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## From Demon to Darling: A Legal History of Wine in America (book review)

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North back in line ideologically, as the Court withdrew and the entire nation turned to the right in the 1970s.

Walker's account provides an important counterpoint to previous studies of white extremists. Coleman, Collins, and Hodges truly believed segregation benefited blacks and whites. They assumed social conventions would simply continue Jim Crow despite token integration. The moderates' quiet, determined efforts to maintain the social fabric of segregation while complying with the letter of the law proved far more successful at dulling federal intervention than the massive resisters' calls for nullification and interposition. *The Ghost of Jim Crow* complicates the story of the fight against *Brown* and helps us understand how we arrived at the civil rights jurisprudence of today.

**Willoughby Anderson**  
Nashville, Tennessee

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Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America*, Los Angeles and Berkeley: University of California Press, 2009. Pp. 302. \$29.95 (ISBN 0-52025-943-2).  
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Richard Mendelson is a lawyer and winemaker who has combined his vocation with his avocation by becoming an expert in the law pertaining to wine. The purpose of his book is to educate “present and future generations of winemakers, wine drinkers and wine attorneys” to “understand our country’s unique liquor history, appreciate concerns about liquor use and abuse, and participate actively in public policy debates about wine, beer and spirits” (5). This is a challenge for which Mendelson is uniquely qualified, and for the most part his book succeeds in meeting his goals.

Mendelson’s thesis is that “wine has been alternatively the demon and the darling of American society since colonial times,” and that duality has not disappeared despite the unsuccessful experiment with Prohibition and the late twentieth-century boom in wine making and consumption in the United States (5). This duality is readily apparent in early American history. Colonial governments promoted the development of vineyards and viticulture, and wine retained a favored status even among Puritans divines such as Increase Mather, who condemned drunkenness but approved of moderate wine consumption. In 1790, Dr. Benjamin Rush (a famous surgeon in the Revolutionary army) wrote a pamphlet attacking the consumption of spirits as a source of physical disease and immoral behavior, but he approved of wine for its medicinal qualities. In fact, the early temperance movement—which began in Ireland and then Britain in the late 1820s before quickly coming to America—made a distinction between wine,

beer, and cider on the one hand, and distilled alcohol on the other. The former beverages were thought to encourage moderation (hence “temperance”) and healthy forms of conviviality, while the latter were allegedly responsible for social disorder and physical ruin.

However, two events occurred that were to radicalize the temperance movement. First, what began as voluntary social organizations soon transformed into a political movement. By 1833, states began experimenting with “local option” laws that authorized voters to regulate alcohol sales in their locality. Second, the temperance movement quickly split into two camps, those who advocated the use of wine, beer, and cider, and those who advocated total abstinence (teetotalers). In the midst of the Second Great Awakening of evangelical zealotry, the stark “for-or-against” dichotomy of the teetotalers soon got the upper hand. And when locally instituted laws proved ineffective because they could easily be circumvented by consumers who resorted to a neighboring locality, temperance advocates lobbied for statewide laws—twelve states had such laws prior to the Civil War. These laws varied in severity and scope, some prohibiting all alcoholic beverages, including wine, and others exempting wine, especially if made from local fruit. But regardless of the specifics, all such laws proved difficult to enforce and either were repealed soon after enactment or rendered ineffectual by a series of Supreme Court decisions that drastically limited a state’s power to prohibit the interstate transportation of alcohol into its territory (37). The result of these cases was that “wet” states posed a constant threat to “dry” states, and the temperance movement—now a prohibition movement—began looking for a national solution.

That “solution” famously arrived in the form of the Eighteenth Amendment to the Constitution in 1919. Broadly speaking, the amendment made no distinction between distilled and fermented alcohol, restricting both equally. However, wine producers and consumers fared slightly better than most during the period of national prohibition, as they benefited from numerous loopholes in the national statutes—most notably the exception for sacramental, medicinal, and homemade wines.

After the repeal of Prohibition in 1933, states needed to enact new laws quickly. What emerged was a patchwork of complex state (and sometimes federal) laws that regulated alcohol, and it was within this context that the modern American wine industry developed. Mendelson describes the various attempts to create a federally regulated appellation of origin system, as exists in European nations. The problem, he acknowledges, is that geography means very little to most American consumers. How can it, when anxious American consumers want consistency over uniqueness, and when most American vineyards have only been planted since 1950? Moreover, there is an inherent distrust of the government’s right and ability to establish such a scheme. And who would not be distrustful when one ATF proposal in 1976 was to create what they called “seal wine” (the wines were to be given a

special seal), conjuring up images of barking sea mammals rather than the nation's finest wines?

Mendelson ends his story with a description of the 2005 Supreme Court case *Granholm v. Heald*, which voided state tax schemes that discriminated against out-of-state wine growers. He clearly sees this as an improvement for wine producers and consumers. Nevertheless, Mendelson is not overly sanguine about the current state of wine law, which remains an intensely local affair. "Although this democratic approach seems rational," asserts Mendelson, "the results are not" (188), because in many communities the majority triumphs over the minority in a matter that is purely personal (wine consumption). Moreover, experience shows that strict laws against alcohol do not work and have a tendency to drive consumers toward the strongest liquors (188). Mendelson suggests that the continued development of a vibrant wine culture in America will depend upon national laws and leadership among wine producers that links wine to "the land, food, and the arts" (190).

Mendelson's story is ably told and his plea for laws that would benefit producers and consumers is clear. However, his book has its shortcomings. For one thing, much of the book is not so much a legal history of wine in America as it is a legal history of alcohol in which wine often plays a minor part. In fact, what Mendelson shows is that wine is rarely the focus of societal concerns or laws, but instead it has been caught in a web of attitudes and legislation that fail to draw distinctions between different types of alcohol. In that sense, wine was never the demon that Mendelson claims in his thesis and title. Nor, it should be noted, has wine been the darling liquor to most Americans, who remain largely immune to wine's charms. Moreover, it is not clear that linking wine to "the land, food, and the arts," will have a salutary effect on wine sales among people for whom the land does not grow grapes, food is for acquiring necessary calories, and the arts are more intimidating than edifying. To that end, wine "visionaries" might want to promote wine as a drink that has historically been produced and consumed by common laborers as well as social elites, and everyone in between.

Further, although the focus of the book is specifically on laws affecting wine, Mendelson could have included some context to help the reader understand larger trends in legal history that shed light on these laws. For example, the temperance laws that preceded prohibition can usefully be characterized as a (misguided) aspect of Progressive-era reform, which included laws prohibiting child labor and prescribing minimum wages and safe working conditions. The Eighteenth Amendment, prohibiting the sale of alcohol, is only one of four Progressive-era amendments; the other three extended the franchise to women (who as a group strongly supported Prohibition), authorized the federal income tax, and provided for the direct election of senators. Mendelson might also have emphasized how the current patchwork of conflicting—and sometimes discriminatory—state schemes of alcohol regulation is directly at odds

with the overwhelming trend towards uniformity in the regulation of interstate commerce, and particularly of consumable commodities. Wine is a rare example of a commodity that is marketed nationwide yet regulated at the state rather than federal level; the effect of fifty different regulatory schemes on winemakers and distributors serves as a cautionary example for those who might wish for *less* federal regulation and more local control over commerce. Finally, Mendelson might have found it useful to his purpose to examine the laws pertaining to wine in both French and Spanish North America. Surely these laws are as much a part of the legal history of wine in America as are the laws created in the English speaking colonies and later the United States.

Mendelson's book is written for lawyers—oenophiles without a legal background might find some of his writing tough going. But motivated readers will find in his book the historical context for current public policy discussions about wine, and for that his book is highly recommended.

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Peter Charles Hoffer, William James Hull Hoffer, and N. E. H. Hull, *The Supreme Court: An Essential History*, Lawrence: University Press of Kansas, 2007. Pp. 494. \$34.95 (ISBN 978-0700615384).

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Hoffer, Hoffer, and Hull—an estimable team of historians who collaborated on *Abortion Rights Controversy in American History: A Legal Reader*—now offer *The Supreme Court: An Essential History*. There are many fine books already available on this subject, ranging from Lucas Powe's recent, idiosyncratic *The Supreme Court and the American Elite* to the comprehensive, Kermit Hall-edited *Oxford Companion to the Supreme Court of the United States* and *Oxford Guide to United States Supreme Court Decisions*. *The Supreme Court: An Essential History* amounts to something more than Powe's narrative history and something less than Hall's desk references, with its shortcomings offset by a coherent interpretation of the subject rooted in the authors' belief that "legal history lies at the intersection of intellectual, social, cultural, economic, and political events." A work with a scope this broad cannot address all concerns, and yet in the course of reviewing it one must advert, however reluctantly, to the things it does not do.