A Nation of Bootleggers: Compliance with the Regulatory State and All-Too-Intended Consequences

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“a government of laws, and not of men”
--John Adams
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“There are no such things as unintended consequences.”
--Henry Butler
AALS 2016
• Bootleggers and Baptists Theory
  – Original Theory
  – Other Applications
    • The EpiPen fiasco
    • Certificate of Need Laws
    • SEC rule on mailing prospectuses
    • Center for Responsible Lending
    • Hedge Fund Regulation in Dodd-Frank
    • Large Truck Safety Regulations
    • Uber vs. Taxis
• **Bootleggers and Baptists:**
  – Baptists have “righteous” motives and act publicly
  – Bootleggers have financial motives and stay secret
  – It’s not as simple as “Baptists good, Bootleggers bad”

• **Rent-Seeking:**
  – If there are extra profits (rents) to be had, people will try to get those profits for themselves
  – They can do it in the market or they can do it by colluding with government
• Why do Baptists need Bootleggers?
  – $$$
  – Dirty work

• Why do Bootleggers need Baptists?
  – $$$
  – Public Relations
• The Easy Cases of Rent-Seeking
  – Massachusetts’ taxing Uber to subsidize taxis
  – Occupational Licensing for hair braiders/interior designers
  – Restrictions on selling caskets on the internet
  – Restrictions on Teeth Whitening/Mail Order Caskets
• EpiPen Fiasco
  – Bootlegger: Mylan
  – Baptists:
    • Those who mandated EpiPen in various locations for safety reasons
    • Those who laud the benefits of the FDA without considering the tradeoff

• A lesson from EpiPen: federal regulation lessens the long-term need for Baptists
• Certificate of Need (CON) Laws
  – Most common in health care
  – Need government approval to enter market
  – Baptists: “we’ll have no health care”
  – Bootleggers: existing entities can charge higher prices
• SEC Rule on Mailing Prospectuses
  – With modern technology, why not let prospectuses and other communications go out electronically?
    • Good for the environment, good for corporations, good for those challenging corporate policy
  – Baptists: “This will confuse investors, particularly older investors”
  – Bootleggers: paper and envelope manufacturers
Center for Responsible Lending
- A group dedicated to opposing the “predatory lending practices” of payday lenders
- Baptists: “People are trapped in a downward spiral of debt”
- Bootleggers: the group is funded by credit unions, the primary source of legal credit for lower and lower-middle income families
• Hedge Fund Regulation In Dodd-Frank
  – In the wake of the crisis, everyone wants to make sure it doesn’t happen again
  – Baptists (mostly politicians): “Look at these secretive, unregulated funds! They helped cause this”
  – Bootleggers: Traditional financial institutions, where money will go if hedge funds disappear
• Safety Regulations for Large Trucks
  – Everyone gets a little nervous when a big rig comes rolling by, especially when it is stormy
  – Baptists: “We have to make the roads safe”
  – Bootleggers: Railroads
    • Long-haul trucking is made increasingly difficult
    • Local trucking largely unaffected
• Uber vs. Taxis
  – Consumers seem to like ride-sharing, but companies run into road blocks in various areas of the country
  – Baptists: Taxi drivers
  – Bootleggers: Large banks
• The Law of (Un)Intended Consequences?
  – Government has a lot of power, and it makes mistakes
  – Power attracts rent-seeking, casting doubts on “mistakes”
  – Incompetence is real, but conspiracy is a plausible alternative
• Conclusions:
  – To the extent we are a nation of bootleggers:
  – Regulatory compliance might hurt the rule of law
  – Regulatory compliance might limit competition and hinder a free economy
  – Regulatory compliance might have no moral claim on us