An Economic and Institutional Analysis of Prohibition (1920-1933)

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As economists, students of public policy, and defenders of a free society, it falls upon us to point out why policies have negative unintended consequences, often going against popular wisdom while doing so. However, there is one historical policy in particular that popular wisdom acknowledges the failure of: alcohol prohibition in the United States between 1920 and 1933. What began as "one of the most extraordinary experiments in modern democratic history"[1], eventually descended into an era of crime, debauchery, and violence. Prohibition is one of the few fruits of the progressive movement that has not become shrouded in an aura of romanticism and falsehood, and thus it's unintended consequences are known far and wide. Economic thinking can help us identify the underlying logic behind the passage, efficacy, and unintended consequences of this "extraordinary experiment".

Prohibition had it's roots in the progressive era of the late 19th century. Religious Institutions had a role to play as well; Baptist and Methodist churches had been anti-liquor for centuries, and the Baptist Church remains so today[2]. However, like so many other Progressive movements, it was motivated by sentiments far beyond paternalistic concern for one's fellow man. The early 20th century was marked by a boom in immigration from Ireland, Italy, and other eastern European countries[3], and these immigrants brought with them their drinking habits. For Irish and Italians "part of daily life [was having] beer, wine, or whisky, even in moderation"[4]. As native-born Americans saw immigrants pour into the cities, and thus into the Saloons,

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[1] Sandbrook, 2012
[2] Okrent, 2010
[3] Krogstad, Keegan, 2015
[4] Okrent, 2010

anti-immigrant public sentiment became anti-liquor public sentiment. The single most crucial figure in channeling these feelings was an Ohio man named Wayne B. Wheeler, who founded one of the most successful advocacy groups of all time: The Anti-Saloon League[5]. The tactics of the ALS, which we will discuss in more detail below, coalesced into the passage of the 18th amendment in 1919, which banned "the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes..."[6]. The 18th Amendment is notable in that it is the only constitutional amendment which *limits* personal freedom rather than protecting it[7]. Also notable is the fact that neither the 18th Amendment nor the Volstead Act, which contained the provisions for enforcing prohibition, contained any restrictions on the consumption or possession of alcohol. Wheeler reasoned that if it became illegal to drink, it would be difficult, if not impossible, to get anyone to "testify against his supplier" [8].

While the effects of prohibition are contested, it is needless to say that it had unintended consequences beyond those that its proponents expected. In short, "Alcohol became more dangerous to consume; crime increased and became "organized"; the court and prison systems were stretched to the breaking point; and

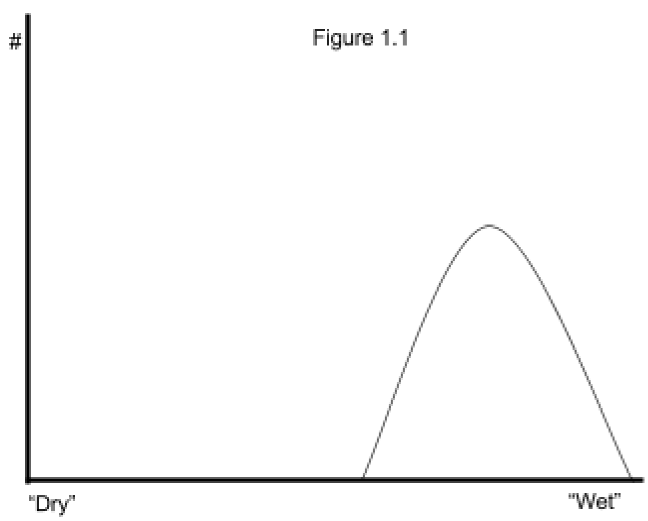
[5] Okrent, 2010
[6] United States Constitution, 1919
[7] Some include the 13th in this category, which arguably restricts one's freedom to own slaves, but it also protects one's freedom *not* to be a slave, so I exclude it.
[8] Okrent, 2010

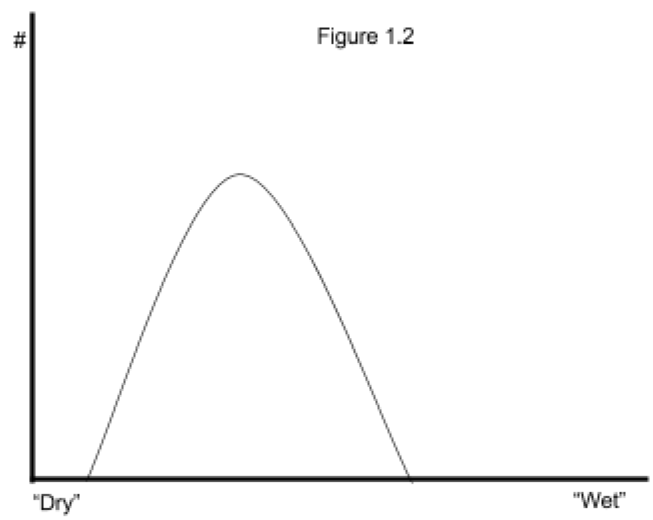
corruption of public officials was rampant"[9]. Thus, in 1933, Prohibition became "the only amendment ever to be repealed"[10].

The first question that emerges after a survey of the prohibition era is how the 18th Amendment was able to make it through the rigorous constitutional amendment process. As Okrent asks, "How did a freedom-loving people decide to give up a private right that had been freely exercised by millions upon millions since the first European colonists arrived in the New World?"[11]. The insights of Public Choice economists will be especially useful to us in answering these questions, so we should begin our analysis using one of the most basic models of political economy: the median voter theorem. First formulated by economist Duncan Black[12], the median voter theorem states that "if voters are fully informed, if their preferred outcomes can be arrayed along one dimension, if each voter has a single most-preferred outcome, and if decisions are made by simple majority rule, then the median voter will be decisive"[13]. Thus, *if* the following assumptions hold, then the passage of prohibition can be attributed to one thing and one thing only: a shift in the median voter's preference on alcohol. One theory explains how this shift might have come about- the entrance of women into the voting population due to the suffrage movement. Women were much less likely to consume alcoholic beverages and more likely to support prohibition, and the beginnings of the suffrage movement emerged from the temperance movement[14]. Early feminist

[9] Thorton, 1991
[10] Munger, Schaller, 1997
[11] Okrent, 2010
[12] Black, 1948
[13] Shughart 2007
[14] Okrent, 2010

Lucy Stone, writing in *The Lily*, wrote that "Intemperance is the great foe to [woman's] peace and happiness...surely she has a right to wield the pen for its suppression"[15]. The role of suffrage in the passage of prohibition was also noted by the Women's Christian Temperance Union, which proclaimed near the end of prohibition that "As long as the Nineteenth Amendment stands, the eighteenth will stand also!"[16]. We can easily model this change using the median voter theorem, showing the preference distribution of the voting population both before (Fig. 1.1) and after (Fig. 1.2) women's suffrage. However, the simplistic





assumptions of the median voter model means that it cannot be the endpoint of our analysis of how prohibition was passed. The median voter model assumes perfect information for example, and relaxing this assumption allows us to examine the effects of interest groups and rational ignorance. A related phenomena that certainly played a role in the passage of prohibition was the aptly named "Bootleggers and Baptists" theory of regulation. Developed by Bruce

[15] Stone, 1851
[16] Rose, 1997

Yandle[17], the “essence of the theory is that social regulation often develops when it is demanded by two distinctly different groups: ‘bootleggers’ taking political action in pursuit of economic gain, and ‘baptists’ driven by an avowed higher moral purpose or desire to serve the public interest”[18]. Criminals like Tom Dennison, the likes of which we will discuss later, were known to work with temperance supporters in order to create more restrictions on alcohol for economic gain[19]. While not as obviously criminal, prohibitionism also had “allies as disparate as Asa Candler, founder of the Coca-Cola Company...a teetotaler who also happened to see [profit] opportunity on the other side of the dry rainbow”[20]. On the “baptist” side, “drys” like W.D. Upshaw “supported both the Ku Klux Klan and woman suffrage, believing that both abetted the try movement”[21]. Wheeler and the ASL represented a new era in regulatory politics, and their success can be partially owed to their willingness to cohort with both literal and metaphorical bootleggers. One final testament to the crucial role of special interests in the passage of prohibition is the work of Michael Munger and Thomas Schaller, who conclude that prohibition’s repeal did not happen because of “a wholesale change in preferences of citizens”, but rather because “producer interests failed to mobilize effectively”, after using “regression analysis on state legislatures and state referenda on convention delegates”[22].

[17] Yandle, 1983
[18] Yandle, Smith, 2014
[19] Iorizzo, 2003
[20] Okrent, 2010
[21] Okrent, 2010, sic
[22] Munger, Schaller, 1997

When considering the question of the efficacy of prohibition, even the average uninformed American will be likely to attest that Prohibition was a failure, as the imagery of “speakeasies” is conjured hand-in-hand with mention of Prohibition and the 1920s. However, there are those who would contest the public view and maintain that prohibition was successful in curbing alcohol use. Jack S. Blocker, in an article entitled “Alcohol Prohibition as a Public Health Innovation, writes that “...Prohibition wiped out an industry. In 1916, there were 1300 breweries producing full-strength beer in the United States; 10 years later there were none. Over the same period, the number of distilleries was cut by 85%...The 318 wineries of 1914 became the 27 of 1925...The number of liquor wholesales was cut by 96% and the number of legal retailers by 90%. From 1919 to 1929, federal tax revenues from distilled spirits dropped from $365 million to less than $13 million, and revenue from fermented liquors from $117 million to virtually nothing”[23]. One need only glance at Blocker’s bibliography to see the flaw in his argument, as his sources for these statistics are, respectively, the *Statistical Abstract of the United States: 1928* from the US Bureau of the Census, and *Statistics Concerning Intoxicating Liquors*, from the US Treasury Department. These statistics would obviously fail to take into account illicit production of alcohol, thus they are an improper tool for gauging the state of the market during prohibition. However, as we can recall, the Volstead act only prohibited the production of alcohol, not consumption, which may be a better gauge on prohibition’s efficacy. In 1989 paper *Actually, Prohibition Was a Success*, Harvard’s Mark Moore, concludes that “alcohol consumption declined

[23] Blocker, 2006

dramatically during Prohibition. Cirrhosis death rates for men were 29.5 per 100,000 in 1911 and 10.7 in 1929. Admissions to state mental hospitals for alcoholic psychosis declined from 10.1 per 100,000 in 1919 to 4.7 in 1928. Arrests for public drunkenness and disorderly conduct declined 50% between 1916 and 1922. For the population as a whole, the best estimates are that consumption of alcohol declined by 30 percent to 50 percent"[24].

As any student of statistics can tell you, correlation does not equal causation, and while Moore's data may be sound, his conclusions might not be. Near the tail end of Prohibition, and economist named Clark Warburton attempted to estimate alcohol consumption both before and after prohibition, using some of the same metrics that Moore would a half-century later: "a series of outputs on agricultural goods used in alcohol production, arrests for drunkenness, and deaths caused by alcoholism".[25] What Moore found was interesting. Alcohol consumption began to plummet in 1917, the same year in which congress passed the Food Control Bill as a war measure. Passed in response to the first World War, the act "prevented foodstuffs from being distilled into liquors"[26], and was the first of many World War I restrictions on food production. In 1919, before the passage of prohibition, Alcohol consumption was already about half of its level in 1916[27]. After consumption bottomed out in 1921, it steadily rose again, until consumption was "about 65% of pre-Prohibition rates [by 1925] and just over 70% by 1929[28]. Thus, we can conclude that World War I restrictions caused a negative supply

[24] Moore, 1989
[25] Hall, 2014
[26] Hall, 2014
[27] Warburton, 1932
[28] Miron, Zwiebel, 1991

shock to the alcohol market, which was enhanced by the 18th amendment and the Volstead Act, but the market was quickly able to bounce back and boost consumption levels near their pre-prohibition values.

Even *if* we accept the claim of Blocker and Moore that Prohibition accomplished its intended effects, there is still the matter of unintended consequences to consider, the most notable of which is violence. Moore dismisses this out of hand, citing the fact that "Homicide rates rose dramatically from 1900 to 1010, but remained roughly constant during Prohibition's 14 year rule. Organized crime may have become more visible and lurid during Prohibition, but it existed before and after"[29]. However, Moore makes the same mistake with this claim that he did with his conclusion on the efficacy of prohibition- he fails to do any isolation of causation. A much more robust analysis of the effects of prohibition on violence is provided by Jeffrey Miron. Unlike Moore, Miron conducts a multivariate regression analysis in order to isolate the causal effect of prohibition law enforcement on violence, and found that, when controlling for unemployment, per capita income, execution rate, and incarceration rate, the enforcement of prohibition on drugs and alcohol had a coefficient of +150.6 on the homicide rate between 1930 and 1995[30]. An R^2 .95 suggests that this test is robust, and we can reject Moore's claim that prohibition did not increase violence.

While the empirical link between violent crime and prohibition is clear, the theoretical link is less so. Miron, for example, concludes that "the activities of any market give rise to commercial disputes, and these disputes give rise to a demand for

[29] Moore, 1989
[30] Miron, 1999

dispute resolution. In general there are many methods for resolving disputes- negotiations, lawsuits, arbitrations, and the like- each of which relies ultimately on an official disputes resolution system- courts or government regulatory agencies. Alternatively, participants in any market can attempt to 'resolve' disputes with violence. Evidently, participants in legal markets generally find it cheaper to use 'lawyers' than to use violence, since violence is rarely observed as a dispute resolution system in the markets for non-prohibited commodities. Under prohibition, however, it is more difficult to use the official dispute resolution mechanisms, since courts will typically not enforce contracts involving prohibited commodities, and disputants cannot easily use these mechanisms without incriminating themselves. Thus, black market participants use violence rather than lawyers to settle commercial disputes"[31]. Chimeli and Soares also endorse this mechanism, noting that "agents operating in illegal markets cannot resort to the justice system to guarantee property rights, to enforce contracts, or to seek protection from competitors improper behaviors. In these contexts, violence is used to enforce previous agreements and to fight for market share"[32].

However, Miron and other's theory- that violence is used in lieu of governmental dispute resolution mechanisms, is not without it's faults. The works of Elinor Ostrom[33], Peter Leeson[34], and Edward Stringham[35] all provide examples of collective dispute resolution mechanisms that do not rely on the state. To describe this phenomenon further, consider the distinction made by Hayek in Law, Legislation, and Liberty between

[31] Miron, 1999
[32] Chimeli, Soares, 2011
[33] Ostrom, 1999
[34] Leeson, 2014
[35] Stringham, 2015

Legislation, the set of rules which are imposed top-down upon a society, and Law, a "grown order" or "cosmos" which governs behavior, emerging from the bottom-up[36] [37]. Just because underground markets lack the influence of Legislation does not mean they lack Law. A question then emerges- why didn't participants in the underground alcohol economy develop such mechanisms? Michael Huemer gives an answer- "Unlike ordinary businesspeople, criminal individuals are willing to risk imprisonment for the sake of money; they are willing to forgo all social respectability; and they are willing to engage in bribery, threats, and violence to pursue their business. These are the traits needed to supply a good that is illegal"[38]. If we accept Huemer's conclusion that participants in underground markets have vastly different value scales than participants in the legal economy, then prohibiting a good means giving these individuals a comparative advantage where they originally had none. Comparing this theory to Miron's, we can discern two main categories of proposed mechanisms that lead to violence in underground markets: "Push" and "Pull" centric views. In the theories of Miron and others, existing suppliers of alcohol are "pushed" into acts of violence by the structure of the market once the market goes from legitimate to underground. The alternative proposes that the makeup of the market changes as a new incentive structure "pulls" in people who are more willing to commit violent acts.

Empirically determining which theory is more valid is difficult, as it requires knowledge of the lives of individuals who lived almost 100 years ago. However, after a

[36] Hayek, 1973
[37] Hayekian Law can also be called "Social Norms"
[38] Huemer, 2013

survey of the lives of some of the most colorful and notorious bootleggers, rum-runners, and gangsters of the prohibition era, a distinct trend begins to emerge-

- **George Cassiday** fought in World War I, but after he returned he couldn't qualify for his job laboring on the Pennsylvania Railroad, he says that "A friend of mine told me that liquor was bringing better prices on Capitol Hill than anywhere else in Washington and that a living could be made supplying the demand"[39].
- The famous **Al Capone** was involved in organized crime, not alcohol production or distribution, before prohibition was instituted[40].
- Political boss **Tom Dennison** operated gambling, prostitution, and other criminal ventures before prohibition, and also worked with temperance groups to eliminate legitimate competition[41].
- **Blaise Diesbourg** did not begin bootlegging until he started serving bar at his brother's hotel after the institution of prohibition[42].
- **Edward Donegan** was "a casual or odd-job laborer" in 1919 who began selling alcohol from within the Bureau of Prohibition after Prohibition was passed in 1920 [43].
- **Mickey Duffy** didn't begin bootlegging until after the passage of prohibition, before which he was serving hard time for robbery and hijacking[44].

[39] Cassiday, 1930
[40] Iorizzo, 2003
[41] Davis, 1977
[42] Gervais, 2009
[43] Funderburg, 2014
[44] Temple University, 2011

- **Angelo Genna** and his brothers were already a criminal enterprise before prohibition, and didn't obtain a federal license to produce industrial alcohol until 1919, which they then sold illegally[45].
- **Roy Hall** was a racing driver, who was pulled into rum-running by his cousin, Raymond Parks[46].
- **Ellsworth "Bumpy" Johnson** didn't begin working for "Beer Baron" Dutch Schultz until after a long stint in prison ending in 1932[47].
- **Enoch "Nucky" Johnson** was a notorious Atlantic City political boss involved in gambling and prostitution prior to prohibition[48].
- **Charley Jordan** was a country musician, who started bootlegging as a side career after the passage of prohibition[49].
- **George "Machine Gun" Kelly** started his storied criminal career in Memphis, Tennessee, which had been a "dry" state since 1838[50], going from driving a cab to producing illegal alcohol[51].
- A lifelong non drinker, **William McCoy** started using his freight business to run alcohol after the passage of prohibition[52].
- **Angelo Meli,** along with Leo Cullura and Chester LaMare, began extorting brothels, gambling houses, and bootlegging operations around the same time[53]

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[45] Gomes, 2009
[46] Thompson, 2006
[47] Gus, 1967
[48] Johnson, 2002
[49] Eder, 2015
[50] Okrent, 2010
[51] Hamilton, 2003
[52] Kobler, 1973
[53] Moldea, 1992

- .**Bugs "Bugsy" Moran** joined a juvenile gang as a youth, and was arrested for robbing warehouses, stealing horses, and the death of a police officer before the passage of prohibition[54].
- Founder of the notorious Gulf Cartel, **Juan Nepomuceno Guerra** began his criminal career by smuggling alcohol from Mexico into the United States[55].
- **Roy Olmstead** was a police Lieutenant prior to the passage of prohibition, until, "noting the potential for profit", he began his own bootlegging operation[56].
- **Mayo "Texas" Guinan** was an actress in a vaudeville act, who opened her own speakeasy, The 300 Club, after prohibition was introduced in 1920[57].
- **Emilio Picariello** was a monopolist in the area of bottle-selling in 1916, earning the title of "the bottle king". After the passage of prohibition, he began covertly selling alcohol in British Columbia[58].
- Finally, there's **Sherman Billingsley,** who was enlisted into the bootlegging business by his brother, who had, at the time, just been released from prison for murder[59].

These 20 men and women are only the initial results of a research on the participants in prohibition's underground market. However, none of them had any record of being involved in the "white market" for alcohol prior to prohibition; they all entered the market after prohibition's passage. When we examine the previous careers of these prohibition

[54] Bankston, 2007
[55] Dillon, 1996
[56] MrClary, 2002
[57] Berliner, 1993
[58] Brennanm, 2002
[59] Blumenthal, 1996

era-criminals, we find that they have quite a bit in common. While we already found that they were involved in non-alcohol related careers prior to the passage of prohibition, the *nature* of those careers is notable. Eight were involved in crime before prohibition's passage, the most common enterprise by far, but there were other common careers too. Cassiday, Johnson, Dennison, and Olmstead were all involved in politics, the military, or law enforcement. Guinan, Jordan, and Hall were all in the entertainment industry, being an actress, musician, and racecar driver respectively. Finally, Picariello and McCoy were entrepreneurs and business owners. All of these careers involve an abnormally high level of risk, whether physical (military) or financial (entrepreneurship). To sum up: we know that upon prohibition's passage, the existing suppliers of alcohol abandoned the market, and were replaced with risk-tolerant, violence prone individuals.

These new conclusions give much more historical credence to the "pull" theory of violence than the "push" theory, though the two are not mutually exclusive. However, aside from the one paragraph in Michael Huemer's lengthy The Problem of Political Authority, finding research on the exact mechanisms of this "pull theory" has been difficult. In order to properly analyze this theory, we must face down a similar question to the one that Hayek did in The Road to Serfdom[60]: How did the worst get on top?

What Miron's theory, which is well thought out and useful, lacks is consideration for what Paul Dragos Aligica calls "Institutional Diversity", which Aligica concludes means that "we should not limit ourselves to the theoretical frameworks of "The State" and "The Market". Instead, we need approaches that match the extensive variety of

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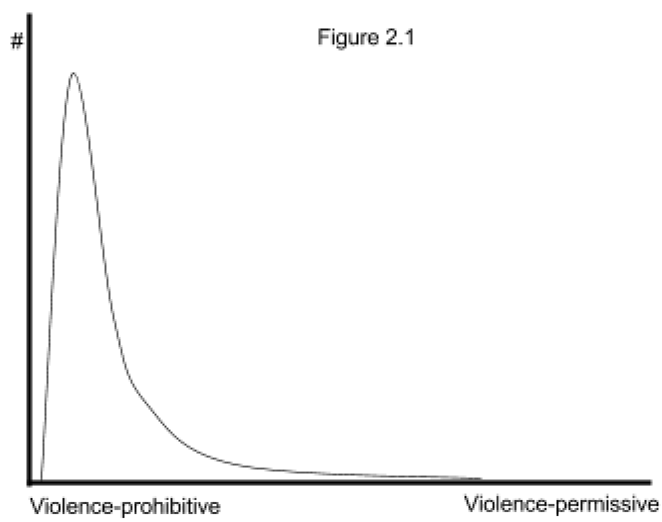
[60] Hayek, 1944

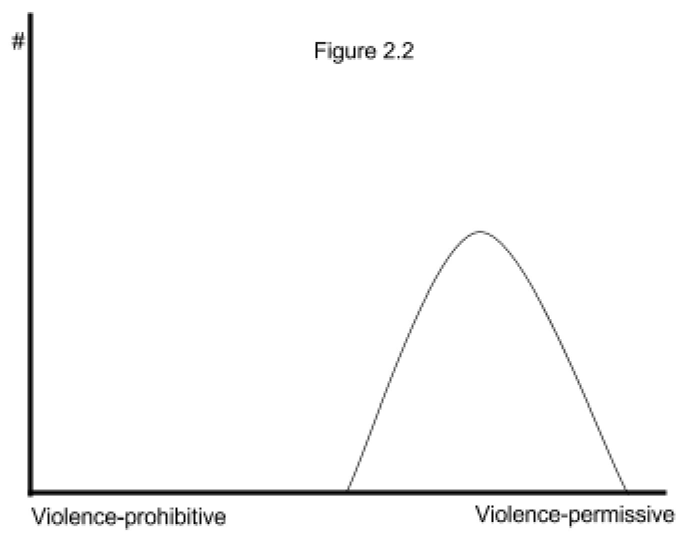
institutional arrangements existent in the world"[61]. Just because underground markets are outside the purview of the state does not mean that they operate in a Hobbesian state of nature. In other words, a lack of Legislation in underground markets does not preclude them from the influence of Law, and while the two may be different, some insights about the process by which Legislation is formed from Public Choice economists may be useful to answer our question about why the Law that emerged in the underground alcohol market during prohibition was so permissive towards violence. Consider the median voter model described earlier. Just as Legislation is dependant on the preferences of the median voter, Hayekian Law is also derived from the preferences of the group. If a population has the displayed(Fig. 2.1[62]) distribution of



preferences on violence, then we can expect social norms (Hayekian Law) to emerge that include strong prohibitions against violence. When the passage of prohibition created a drastic change in the comparative advantage needed to thrive in the market, the makeup of the market changed radically. A situation like this isn't unheard of in free markets. Consider the automatization of factory production in recent years, which has caused a comparative advantage to require computer and programming skills rather than manual

[61] Aligicia, 2014
[62] The extreme rightward skew is to be expected, considering how violence is a strong moré in most societies

strength and dexterity. What makes this particular transition in market composition unique is that the nature of the incentive shifts begets not only a different distribution of skills, but also a different distribution of preferences on violence. Thus, the distribution of preferences depicted in Fig. 2.1 is replaced by Fig. 2.2, and the median preference becomes much more permissive towards violence instead of prohibitive. This emergent Law is one which allows, or even glorifies violence as a means of conflict resolution, but, again, it's important to note that this does not mean that underground markets are a Hobbesian jungle. Emergent Law in underground liquor markets during prohibition may have been permissive towards violence, but it also included strong prohibitions *against* testifying to law enforcement ("snitching") and disrespecting elders[63], with other standards of behavior varying between syndicates[64].



To summarize the new insights that can be drawn from this research:

1. Presence of violence in underground markets like the ones found during prohibition is a result of institutions which promote or allow violence emerging, not a *lack of any* institutions.

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[63] Sardell, 2009
[64] The reader, I suspect, is familiar with the strict code of behavior associated with the Sicilian Mafia

2. These institutions are the result of violence and risk-tolerant individuals entering the market as existing suppliers leave, not existing suppliers *becoming* more risk tolerant or violent.
3. This shift in the makeup of the market is due to a distorted incentive structure created by government policy, *incorrectly* signaling that the above violent qualities constitute a comparative advantage where none existed before.

The most obvious analogue to prohibition in today's public policy debates is the "War on Drugs" declared by President Nixon in 1971, who spoke to congress on the need for "comprehensive reform of Federal drug enforcement laws"[65]. Violence in underground drug markets is well known, and the above selection effects certainly play a currently untapped role in understanding it. A similar shift from violence prohibitive Law to violence permissive Law could have occured in the Miami cocaine market in the 1980s, with the uptick in violence coinciding with the Mariel Boatlift, wherein a mass exodus of Cuban refugees included "2,746 criminals, the mentally ill, and other unwanted people..."[66]. The addition of these individuals into the market would shift the median violence preference, creating an environment which permits violence.

Consider also the selection effect created during the escalation of Mexico's drug war in 2006, which has resulted thus far in deaths upwards of 100,000[67]. The increased military action against the cartels signalled that a comparative advantage in drug distribution now required an even more intensive penchant for violence. The gruesome *Los Zetas* cartel, formed when Osiel Cardenas Guillen of the Gulf Cartel "convinced at

[65] Nixon, 1971
[66] Yoo, 1998
[67] Drug Policy Alliance, 2014

least 31 men to leave *military* service and fall under his command"[68], is an excellent example. After splitting from the Gulf Cartel after the escalation of the drug war, they have been known for unprecedented brutal acts of violence, such as the murder of "over 250 farmers and migrant workers in Mexico and Guatemala who refused to join their ranks"[69]. The institutional nature of this violence is noted by Ioan Grillo, who, writing about *Los Zetas*, said "violence was no longer a way of control but a basic language of communication. They committed atrocities that made even seasoned cartel bosses sick...they had gone beyond the pale"[70].

The most obvious policy prescription would be the legalization of drugs. Thus, violence permissive individuals would no longer have a comparative advantage in the market, and would pursue careers where they can serve their fellow man using their most valuable non-violent skills. The political feasibility of this solution, however, is questionable at best. An improvement on the margin would be to decrease the severity of enforcement of drug laws. This would decrease the average risk preference of individuals entering the market, and thus shift the distribution of preferences towards violence-prohibitive norms. Another option, if one accepts the argument that drug use has negative externalities, would be a tax upon addictive drugs. Our earlier conclusions about the passage of prohibition also have relevance for today's policy debates. The "bootlegger and baptists" paradigm has applications ranging from climate change legislation to consumer safety standards. Keeping a keen eye for the "bootleggers"

[68] Logan, 2012, emphasis mine
[69] Bertrand, 2015
[70] Grillo, 2011

behind “baptist” rhetoric could allow the public or popular media to better gauge the unintended consequences of proposed public policies.

As Mark Thornton of the Cato Institute puts it: “Prohibition was supposed to be an economic and moral bonanza. Prisons and poorhouses were to be emptied, taxes cut, and social problems eliminated. Productivity was to skyrocket and absenteeism disappear. The economy was to enter a never-ending-boom”[71]. As we navigate today’s economic and policy conversations, we are certainly no strangers to promises as bold and lofty as these. Yet, the same public that is fully aware of the unintended consequences that prohibition had for America still buys into the same style of rhetoric that got it passed in the first place. As defenders of a free society, prohibition can be used as an example of the ways in which government policy has failed in the past, but also how it will continue to fail in the future.

[71] Thornton, 1991