

CHAPTER 6

Sex, Booze, and Drugs

Before 1914, cocaine was legal in this country. Today it is not. Alcoholic beverages are legal in the United States today. From 1920 to 1933, they were not. Prostitution is legal in Nevada today. In the other forty-nine states, it is not.¹ All these goods—sex, booze, and drugs—have at least one feature in common: The consumption of each brings together a willing seller with a willing buyer, creating an act of mutually beneficial exchange (at least in the opinion of the parties involved). Partly because of this feature, attempts to proscribe the consumption of these goods have met with less than spectacular success and have yielded some peculiar patterns of production, distribution, and usage. Let's see why.

SUPPLY-SIDE ENFORCEMENT

When the government seeks to prevent voluntary exchange, it must generally decide whether to go after the seller or the buyer. In most cases (and certainly where sex, booze, and drugs are concerned), the government targets sellers, because this is where the authorities get the most benefit from their enforcement dollars. A cocaine or heroin dealer, even a small retail pusher, often supplies many dozens of users each day, as did speakeasies (illegal saloons) during Prohibition; a streetwalker may service three to ten "tricks" per night. By incarcerating the supplier, the police can prevent several, or even several hundred, transactions from

¹ These statements are not entirely correct. Even today, cocaine *may* be obtained legally by prescription from a physician. Prostitution in Nevada is legal only in counties that have chosen to permit it. Finally, some counties in the United States remain "dry," prohibiting the sale of beer, wine, and distilled spirits.

taking place, which is usually much more cost-effective than going after the buyers one by one. It is not that the police ignore the consumers of illegal goods. Indeed, sting operations, in which the police pose as illicit sellers, often make the headlines. Nevertheless, most enforcement efforts focus on the supply side, and so shall we.

Law enforcement activities directed against the suppliers of illegal goods increase the suppliers' operating costs. The risks of fines, jail sentences, and possibly even violence become part of the costs of doing business and must be taken into account by existing and potential suppliers. Some entrepreneurs will leave the business, turning their talents to other activities. Others will resort to clandestine (and costly) means to hide their operations from the police. Still others will restrict the circle of buyers with whom they are willing to deal to minimize the chances that a customer is a cop. Across the board, the costs of operation are higher, and at any given price, less of the product will be available. There is a reduction in supply, and the result is a higher price for the good.

This increase in price is, in a sense, exactly what the enforcement officials are after, for the consumers of sex, booze, and drugs behave according to the **law of demand**: The higher the price of a good, the lower the amount consumed. So the immediate impact of the enforcement efforts against sellers is to reduce the consumption of the illegal good. There are, however, some other effects.

VIOLENCE EMERGES

First, because the good in question is illegal, people who have a **comparative advantage** in conducting illegal activities will be attracted to the business of supplying (and perhaps demanding) the good. Some who have an existing criminal record may be relatively unconcerned about adding to it. Others may have developed skills in evading detection and prosecution while engaged in other criminal activities. Simply put, when an activity is made illegal, people who are good at being criminals are attracted to that activity.

Illegal contracts are usually not enforceable through legal channels. (Even if they were, few suppliers of illegal goods would be foolish enough to complain to the police about not being paid for their products.) Thus, buyers and sellers of illegal goods must frequently resort to private methods of contract enforcement, which often entails violence.²

² Fundamentally, violence—such as involuntary incarceration—also plays a key role in the government's enforcement of legal contracts. We often do not think of it as violence, of course, because it is usually cushioned by constitutional safeguards and procedural rules.

Hence, people who are relatively good at violence are attracted to illegal activities and have greater **incentives** to employ their talents. This is one reason why the murder rate in America rose to record levels during Prohibition and then dropped sharply when liquor was again made legal. It also helps explain why the number of drug-related murders soared during the 1980s and why drive-by shootings became commonplace in many drug-infested cities. The Thompson submachine gun of the 1930s and the MAC-10 machine gun of the 1980s were just low-cost means of contract enforcement.

USAGE CHANGES

The attempts of law enforcement officials to drive sellers of illegal goods out of business have another effect. Based on recent U.S. wholesale prices, \$300,000 worth of pure heroin weighs less than ten pounds, while \$300,000 worth of marijuana from Mexico weighs about three hundred pounds. As any drug smuggler can tell you, hiding ten pounds of contraband is a lot easier than hiding three hundred pounds. Thus, to avoid detection and prosecution, suppliers of the illegal good have an incentive to deal in the more valuable versions, which for drugs and booze mean the more potent versions. Bootleggers during Prohibition concentrated on hard liquor rather than on beer and wine. Even today, moonshine typically has roughly twice the alcohol content of legal hard liquor such as bourbon, scotch, or vodka. After narcotics became illegal in this country in 1914, importers switched from the milder opium to its more valuable and more potent derivative, heroin.

The move to the more potent versions of illegal commodities is enhanced by enforcement activities directed against users. Not only do users, like suppliers, find it easier (cheaper) to hide the more potent versions, but there is also a change in relative prices due to user penalties. Typically, the law has lower penalties for using an illegal substance than for distributing it. Within each category (use or sale), however, there is commonly the same penalty regardless of value per unit. For example, during Prohibition, a bottle of wine and a bottle of more expensive, more potent hard liquor were equally illegal. Today, the possession of one gram of heroin brings the same penalty, regardless of its purity. Given the physical quantities, there is a fixed cost (the legal penalty) associated with being caught, regardless of value per unit (and thus potency) of the substance. Hence, the structure of legal penalties raises the relative price of less potent versions, encouraging users to substitute more potent versions—heroin instead of opium, hashish instead of marijuana, and hard liquor instead of beer.

Penalties against users also encourage a change in the nature of usage. Before 1914, cocaine was legal in this country and was used openly as a mild stimulant, much as people today use caffeine. (Cocaine was even an ingredient in the original formulation of Coca-Cola.) This type of usage—small, regular doses over long time intervals—becomes relatively more expensive when the substance is made illegal. Extensive usage (small doses spread over time) is more likely to be detected by the authorities than intensive usage (a large dose consumed at once), simply because possession time is longer and the drug must be accessed more frequently. Thus, when a substance is made illegal, there is an incentive for consumers to switch toward more intensive usage. Rather than ingesting cocaine orally in the form of a highly diluted liquid solution, as was commonly done before 1914, people switched to snorting or injecting it. During Prohibition, people dispensed with cocktails before dinner each night; instead, on the less frequent occasions when they drank, they more often drank to get drunk. The same phenomenon is observed today. People under the age of twenty-one consume alcoholic beverages less frequently than people over the age of twenty-one. But when they do drink, they are more likely to drink to get drunk. Binge drinking becomes the norm.

INFORMATION COSTS RISE

Not surprisingly, the suppliers of illegal commodities are reluctant to advertise their wares openly; the police are as capable of reading billboards and watching television as potential customers are. Suppliers are also reluctant to establish easily recognized identities and regular places and hours of business because to do so raises the chance of being caught by the police. Information about the price and quality of products being sold goes underground, often with unfortunate effects for consumers.

With legal goods, consumers have several means of obtaining information. They can learn from friends, advertisements, and personal experience. When goods are legal, they can be trademarked for identification. The trademark cannot legally be copied, and the courts protect it. Given such easily identified brands, consumers can be made aware of the quality and price of each one. If their experience does not meet expectations, they can assure themselves of no further contact with the unsatisfactory product by never buying that brand again.

When a general class of products becomes illegal, there are fewer ways to obtain information. Brand names are no longer protected by law, so falsification of well-known brands ensues. When products do not meet expectations, it is more difficult (costly) for consumers to punish

suppliers. Frequently, the result is degradation of and uncertainty about product quality. The consequences for consumers of the illegal goods are often unpleasant and sometimes fatal.

DANGEROUS SEX

Consider prostitution. In Nevada counties where prostitution is legal, the prostitutes are required to register with the local authorities, and they generally conduct their business in well-established bordellos. These establishments advertise openly and rely heavily on repeat business. Health officials test the prostitutes weekly for venereal disease and monthly for HIV (the virus that causes AIDS). Contrast this with other areas of the country, where prostitution is illegal. Suppliers are generally streetwalkers, because a fixed, physical location is too easy for the police to detect and raid. They change locations frequently to reduce harassment by police. Repeat business is reported to be minimal. Frequently, customers have never seen the prostitute before and never will again.

The difference in outcomes is striking. In Nevada, the spread of venereal disease by legal prostitutes is estimated to be almost nonexistent. To date, none of the registered prostitutes in Nevada has tested positive for HIV. By contrast, in some major cities outside of Nevada, the incidence of venereal disease among streetwalkers is estimated to be near 100 percent, while the incidence of HIV can reach the double digits. Due to the lack of reliable information in markets for illegal goods, customers frequently do not know exactly what they are getting. As a result, they sometimes get more than they bargained for.

DEADLY DRUGS AND BAD BOOZE

Consider alcohol and drugs. Today, alcoholic beverages are heavily advertised to establish their brand names and are carried by reputable dealers. Customers can readily punish suppliers for any deviation from the expected potency or quality by withdrawing their business, telling their friends, or even bringing a lawsuit. Similar circumstances prevailed before 1914 in this country for the hundreds of products containing opium or cocaine.

During Prohibition, consumers of alcohol often did not know exactly what they were buying or where to find the supplier the next day if they were dissatisfied. Fly-by-night operators sometimes adulterated liquor with far more lethal methyl alcohol. In tiny concentrations, this made watered-down booze taste like it had more kick, but in only slightly higher concentrations, the methyl alcohol blinded or even killed

the unsuspecting consumer. Even in “reputable” speakeasies (those likely to be in business at the same location the next day), bottles bearing the labels of high-priced foreign whiskeys were refilled repeatedly with locally (and illegally) produced rotgut until their labels wore off.

The adulterated booze, combined with the incentive to consume intensively, was deadly. The death rate from acute alcohol poisoning (due to overdose) was more than thirty times higher than it is today. In 1927 alone, 12,000 people died from acute alcohol poisoning, and many thousands more were blinded or killed by contaminated booze.

During the 1990s, the use of prescription opioid painkillers (such as Oxycodone) began to rise, as doctors sought more effective means of relieving pain among an aging generation of baby boomers. Along with this came higher rates of prescription drug abuse. When a federal crackdown forced manufacturers of powerful painkillers to make them resistant to abuse, the abusers quickly switched to illegal but easy-to-obtain heroin and its much more powerful synthetic cousin, fentanyl (the drug that killed the pop star Prince).

Today cheap-to-make fentanyl is used as a cutting agent to heighten the effects of other illegal drugs, including heroin, and to increase the potency of counterfeit look-alikes of prescription medicines such as Percocet and Xanax. The problem is that fentanyl is fifty times more potent than heroin, and an amount as small as three grains of sugar can be lethal for an adult. Drug overdoses now kill about 48,000 people a year in the United States. About 19,000 of these are attributed to prescription painkillers, with another 11,000 tied to heroin. But fentanyl is so deadly and has become so widespread as an adulterant in illegal drugs that it may actually be responsible for many of the overdoses attributed to other drugs. Clearly, *caveat emptor* (“let the buyer beware”) is a warning to be taken seriously if one is consuming an illegal product.

INFORMATION AND THE INTERNET

The importance of (the lack of) information in markets for illegal goods is highlighted by the growing role of the Internet in driving one of these markets—that for sexual services. Over the last twenty years, a number of Internet sites have evolved around the world on which prostitutes advertise the services and prices they offer. Customers can even post reviews, much as they might do on TripAdvisor for restaurants or hotels. Other sites enable suppliers to exchange information about their clients—not names, of course, but whether they are prone to violence or fail to pay for services rendered. There are even sites that enable buyer and seller to share verified results from sexual-health tests.

There is growing evidence that these sites have had salutary effects on both sides of the market. Suppliers have been able to move off the streets, because a public display of their bodies is no longer the only way to advertise. And because word about violent customers now spreads more rapidly, Internet-based suppliers seem to suffer less violence than their streetwalking counterparts. On the demand side, customers are much more likely to get what they hoped for, rather than what they wanted to avoid. And in some cases, buyer and seller have been able to eliminate the middleman—the madam or pimp who previously took a share of the fees.

Parallel developments have occurred in those states where marijuana has been made legal for medical purposes, and especially in the states where it is now lawful for all adults to consume. Customer reviews of various strains are available on the Internet, and suppliers advertise their wares as they would other goods. Product quality has risen, and the legal and physical risks facing both buyers and sellers have fallen sharply. Total consumption of marijuana in these locales has risen, but consumption among underage individuals has not—presumably because suppliers don’t want to lose their licenses by making unlawful sales.

SUCCESS IS LIMITED

We noted at the beginning of this chapter that one of the effects of making a good illegal is to raise its price. One might well ask, “by how much?” During the early 1990s, the federal government was spending about \$2 billion per year in its efforts to stop the importation of cocaine from Colombia. One study concluded that these efforts had hiked the price of cocaine by 4 percent relative to what it would have been, had the federal government done nothing to interdict cocaine imports. The study estimated that the cost of raising the price of cocaine an additional 2 percent would be \$1 billion per year. More recently, Nobel Laureate Gary Becker and his colleagues have estimated that America’s war on drugs costs at least \$100 billion per year. And the results? The prices of heroin and cocaine are at record-low levels.

Several years ago, most states and the federal government began restricting sales of cold medicines containing pseudoephedrine, because that ingredient was widely used for making the illegal stimulant methamphetamine in home laboratories. The restrictions succeeded in reducing home production of “meth.” They also led to a huge increase in imports of a far more potent version of meth from Mexico. Overall, it is estimated that neither consumption of nor addiction to methamphetamine was reduced by the restrictions. But overdoses from the drug

rose sharply because of the greater purity of the imports. Moreover, the “shake-and-bake” method of domestic production that arose after the crackdown on cold medicines had an unintended and often fatal consequence. The mixing process often goes wrong, and when it does, the ensuing explosion causes horrific and sometimes fatal burns of the head and upper torso. Many emergency rooms and hospital burn centers were overwhelmed by these casualties.

Consider also the government’s efforts to eliminate the consumption of alcohol during the 1920s and 1930s. They failed so badly that the Eighteenth Amendment, which put Prohibition in place, was the first (and so far the only) constitutional amendment ever to be repealed. As for prostitution, it is reputed to be “the oldest profession” and, by all accounts, continues to flourish today.

The government’s inability to halt the consumption of sex, booze, or drugs does not mean that its efforts have failed. Indeed, the impact of these efforts is manifested in their consequences, ranging from overdose deaths to disease-ridden prostitutes. The message instead is that when the government attempts to prevent mutually beneficial exchange, even its best efforts are unlikely to meet with spectacular success.