Reexamining the Prohibition Amendment

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Abstract

Richard Hamm's book, Shaping the Eighteenth Amendment, is a welcome addition to the literature on prohibition and the history of drinking in America. The author's most important contribution is to demonstrate the significance of law and the courts, both for prohibition in particular and for progressive politics more generally. He shows how the internal dynamics of legal processes, including the give and take of legislative and judicial bodies, provide the structure within which politics takes place. For reformers, both in the progressive era and more generally, this is a crucial insight: The reform impulse, usually nebulous and general, can only be realized in the political realm through policies that operate within the governmental structure. In a sense, all politics must relate to existing statutes and court decisions, but advocates of the status quo are likely to find inertia congenial, while reformers bear the special burden of seeking to use law and the courts to overturn powerful forces that are legally entrenched. The particular way that reformers choose to move is, to a surprising extent, dictated by the legal frame of reference. As Hamm demonstrates, the popularity of federalism long hampered prohibition and led to the adoption of national prohibition with an unworkable policy of concurrent federal and state enforcement. Although prohibition failed for many reasons, Hamm shows that the legal framework predetermined failure even if other conditions had been favorable.

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When the nation repealed Prohibition via the Twenty-first Amendment in 1933, it vested primary control over alcoholic beverages in the states. The common understanding of the framers of the Twenty-first Amendment was that it grants each state the power to regulate alcoholic beverages within its borders without intrusion by federal law or regulation. The question remains, however, as to how much and what kind of federal intrusion the amendment blocks. The Twenty-first Amendment has three parts. Section 1 explicitly repealed the Eighteenth Amendment and brought an end to Prohibition. Accordingly Reexamining the Prohibition Amendment. Yale Journal of Law & the Humanities, Sep 2018. W. J. Rorabaugh. W. J. Rorabaugh. Richard E Hamm, Shaping the Eighteenth Amendment: Temperance Reform, Legal Culture, and the Polity, 1880-1920. Chapel Hill: University of North Carolina Press, 1995. Pp. x, 341. Although prohibition failed for many reasons, Hamm shows that the legal framework predetermined failure even if other conditions had been favorable. This is a preview of a remote PDF: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1158&context=yjlh. W. J. Rorabaugh. Reexamining the Prohibition Amendment, Yale Journal of Law & the Humanities, 2018. Home. · About. Reexamining the Prohibition Amendment. Richard E Hamm, Shaping the Eighteenth Amendment: Temperance Reform, Legal Culture, and the Polity, 1880-1920. Chapel Hill: University of North Carolina Press, 1995. Rorabaugh: Reexamining the Prohibition Amendment. Rorabaugh, was just one of a matrix of progressive reforms designed to remake the United States. Hamm stresses that the Eighteenth Amendment, as passed by Congress in December 1917, did not ban personal possession or use of alcohol. The ASL feared that such a ban would sound too extreme and would defeat ratification.