

# Livestock Care Conference, April 4, 2008

## Questions answered by Dr. Terry Whiting

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**Q1: With reference to your criteria of verification (sustainable etc.) of legislation is there: a) a way to test whether a law is effective, b) can laws be 'piloted' in a temporary manner?**

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**a) a way to test whether a law is effective,**

This is a very good question. All laws have an outcome, I am taking "effective" to mean "does the implementation of the new law result in the intention of the legislators at the time of passage?"

There are a couple of good examples:

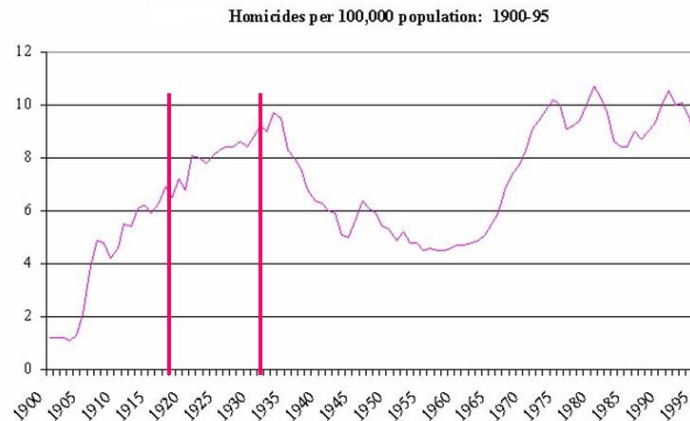
1. Prohibition

The Women's Temperance League, after about an 50 year campaign succeeded in unifying the United States with the conviction that the consumption of alcohol was responsible for the majority of crime, wife beating, child desertion and murder in the United States. Therefore the prohibition of the consumption of alcohol would be a catalyst for the general improvement of the citizenry.

Prohibition was in effect for about 14 years and coexisted with the greatest period of lawlessness and murder in the history of the United States (until the current era) (Figure 1).

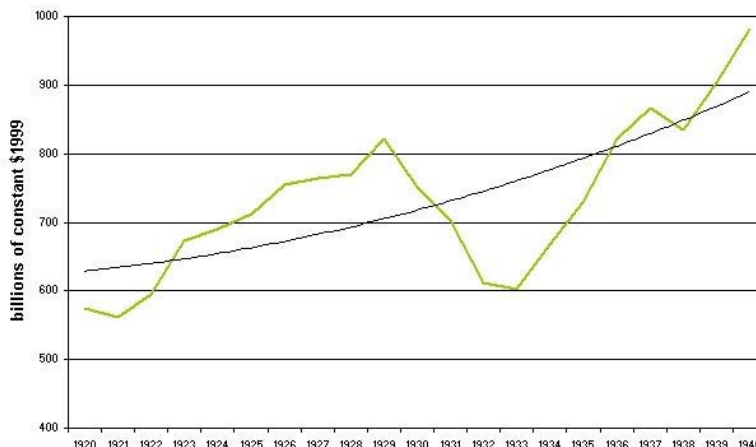


## Prohibition



**Figure 1** The period of prohibition of alcohol sales in the USA ran from 1920 to 1934. This was a period of rapid urbanization in the USA and the Great Depression officially starting in 1929 with the stock market crash. There is little empirical evidence that prohibition did other than galvanize the establishment of criminal organizations funded by illegal alcohol trade. When the economy recovered somewhat by 1935 people stopped killing each other. If you want to encourage murder the best way may be to concentrate large numbers of unemployed urban young men, in poverty, with no hope of self betterment. Note 1970 generally is the start of the "War on Drugs" in the USA.

## GDP 1920-1940



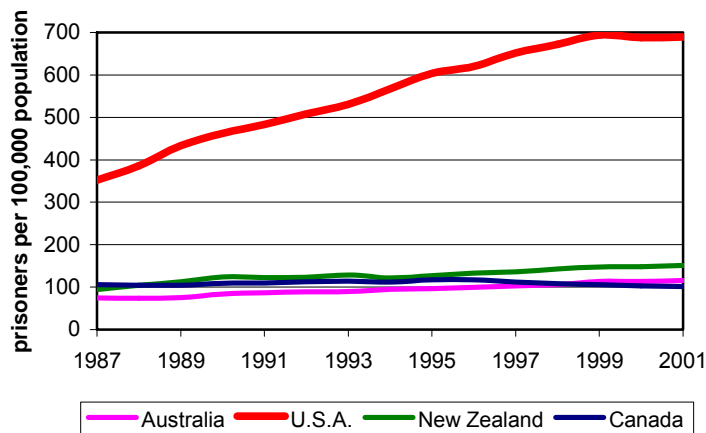
**Figure 2** GDP is “Gross Domestic Product” and is a measure of the general productivity of a nation. Green line is the annual DGP and the black line the smoothed trend data. The Depression was largely over by 1935 when the murder rate also catastrophically dropped.

In considering whether prohibition was effective, there is no evidence that prohibition resulted in a less violent society which was the intent of the campaign; and, significant that criminalizing otherwise only moderately destructive behaviour greatly increases truly violent behaviour.

### 2. The Three-Strikes Law

Three strikes laws are statutes enacted by state governments in the United States which require the state courts to hand down a mandatory and extended period of incarceration to persons who have been convicted of a serious criminal offense on three or more separate occasions. These statutes became very popular in the 1990s. They are formally known among lawyers and law professors as habitual offender laws.

## US Prison Industrial Complex



**Figure 3** Incarceration Rate 1987 - 2002: Australia, Canada, New Zealand, US (OECD, Statistic, US). Prisoner rate (per 100 000 population) for countries New Zealand, Australia, US, and Canada for year 1987-2002. The US has recently achieved over the 1% incarceration rate that is 1% of the

population is currently in prison. Good thing this incredible social and moral cost has proven so effective in making the United States a less violent nation.

The intent of a three strikes law is to protect society from violent offenders. The natural outcome of a three strikes law is to permanently support an industry of prison construction. Once the industry of building prisons is profitable it is able to lobby government and the voting public that more and better prisons is the only way to deal with violence in society.

This phenomenon of Government action having other than intended outcomes has been called the "The unanticipated outcomes of purposeful social action"<sup>1</sup>. The best documented example is students of history often conjecture that if the Treaty of Versailles had not imposed such harsh conditions on Germany, World War II would not have occurred. From this perspective, one might consider the war an unintended consequence of the treaty ending WWI.

As in all aspects of social science cause and effect are very difficult to prove. It is extremely difficult to "test" success of a law. There is a very interesting discussion on gun ownership in a recent issue of The New England Journal of Medicine<sup>2</sup>.

**b) *can laws be 'piloted' in a temporary manner?***

In fact all laws are a pilot. Governments rescind laws that are not working all the time and in fact every time the government passes a budget it changes the Income Tax Act. Most regulations and laws are less susceptible to whim of the current government than the Income Tax Act.

The Animal Cruelty section of the Canadian Criminal Code; are perhaps the most resilient legislation on the books having remained essentially unchanged for over 110 years.

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<sup>1</sup> Merton, R. K. (1936). The unanticipated consequences of social action. American Sociological Review, 1 (December), 894-904.

<sup>2</sup> Wintemute GJ. Guns, Fear, the Constitution, and the Public's Health. N Engl J Med 2008;358:1421-4. DOI: 10.1056/NEJMp0800859. <http://content.nejm.org/cgi/content/full/358/14/1421>

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