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# Forbidden Fruit

## *When Prohibition Increases the Harm It Is Supposed to Reduce*



DWIGHT FILLEY

Various activities, such as drinking alcohol, smoking tobacco, and using psychoactive drugs, have been prohibited by governments at various times. Ostensible motives for the prohibitions have included helping people to lead “good” lives (in the opinion of the lawmakers) by keeping them from temptation, and preventing behavior that harms society as a whole. Evidently lawmakers have assumed that if they prohibit an activity deemed harmful, then the harm individuals do to themselves and to society will decrease—corruption aside, why else would they impose such prohibitions? Let us examine the evidence for their assumption. If it is incorrect, if indeed prohibiting an activity causes it to increase rather than decrease, then the whole prohibitionist program is called into serious question.

My thesis is that because reducing only the harmful types or aspects of certain behaviors is difficult, governments often resort to prohibiting all types or aspects of the behavior, both the harmful and the benign. Such flat prohibition often leads to an increase, rather than a decrease, of the harmful behavior.

In reviewing the literature on the effects of such laws, one repeatedly sees a curious pattern. Although conventional wisdom presumes that a prohibitory law will have the desired effect and lawmakers act in accordance with such “wisdom,”

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careful studies of the operation of the laws often show the opposite effect: the behavior they are supposed to inhibit actually increases.

It is beyond the scope of this article to determine exactly why that seemingly strange reaction sometimes occurs. But even a little imagination suffices to suggest some possible reasons. Some people simply enjoy doing what is forbidden, for the thrill of breaking the rules. Others may resent being told what to do, preferring to be asked or persuaded. People may resent living under laws that restrict nonabusers in an attempt to constrain the abusers, so the intrinsic injustice of blanket prohibitions may prompt perverse reactions. Finally, when scarce police and court resources are diverted toward the prevention of the nonabusive forms of behavior, fewer resources remain to be used in preventing the abusive behavior.

There is ample evidence that arresting, convicting, and punishing wrongdoers who harm others reduces such harmful behavior. However, as I will show, prohibiting all related behavior in an attempt to reduce the harmful portion is far more problematic, and often is counterproductive. If prohibitory laws have the opposite of the intended effect, that outcome has profound ramifications for policy makers. Let us consider some cases.

### **Prohibiting Teen Smoking**

There has been a long history of attempts to prohibit cigarette smoking. All such attempts have failed.

Washington, North Dakota, Iowa, and Tennessee banned the sale of cigarettes in the 1890s, but the laws were generally ignored (Dillow 1981, 94–107). Although good data apparently do not exist, some evidence indicates that cigarette use declined between 1896 and 1901 but then increased continuously until the prohibitions were repealed between 1911 and 1922 (104). Cigarette sales continued to climb in the United States until 1965 (*Statistical Abstract* 1971, 701; 1996, 700). Thus, if the limited available data are correct, the prohibited activity increased during the period of prohibition and continued to increase after prohibition was repealed.

After World War II, cigarettes were in extremely short supply in Germany because of rationing and the generally disordered economic conditions. That de facto prohibition of smoking gave the Germans a sense of how de jure cigarette prohibition would operate. The episode was recalled during a debate on cigarette prohibition in the German Parliament in 1974, where the conclusion was:

To outlaw production and trade would not turn smokers into non-smokers. It would, on the contrary, create a situation much like the one after the last war, when—in spite of the shortages—the number of smokers increased. There would certainly develop a black market, and the use of all sorts of ersatz substances would only raise the risks to the health of the users. Prohibition, therefore, is no solution. (Hess 1996, 55)

More recently, the focus in the United States has shifted to warnings, restrictions, and high taxes rather than prohibition. The decline in cigarette use in the United States since 1965, noted earlier, may point to a more effective alternative to prohibition in reducing harmful behavior.

A notable exception to the abandonment of prohibition of cigarettes has been the prohibition of the sale of cigarettes to minors. The conventional wisdom, of course, holds that such prohibition will reduce teen smoking. All fifty states prohibit cigarette sales to minors, but a study reported in the *New England Journal of Medicine* (Rigotti and others 1997) finds that such laws are rarely enforced.

To determine whether stronger enforcement efforts would reduce teen smoking, the researchers compared six Massachusetts towns, three with increased enforcement measures and three as controls. They concluded, "The rate of current tobacco use [among teens] rose in the intervention communities but remained stable in controls, the reverse of what would have been expected; however this difference was of borderline significance ( $P = .05$ )" (Rigotti and others 1997, 1048). The researchers speculate that teens found it easy to find vendors willing to sell to them in spite of the increased enforcement, and that teens found it easy to get cigarettes from adults or to buy them in neighboring towns where enforcement was not so strict. Vending machines offered another obvious source.

Two previous studies (Jason, Anes, and Birkhead 1991; DiFranza, Carlson, and Caisse 1992) did find that teenage smoking diminished when enforcement compliance reached 90 percent (that is, when 90 percent of minors' attempts to purchase tobacco failed). However, those studies failed to employ controls. As it happened, teen smoking was declining generally during the period of the studies, so it was impossible to determine whether the enforcement efforts or the general decline caused the outcome reported. The findings of the later, more careful study by Rigotti and others (1997) strongly suggest that the general decline of teen smoking occurring at the time of the earlier studies was actually responsible for the apparent success of prohibition.

N. A. Rigotti and associates (1997) observe:

Reducing young people's access to tobacco has become a cornerstone of public policy regarding tobacco control in this decade. A growing number of federal, state, and local laws and regulations are intended to accomplish this goal. This activity has occurred in the absence of evidence clearly supporting its efficacy, and therefore there has been debate in the public health community about the wisdom of the current focus on reducing access. (1048)

Cigarette use has been declining in America since 1965 (*Statistical Abstract* 1971, 701; 1996, 700), apparently because of information campaigns about the adverse health effects of smoking. However, in recent years, teen use of cigarettes has risen. According to Jacob Sullum, "The share of teenagers reporting past-month use of cigarettes rose from 18.4 percent in 1992 to 20.2 percent in 1995" (1996, 8). That increase by

itself does not prove the counterproductivity of prohibition, but it is noteworthy. Despite a decline in smoking among the general population, which is bombarded with anti-smoking messages but allowed to smoke at will, teen smoking has risen even though it is prohibited. Lawmakers take note.

## Prohibiting Teen Drinking

Attempts to prohibit the consumption of alcohol also have a long history, with equally mixed results. The Great Experiment, as the Eighteenth (Prohibition) Amendment of the U.S. Constitution was known, apparently did succeed in reducing overall alcohol consumption. But researchers S. B. Duke and A. C. Gross (1993) concluded, “if consumption of alcohol was reduced, it wasn’t by much; the costs of enforcement, in money, corruption, crime, disrespect for the law, alcohol and related poisonings far exceeded, by virtually anyone’s measurements, the tiny gains in alcohol control” (86).

Recent research has found that moderate alcohol consumption also has health benefits, primarily a reduced risk of heart attack. For this reason, among others, calls to prohibit alcohol are rarely heard today. However, as with cigarettes, prohibition of sales to minors is the universal rule. The most obvious justification for such prohibition is the prevention of drunk driving by teenagers.

Because accidents involving drunk driving are officially recorded, along with the age of the offenders, such statistics are a relatively reliable and easily studied indicator of teen alcohol abuse. Again, the conventional wisdom is that reduced access to alcohol will reduce teen drunk driving. A general decline in driving fatalities has coincided with the various states’ raising the legal drinking age to twenty-one. Advocates of prohibition were quick to credit the new laws, and a large study by the Insurance Institute for Highway Safety tried to prove the point (Williams and others 1983).

As with the flawed teen-smoking studies cited earlier, the Insurance Institute study ignored the real possibility that prohibitory laws had no effect. A more careful study by M. A. Males compared states that raised their legal drinking ages with other states that did not do so during the same period. The more rigorous study found:

States that did not raise their MLPA’s [minimum legal purchase ages] during the 1976–81 period experienced a slightly larger decrease in fatal crashes among drivers under twenty-one years of age than did those states that did raise their MLPA’s. The difference is not large enough to be called significant, but it does suggest that raised drinking ages are not associated with any net reductions in fatal crashes by young drivers. (Males 1986, 191)

Indeed, the more careful study found a slight *increase* in teen fatal crashes associated with alcohol where teen drinking was prohibited.

Males also refers to “the utter failure of legislative efforts to ban or control teenage drinking” (1986, 205). He observes that responsible drinking is a learned behav-

ior, somewhat like driving or the skills used in one's occupation. To prohibit a potentially dangerous activity is a poor way to provide training in that activity, particularly when such efforts only force teens to "practice" their new skill in secret, among other unskilled beginners.

At this juncture it is appropriate to note that the literature of prohibition contains a great deal of sloppy research, much of it seemingly carried out with the (no doubt) well-intentioned goal of justifying legislation aimed at improving social conditions. Too often, however, researchers with a bias find what they are looking for.

## **Prohibiting Advertising**

One currently popular means of reducing the consumption of products deemed undesirable is to prohibit their advertisement. In the United States, it is illegal to advertise hard liquor and tobacco products on radio and television, and there is much debate about whether to allow tobacco ads of any kind to be directed toward minors. The assumption is that such ads increase the consumption of the product deemed harmful by the government. However, economic theory calls that assumption into question.

As Massimo Motta (1996) observes, advertising is of two basic sorts: informational and persuasive. Informational ads tell buyers about a new product or a new supplier of existing products; often they describe product attributes, prices, and other terms on which products are offered for sale. Such ads tend to drive down prices by assisting buyers in their comparison shopping. On the other hand, persuasive ads generally attempt to woo buyers from one well-known brand to another. Liquor and cigarette ads tend to fall into this category, as well-known brands fight for market share. These ads rarely mention prices; they focus on intangible benefits such as quality of life, taste, "coolness," and so on. Extreme examples of such ads feature the Marlboro Man and Joe Camel, neither of whom makes any claims at all.

A ban on advertising tends to force liquor and cigarette competitors to compete on the basis of price, because the sellers find it difficult to project their particular image without ads. At the same time, a prohibition of advertising reduces their overall cost of production as their ad budgets plummet. Such cost reduction allows and even forces prices to drop, and lower prices induce increased consumption.

The demand for cigarettes is price inelastic (Goodin 1989), which means, for example, that a 10 percent increase in price will lead to a less than 10 percent decrease in the amount purchased. But, as with any good, there is still an inverse correlation—higher prices do cause lower consumption to some degree. Thus, bans on persuasive ads, by driving down prices, have an effect that tends to offset the intended effect. Depending on market conditions, advertising bans can have the net effect of an increase in cigarette consumption due to lower prices.

## Gun Control Measures

Another quasi-prohibition movement involves firearms. Although the Second Amendment to the U.S. Constitution bars outright prohibition, gun-control advocates are constantly trying to prohibit various aspects of gun ownership. Thus, they would ban so-called Saturday night specials (or even all handguns), so-called assault weapons, and the carrying of concealed firearms.

The question is whether such bans reduce the level of violence. Again, there is evidence that the reverse is true, and that the sound bite “more guns equals less crime” may actually be correct. Writing in the *Journal of the Medical Association of Georgia*, Edgar A. Suter (1994) states: “Crime and homicide rates are highest in jurisdictions, such as Washington D.C., New York City, Chicago and California, where the most restrictive gun licensing, registration and prohibition schemes exist” (143; see also his graph 1). Given just this information, of course, it cannot be determined whether the restriction of guns caused the crime rate to go up or the preexisting high crime rate caused gun controls to be adopted.

In an attempt to answer that question, scholars have examined crime rates before and after the enactment of gun-control laws. For example, the toughest gun-control law in America was enacted in Evanston, Illinois, in 1982, when the city banned nearly all handguns within its limits. (A few smaller towns have even stricter laws, but they are so small that statistical evaluation is nearly meaningless. In 1980 Evanston had a population of 73,431.) If a little gun control is a good thing, then the toughest control should show the greatest reduction in crime. However, a survey by Gary Kleck (1991) of crime in Evanston in the years before and after the ban went into effect showed statistically trivial changes in the rates of homicide, assault, and robbery. Thus, even the most stringent form of gun control failed to reduce the frequency of violent crime.

Advocates of gun control often point to the far lower homicide rate in Japan, where gun ownership is rare. They claim that if we could only reduce gun ownership in America to that low level, we too would enjoy a correspondingly lower crime rate. It should be obvious upon reflection, however, that such cross-cultural comparisons are fraught with peril. The two nations differ enormously not only in homicide rates but in most other sociological factors thought to contribute to homicide. These include cultural and ethnic homogeneity and the willingness to obey authority, among others. In an attempt to make the comparison a little more valid, Kleck compared homicide rates of Japanese-Americans living in America with homicide rates of Japanese living in Japan. He found that for the period 1976–78, Japanese-Americans, with ready access to guns, committed 1.04 homicides per 100,000 population. In Japan, where gun ownership is almost unknown, the rate was 2.45, or more than double (Kleck 1991). Although this comparison still does not adequately control for other variables, it does suggest that prohibiting gun ownership may actually contribute to raising the homicide rate rather than reducing it.

Similarly, prohibiting the carrying of concealed handguns has had an effect opposite of that intended. The intent of the prohibition was of course to reduce the number of guns carried by the general public and thereby reduce handgun violence. However, handgun violence is not reduced when concealed carrying is prohibited. In fact, violence is reduced when concealed carrying is permitted.

Thirty-one states have laws requiring officials to issue concealed-weapons permits to qualified applicants (those who are mentally stable and have no criminal record). According to John Lott and D. B. Mustard (1996), those laws deter violent crime by significant amounts (and produce only an extremely small increase in accidental deaths from handguns). Specifically, “When state concealed handgun laws went into effect in a county, murders fell by 7.65 percent and rapes and aggravated assaults fell by 5 and 7 percent, respectively” (Lott and Mustard 1996, 1).

Although the question lies slightly outside the scope of this article, the preceding findings may leave the reader wondering in some desperation what can be done about America’s high level of violence. If we permit citizens to carry concealed handguns, murders fall by only about 8 percent. Although such a reduction does not come close to solving the problem, it is a start. David Kopel suggests another part of the solution (1994, 153–55). He notes that both Switzerland and Japan have far lower homicide rates than the United States, but Switzerland requires every able-bodied male between the ages of twenty and fifty to keep a fully automatic assault rifle in his house, whereas in Japan gun ownership is all but unknown. Gun ownership alone therefore cannot explain low crime rates. Kopel concludes: “The crucial variable is not the presence of firearms, but the degree to which young people are successfully socialized into non-criminal, responsible behavior patterns” (154).

## Prohibiting Drug Use

The very existence of drug prohibition makes it difficult, if not illegal, to conduct studies of the consequences of decriminalization. As a result such studies are not readily available, if they exist at all. However, it is possible to gain some understanding indirectly.

Generally, prohibition has the effect of shifting consumption toward more concentrated forms of the prohibited product, because such products are more easily smuggled and more easily consumed covertly. During America’s experiment with alcohol prohibition, for example, consumption shifted toward hard liquor and away from the less potent wine and beer, a perverse result from which the nation still has not fully recovered (Barnett 1994, 2609). With respect to illegal drugs, this phenomenon is even more pronounced. According to Randy Barnett,

in cultures where opiates are legal, they are primarily consumed by smoking, snorting or inhaling fumes. Each of these practices may lead to addiction, but only rarely if ever to death or disease. Injection, a more efficient method



of consumption resulting from the artificially high prices created by prohibition, carries with it the dangers of overdose and now AIDS, and much more easily leads to dependency. (1994, 2609)

The more reasonable advocates of drug prohibition do not strongly oppose drug use per se; rather, they underline the problems of drug abuse. Yet the policy they advocate—prohibition—though presumed to reduce overall drug use, may seriously increase drug abuse.

## **Banning Pornography**

The possession, sale, and purchase of various forms of erotic art and literature have been repeatedly permitted and prohibited throughout history. The presumption is that viewing such material leads to sex crimes. The Meese Commission's report on pornography (1986), commissioned by a Republican administration, certainly insisted on that interpretation. Interestingly, a similar report commissioned by a Democratic administration (*Report of the Commission on Obscenity and Pornography*, 1970) reached the opposite conclusion.

Unfortunately for the prohibitionists, the evidence again confounds their presupposition. Although many researchers have attempted to find a positive link between pornography and sexual abuse and violence, "the existence of the alleged casual relationship is conclusively refuted by the fact that levels of violence and discrimination against women are often *inversely* related to the availability of sexually explicit materials, including violent sexually explicit materials" (Strossen 1995, 254, emphasis in original).

Probably the largest natural experiment along these lines resulted from the lifting of the prohibition of pornography in Denmark in 1965. As R. Ben-Veniste reports,

If pornography is indeed a cause of sex crime, we would expect to see a rise in Copenhagen's sex crime rate since pornography began to be freely disseminated. On the other hand, a decrease in the rate of sex crime, barring other explanations, would certainly give credence to the catharsis or safety valve theory. An analysis of Copenhagen police statistics reveals that the rate of reported sex crimes has declined sharply during the period that hard-core pornography has been freely disseminated. (1971, 246)

Ben-Veniste examined crime rates through 1969 and found that lifting prohibition resulted in less of the harmful behavior that the prohibition had been intended to reduce. A second study (Kutchinsky 1971) reached similar conclusions (see especially p. 165, graph 2) and found that the most dramatic drop in sex crimes was in the category of child molestation. "Between 1965 (the first year of the availability of hard-core pornographic pictures) and 1969 (the year of . . . peak production), the number of cases of this type dropped from 220 to 87" (179).

## The 55-Mile-per-Hour Speed Limit

A more prosaic example of the reaction to laws that reduce the freedom of all in order to correct the harmful behavior of a few is the imposition of a 55-mile-per-hour speed limit on the interstate highway system. In 1973, in response to the oil shock, the federal government reduced the speed limit to 55 miles per hour; in 1987 it allowed the states to raise it again. Because some states did so whereas others did not, researchers were quick to compare the results (Will 1997). The conventional wisdom held that highway fatalities would rise by 4,400 to 6,000 per year. Forty states increased their speed limits, but rather than suffering an increase in highway fatalities, they enjoyed a reduction in statewide highway fatalities of 3.4 to 5.1 percent, as compared to the fatality rates in states that did not increase their speed limits. The reasons seem to be twofold: first, a release of police resources for safety work more effective than writing speeding tickets; and second, a reduction in speed differentials on highways where some people obey the speed limit and others do not.

Although this example, strictly speaking, does not involve prohibition, it does pertain to a law prohibiting the high-speed use of automobiles, which in itself is not harmful but rather beneficial, in that people waste less time driving and the highways carry more traffic.

## Conclusion

Although far from a comprehensive review of all prohibitions, the preceding survey points to the often surprising results of attempts to regulate harmful behavior by prohibiting the materials or benign behaviors related to it. William Shugart has noted

the almost universal judgment, both over time and over a number of goods, that such [prohibition] policies rarely if ever make substantive progress toward achieving either the ancillary goal of reducing consumption or the primary goal of reducing “sinful” behavior. This failure is cited by opponents, impartial observers, and, importantly, proponents of prohibition themselves. (1997, 173)

The legislative dictation of morality has always been problematic. If the morality in question is widely accepted, its regulation by government can be reasonably successful. For example, requiring the wearing of automobile seat belts has dramatically increased their use. On the other hand, violent crime is universally accepted as immoral, yet its legal prohibition goes hand in hand with extraordinarily high rates of violent crime in the United States. If the immorality of the prohibited activity is not a matter of such broad social consensus, prohibition can be so unsuccessful that it becomes counterproductive.

Thus we confront the paradoxical reality that if lawmakers want less of a certain behavior, they cannot be sure that prohibiting it will achieve the objective. Indeed, just the reverse may occur.

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