utah</td>
<td>none</td>
<td>See Utah Code Ann. § 63g-1-601 (West 2012)</td>
</tr>
<tr>
<td>State</td>
<td>Beverage</td>
<td>Code</td>
</tr>
<tr>
<td>------------</td>
<td>----------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>W. Virginia**</td>
<td>none</td>
<td>See W. Va. Acts</td>
</tr>
</tbody>
</table>

* Most official state symbols are codified within a state’s statutory scheme. Where a state does not designate an official beverage within its statutory scheme, the presumption has been made that no official state beverage exists. Where ‘none’ is listed, a citation to where a state’s official symbols appear is included.

**Denotes official state symbol adoption other than, or in addition to, incorporation into a statutory scheme, e.g., resolution, proclamation, etc.