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DOES FREEDOM NEED ‘BOOTLEGGERS’?

Freedom “Baptists” may not need help from bootleggers.

◆ BY DWIGHT R. LEE

Freedom is popular with politicians and those they represent. I have yet to hear a politician speak against freedom. Yet, as much as they claim to value it, their expansion of government over the last century has increasingly constrained it, if we understand freedom as Friedrich Hayek did, as “the state in which a man is not subject to coercion by the arbitrary will of another or others.”

Politicians clearly prefer praising freedom to protecting it. That should be surprising because it is through government action that freedom can be increased as cheaply as possible. The marginal social cost of government expanding freedom beyond the amount currently available is negative—freedom can be expanded by government simply *not doing* things that it currently does. Unfortunately, it is the negative marginal social cost of increasing freedom that explains the reluctance of politicians to expand it.

In this article, I explain why politicians prefer praising freedom to protecting it. I draw on a notion that first appeared in *Regulation* more than three decades ago, that government action is often best explained as the product of “bootleggers and Baptists coalitions.” Freedom receives almost no political support from “bootleggers” and has to rely almost entirely on the political influence of “Baptists”—influence that all too often proves insufficient against those forces that would constrain it.

BOOTLEGGERS AND BAPTISTS

Clemson University economist Bruce Yandle (now also affiliated with George Mason University’s Mercatus Center) first introduced the metaphor of bootleggers and Baptists in these pages (“Bootleggers and Baptists: The Education of a Regulatory Economist,” May/June 1983). Using it, he explained how different motivations complement each other in getting

government regulation enacted. Bootleggers and Baptists represent groups that explicitly or implicitly work together to get legislation they both favor passed, despite having very different motivations.

Yandle’s terminology is based on actual bootleggers and Baptists who worked together to get alcoholic beverage sales outlawed on Sunday. The bootleggers’ motivation was to reduce competition from the legal supply of alcohol, while the Baptists’ motivation was to reduce what they consider evil alcohol consumption on the Lord’s Day. In general, bootleggers have a strong financial interest in the passage of such legislation, while Baptists favor the same legislation for what they see as noble reasons that extend beyond their narrow self-interest.

Bootleggers’ importance results from their being organized around a private interest that can be augmented by influencing the legislative process. Thus, bootleggers bring a persistence and focus to their political activity that typically exceeds the Baptists’, who are generally less organized and more concerned with noble intentions than legislative details. While the bootleggers’ persistence and focus are important to getting legislation passed, they are more successful when their narrow self-interest is masked behind what is seen as a plausible concern for the public interest. The Baptists provide that concern.

While it is possible to get legislation passed with the political influence of only bootleggers or only Baptists, it is less likely. But if one group must go it alone, the bootleggers will likely be more successful than the Baptists. As Yandle and his grandson, Johnson and Wales University economist Adam Smith, explain in their 2014 book *Bootleggers and Baptists*, “Moral appeals through the political process, without accompanying hidden financial beneficiaries, are like a sailboat without a breeze.”

The “bootleggers and Baptists” metaphor is useful in understanding how governments deal with a serious problem in providing what economists call public goods—goods that provide a benefit that is freely available to *everyone* in a relevant area if it is

provided to *anyone* in that area. Think of mosquito control or a police department: if those services are provided to anyone in an area, then everyone in that area benefits.

The problem is that markets are unable to provide the optimal amount of a public good because consumers often have little motivation or ability to communicate to suppliers how much they value that good. If mosquitos are controlled or a police department is furnished through private payments, then people will be tempted not to pay the fee, but instead “free-ride” on their neighbors’ payments, resulting in less revenue being collected and under provision of the good.

That problem is the basis for the argument that public goods must be supplied by government. What generally goes unrecognized is that the same problem that exists with market supply of public goods also plagues government provision of those goods.

FREEDOM AS A PUBLIC GOOD

The defining characteristics of a public good are that its benefits are nonrivalrous and nonexcludable. That is, allowing an additional person to benefit from a public good doesn’t reduce the benefits available to others, and it is difficult to prevent a person’s use of that good when it’s available to others. Freedom is an obvious example. The fact that others benefit from the freedom allowed in America doesn’t reduce the freedom from which I can benefit.

Some goods are described as “public goods” when in fact they aren’t (or, perhaps because of technological innovation they no longer are). For instance television programming is often described as a public good though nowadays subscriber services provide that good privately in response to the profit motive. But if it is commercially infeasible to exclude nonpayers from benefiting from a good, a private firm

supplying that good would be unable to cover its costs because consumers would free-ride, resulting in underprovision. That is a public good.

When nonpayers cannot be excluded from the benefits of a good, it is widely accepted that government is the appropriate supplier, with the good financed coercively through tax payments. In the case of freedom (not all of which is provided by government), I shall argue that government is in the best position to increase our freedom above what currently prevails.

Yet even if government is in the best position to provide a public good, it is incapable of solving the fundamental problem of getting consumers of the good to communicate accurately and honestly the value they place on it to suppliers—the same problem that exists with supplying public goods through markets. It is useful to examine how the federal government moderates this problem, even if crudely, when supplying the public goods of national defense and environmental quality.

MILITARY BAPTISTS AND BOOTLEGGERS

Military spending to provide national defense is widely recognized by citizen-consumers as important, at least up to some point. Many people associate with—and contribute to—veterans’ organizations and those actions directly communicate their desire for a strong and efficient military to politicians. These people can be thought of as “military Baptists.”

Relatively few citizens, however, communicate to their political representatives the value they place on a strong military to defend the country. Of course, many communicate their demands for national defense indirectly by voting for congressional representatives on the basis of those politicians’ statements and promises of having “a strong defense.” But those statements and promises are seldom



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very specific and often little more than platitudes covering a wide range of issues. Many voters thus base their votes on comparisons between the vaguely differentiated statements on a number of diverse issues by competing politicians.

Even when congressional representatives know their constituents place a high value on national defense, they also know that constituents value a lot of things. The politicians can thus be expected to discount the value their constituents place on national defense because it is a public good. The jet fighters prepared to intercept military threats along the Gulf Coast benefit consumers of national defense in Mobile, Ala., regardless of whether they paid for those jets or taxpayers in Bozeman, Mont., did. Thus, each congressional representative has a motivation to divert funds out of the military budget to fund federal programs that generate benefits specific to her congressional district.

Obviously, this public good problem doesn't come remotely close to starving the military budget. The military receives the ample funding it does because of focused and aggressive political activity generated by "military bootleggers" (assisted by "military Baptists") who are well represented in what President Dwight Eisenhower famously dubbed the "military-industrial complex." These bootleggers consist of the military establishment represented by the Pentagon, military contractors that supply weapons and other equipment, and state and local politicians who have bases and contractors operating in their jurisdictions. There are large numbers of military bases scattered throughout the country, despite creative efforts to overcome political resistance to closing them. The bases are politically popular, whether or not they are militarily useful, because they provide convenient ways for congressional representatives to funnel money into their districts, allowing them to take credit for creating jobs for their constituents and to be seen as champions for protecting the country.

Effective political demand for military spending is also communicated through the persistent lobbying by defense contractors, who commonly receive "cost-plus" contracts with inevitable cost overruns. Again, the political popularity of this military spending is guaranteed by the large number of political jurisdictions in which these contractors are located. The *Weekly Standard's* Jay Cost cites an infamous example in his new book, *A Republic No More*: "the B-1 bomber, perhaps the most famous example of military pork, about which it was said that it was invulnerable to attack because it had parts made in all 435 congressional districts." Not surprisingly, Congress has been known to appropriate funding for weapons that the military didn't want.

There can be no doubt that military bootleggers are responsible for a lot of waste and overkill in the military budget and policy. The excessive cost of the U.S. military would be largely eliminated if consumers could spend their own money to purchase national defense directly from suppliers as they do with private goods in the marketplace. Unfortunately, the public-good nature of national defense renders that impossible. When public goods cannot be selectively denied, the suppliers of those goods

have the motivation and political influence to secure additional government support for them—which is exactly what military bootleggers do.

ENVIRONMENTAL BAPTISTS AND BOOTLEGGERS

Environmental quality is also a public good. The benefit of improving the environment for one person is available to others within the same ecosystem. Because it is not feasible to exclude those benefits to nonpayers, providing environmental quality is almost universally seen as the responsibility of government, even though consumers lack the ability and motivation to accurately communicate to either the market or government suppliers the value they receive from environmental improvements.

Everyone is a consumer of environmental quality. But some of those consumers can be considered "environmental Baptists" because of their fervid support for this good's provision: they support organizations that communicate their environmental concerns directly to politicians, they rally for environmental causes, and of course they vote, campaign for, and donate to politicians who champion various environmental policies.

But many "pro-environment" voters are motivated by private concerns, not public. When constituents contact their political representatives about environmental issues, they often do so out of desire for benefits that would be concentrated on them, not benefits spread widely over the population—stopping the smoke-belching factory next door rather than becoming familiar with, and lobbying for, the environmental advantages of market-based policies for reducing pollution. Few environmental Baptists see much private advantage in becoming well informed on the details of environmental laws and regulations. Furthermore, environmental organizations that do study the details of policy depend on contributions from people who know they can enjoy environmental improvements that result from the contributions of others. Those dynamics all serve to weaken the political power of environmental Baptists.

Yet over the past several decades, the federal government has acted aggressively to improve environmental quality. The resulting swarm of costly laws and regulations cannot be explained by the political influence of environmental Baptists. The most effective influence for aggressive environmental policy comes from single-minded bootleggers who are motivated primarily by private advantages they can capture from that influence. These bootleggers consist of government agencies, primarily the U.S. Environmental Protection Agency (even though its activity is widely perceived as being motivated by environmental Baptists) and organized groups of private firms that profit from environmental regulations, research grants, and environment-related government contracts. These bootleggers are more effective because they talk as if they are in agreement with environmental Baptists, which helps the bootleggers to camouflage their private-interest motivations.

There is a price to be paid for the bootleggers' ability to get more environmental policies passed and enforced than environmental Baptists could have gotten on their own. That price takes

the form of policies that do less to improve the environment at more cost than is necessary.

For example, the EPA has consistently favored command-and-control emissions policies, which involve imposing and enforcing detailed mandates on how to reduce pollution, rather than using market-oriented policies (such as transferable pollution rights) that reduce pollution at much less cost. Of course, many employees at the EPA qualify as environmental Baptists, but it is not surprising that the organizational incentives within the EPA favor command-and-control policies because they require more employees and larger budgets than policies relying on market approaches.

The political influence favoring command-and-control policies cannot be attributed entirely to the influence of the EPA. Many business groups are environmental bootleggers who receive private benefits from pollution control based on command-and-control policies. Firms in a polluting industry with the greatest political influence (typically larger firms) can often use their influence to protect themselves against the competition from other, less influential firms by getting the same pollution restrictions imposed on all firms in the industry. This requires influencing the details of environmental policies, which is easier to do with command-and-control policies than with market-based policies that allow firms the freedom and motivation to use the least-cost approach to reduce pollution given their particular situations.

For example, eastern U.S. coal interests used their political influence to shape environmental policy that prevented producers of high-sulfur eastern coal from being outcompeted by producers of environmentally better low-sulfur western coal. The regulations require a large (and increasing) number of coal-fired electricity-generating plants to use stack scrubbers to remove sulfur emissions regardless of what type of coal the plants use. The result is higher profits for, and more employment in, eastern coal mines; less reduction in air pollution; and higher costs for electricity consumers.

A more recent example of businesses in the role of environmental bootleggers is the American car companies' joining with environmental Baptists to support the Obama administration's policy of increasing federal fuel economy standards for cars and light trucks sold in the United States. Despite the rhetoric of environmental responsibility, the auto companies had two self-interested reasons for supporting the new standards. First, they established one single set of standards for the whole United States, which meant the car companies didn't have to worry about the different state standards (many of which were more restrictive than the federal standards) that were then percolating in state capitals. Second, the new Obama policy kept less stringent standards on light trucks than cars, which American companies wanted because of the high profitability of light trucks and the advantage that American companies have in this market sector as compared to Asian competitors, which are more focused on small cars. Even if these command-and-control standards reduced automobile pollution, relying on a higher tax on gasoline could have reduced more pollution at less cost.

PUBLIC COSTS AND BENEFITS

As with consumers of national defense, consumers of environmental quality, in their role as political Baptists, lack the motivation and ability to secure as much government support for environmental quality as is desirable because it is a public good. In the case of national defense and environmental quality, and other public goods for which excluding nonpayers is infeasible, suppliers of those goods have the motivation and political influence (as bootleggers) to get additional government support in the form of funding and regulation.

For the general public, there are both benefits and harms from these bootleggers-and-Baptists coalitions. Their political influence surely generates more government support for the military and environmental quality—public goods that people want (at least to some degree). But these policies increase the cost and reduce the effectiveness of the policies resulting from that support. So we cannot determine a priori whether the political influence of these bootleggers works to increase or decrease the amount of national defense and environmental quality above the levels that would exist without them.

However, in the case of freedom, it is overwhelmingly clear that the effect of political bootleggers is negative because bootleggers are overwhelmingly on the side of less freedom.

FREEDOM BOOTLEGGERS ARE AS RARE AS UNICORNS

There are clear similarities between the public good of freedom and other public goods. We all benefit from freedom as consumers and many of us are members of (or associated with) organizations dedicated to protecting the freedom we have and recovering that which we have lost. The Cato Institute and Liberty Fund are two of a growing number of such organizations, and these organizations—and the donors who support them financially—can be thought of as “freedom Baptists.”

As commendable as these organizations and people are, however, communicating their demand for freedom directly to politicians—like the consumer demand for public goods in general—is unlikely to be done with the intensity, persistence, and political leverage necessary to motivate government to increase freedom or refrain from eroding it. As I shall discuss in the conclusion, however, advocates of freedom often recognize that direct political appeals are not the most effective way to secure more freedom. But what about bootleggers?

It should be acknowledged that some political bootleggers probably have a positive effect on our freedom. Consider, for example, the influence of military bootleggers on the large government expenditures for the military, which (we hope) increase our freedom by protecting us against foreign and domestic threats. (Of course, a significant amount of our freedom comes from our private purchases of locks, guns, burglar alarms, security guard services, and other protections.)

Political bootleggers also do much to reduce freedom. Part

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of the reason for this is that there are not many genuine public goods; certainly far fewer than the number of private goods that bootleggers want to capture from government and have the public pay for. Much of the bootleggers' success in this capture involves turning many voters into Baptists for many special-interest policies by convincing them that they promote some noble purpose and the general interest. The resulting Baptists, though unorganized politically (at least with respect to most special-interest policies), provide important electoral support for the bootleggers' efforts. Voters are typically blinded by rational voter ignorance to the fact that such policies are seldom in the public interest and often impose high financial cost on taxpayers if they are enacted.

Unfortunately, the costs of the great majority of special-interest policies are not limited to financial costs, but include the loss of freedom. While government may be doing a reasonable job in some respects at protecting our freedom from predators, it has become a major predator itself with socially costly transfers, regulations, and tax loopholes that reduce our freedom and prosperity.

As I noted earlier, government—ironically—is potentially the most effective and least-cost means of increasing our freedom. By scaling back or eliminating excessive regulations, ubiquitous transfers, and needless complications in tax codes, government would increase freedom and reduce the deadweight losses (the value lost from the misallocation of resources) generated by regulations, transfers, and legal impediments. The social cost of the deadweight losses is only partially offset by any benefits generated, which go primarily to organized interest groups. Getting rid of the deadweight losses would thus be a net benefit for society. In other words, *the marginal social cost of increasing freedom is negative.*

The problem is that the negative marginal social cost of increasing freedom translates into a positive marginal political cost of doing so. As a rough rule-of-thumb, the more negative the marginal social cost of a special-interest program, the more rents bootleggers receive from it and the higher the political cost is for eliminating it or scaling it back. Put simply, politicians incur cost when they take rents away from bootleggers, and it is generally the case that it is more costly the greater the rents being taken.

This is a rough rule-of-thumb because two policies with the same marginal social cost can generate different rents to the beneficiaries. It is also true that bootleggers will likely fight harder to keep a special-interest policy that is destroying freedom and prosperity than they fought to get it in the first place. As Gordon Tullock pointed out in his 1975 paper “The Transitional Gains Trap,” the rents from many special-interest policies soon get competed away through market forces, leaving nothing more than a normal return to the “beneficiaries,” but leaving the deadweight loss intact. Ironically, even though the special interests are no longer receiving a rent from the policy, if the policy is eliminated they will lose an amount approximately equal to the initial rent (which is about what they paid to get the rents in anticipation that the policy would not be eliminated). Because people often fight harder to prevent losing

something than they originally did to gain it, the “Tullock” effect increases the marginal political cost of increasing freedom by eliminating (or scaling back) special-interest policies.

The important difference between freedom and other public goods is the lack of bootleggers with strong private interests in protecting freedom by opposing policies that are eroding it. There clearly exist organized interest groups with political influence that would receive private benefits from more freedom. But each can receive more private benefit from using its political influence to secure a new special-interest policy (or expand a current one) that reduces freedom a tiny bit for everyone. Not only do politicians largely ignore the cost of a little more lost freedom because it is spread so thinly, but the public is unlikely to protest the loss of freedom even when the cumulative loss becomes large for each of us. As Friedrich Hayek observed in *The Constitution of Liberty*:

The importance of freedom to do a particular thing has nothing to do with the number of people who want to do it: it might almost be in inverse proportion. One consequence of this is that a society may be hamstrung by controls, although the great majority may not be aware that their freedom has been significantly curtailed.

It is true that the loss of freedom resulting from the political influence of a few older firms can be restored as rapidly growing new firms made possible by new technologies eliminate those older firms and their political influence. But it is the freedom that still exists that makes such entrepreneurial success possible and deserves the credit for such reversals in the loss of freedom. And the safest bet is that as the new firms grow, they will find that becoming political bootleggers is an effective way to increase their profits. They will not be deterred from doing so by the loss of freedom. Consider Microsoft, once a force for freedom when fighting against antitrust threats, but now supporting European antitrust actions against Google. Bootleggers for freedom are almost as rare as unicorns.

There really isn't much for bootleggers to do to expand freedom, even if they were motivated to do so. Freedom could be significantly increased by government doing nothing and letting existing sunset legislation terminate many programs that currently reduce freedom. In the absence of federal sunset laws, Congress can expand freedom by eliminating, or scaling back, many of the policies and regulations that currently restrict it.

Obviously it is unrealistic to expect that all policies that reduce freedom will be eliminated or cut back. Indeed, it is easy to believe that it is unrealistic to expect hardly any such policies to be trimmed. Given that politicians couldn't resist the political advantages of providing bootleggers with policies that reduce freedom, it is unlikely that they are willing to incur the greater political costs of eliminating those policies to restore the lost freedom.

There are Baptists for freedom, however, and their case for freedom is strong. And Baptists for freedom can have far more political influence without the support of bootleggers than Smith

and Yandle acknowledge when they say that, by themselves, the Baptists are “like a sailboat without a breeze.”

CONCLUSION

When considering political outcomes, most people focus their attention on what happens in the political arena, particularly in legislatures. That is understandable.

Ask most people where pencils are made, and they will say a pencil factory. Economists know, however, that the work in a pencil factory is only one step in a complicated and impressive process required to make pencils, as Leonard Read explained in his 1958 *Freeman* article, “I, Pencil.” Similarly, legislative action is only one step in a complicated process required to produce political outcomes—and not necessarily the most important step. Concentrating on the influence of different interest groups on legislative action diverts attention away from things that take place prior to legislation that ultimately exert the most important influences on political outcomes. I am referring to ideas, understanding, and social norms that not only determine the prospects of the legislation that is being considered, but more importantly the type of legislation that is simply unacceptable for consideration.

Baptists who make the case for freedom outside the boundaries of the legislative process are not necessarily hampered by the absence of complementary bootleggers. If the Baptists for freedom help restore the ideology of freedom that prevailed in the United States for over a hundred years after its founding, when government violations of freedom that are routine today were unacceptable, they will do far more to restore the freedom we have lost than anything that can be done with direct political action alone. R

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