



# The Eighteenth Amendment and National Prohibition, Part 7: Repeal

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This Legal Sidebar post is the last in a seven-part series that discusses the [Eighteenth Amendment to the Constitution](#). Prior to its [repeal](#), the Eighteenth Amendment prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United States. Section 2 of the Amendment granted Congress and the state legislatures “concurrent power” to enforce nationwide Prohibition by enacting “appropriate legislation.” The Eighteenth Amendment was partly a response to the Supreme Court’s pre-Prohibition Era Commerce Clause jurisprudence, which limited [the federal and state governments’](#) power over the liquor traffic. As such, the Eighteenth Amendment’s history provides insight into the judicial evolution of the [Commerce Clause](#), which operates as both a positive grant of legislative power to Congress and a [limit on state authority](#) to regulate commerce. Additional information on this topic will be published in the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

## Repeal of the Eighteenth Amendment

The Eighteenth Amendment and Volstead Act were controversial in part because they empowered the federal government to [police activities](#) that implicated individual social habits and morality—a role traditionally led by state and local governments. Nationwide Prohibition quickly [fell out of favor](#) with the American public because of ineffective enforcement, harsh enforcement techniques, crime related to the illegal liquor traffic, a need for tax revenue during the Great Depression, and widespread defiance of the law. The Eighteenth Amendment was repealed when the states [ratified](#) the Twenty-First Amendment on December 5, 1933.

The Supreme Court decided a few cases that examined the repeal’s legal implications. In [United States v. Chambers](#), the Court held that the Twenty-First Amendment’s ratification immediately rendered the Eighteenth Amendment inoperative. Consequently, “neither the Congress nor the courts could give it continued vitality.” The Twenty-First Amendment also nullified provisions of the Volstead Act that rested upon Congress’s Eighteenth Amendment powers, including provisions that imposed penal sanctions for violations of Prohibition. Courts were thus required to dismiss for lack of jurisdiction all pending prosecutions for Volstead Act violations, including proceedings on appeal.

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Nonetheless, Prohibition's repeal **did not extinguish** all forms of legal liability related to the transportation, sale, or manufacture of alcoholic beverages (e.g., liability for federal taxes on alcohol). Moreover, the Twenty-First Amendment **recognized** that states could regulate or prohibit alcoholic beverages within their jurisdictions for legitimate, **nonprotectionist purposes**, such as health or safety. Exercising this authority, a few states banned the liquor traffic within their borders until the mid-20<sup>th</sup> century. In addition, the federal government continued to **regulate** or **tax** activities involving alcoholic beverages, including aspects of beverage production, wholesale distribution, importation, labeling, and advertising.

## Additional References

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ERIC BURNS, *THE SPIRITS OF AMERICA: A SOCIAL HISTORY OF ALCOHOL* (2004)

MARK EDWARD LENDER & JAMES KIRBY MARTIN, *DRINKING IN AMERICA: A HISTORY* (1982)

RICHARD F. HAMM, *SHAPING THE EIGHTEENTH AMENDMENT* (1995)

## Author Information

Brandon J. Murrill  
Legislative Attorney

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