The legality of absinthe

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I finally got some absinthe last week.

There are many types. Like many liqueurs, it is basically just an infusion of a few pleasantly-flavored plants in grain alcohol. Being grain alcohol, it is about 50% alcohol by volume, but you water it down. Now, when watering it down, it goes from grain alcohol clarity to the opacity of milk. This is fun, and there is a little ritual built around the process, typically involving a sugar cube perched on top of the glass. Having a ritual associated with a social beverage is a big perk, and probably has had some hand in making absinthe so popular. [I also have a full tea set, and get great enjoyment from the process of pouring water from the kettle to the teapot to the ocean of tea to the sniffer cup to the tea cup.]

But you know the real reason absinthe is famous: wormwood, which has a chemical known as thujone. I have no idea what the effect of thujone is on the human brain; I get the impression that nobody else does either. Some commenters have said that it's something of a stimulant, so absinthe is a bit like having a black Russian (i.e., vodka + coffee), but I'm not sure if even this much effect has verifiable evidence behind it. As above, it's 50% alcohol straight, is watered down, and is heavily spiced, which all adds up to being able to drink a lot of alcohol without tasting it. Having such an easy means of drinking quite a bit of booze without knowing it is already enough of a recipe for loopy behavior, without recourse to obscure chemicals.

Absinthe was a scapegoat of the temperance movement, and was banned in both the USA and Europe. I don't have the exact history—the USA obviously spent the '20s banning a lot more than just absinthe—but as we rolled in to the new millennium, thujone was banned (sort of) in both the USA and EU.

You may have read that absinthe is now legal in the USA. What changed in the law?

Nothing. Nothing at all.

The most credible source I've found to this point has been an egghead-oriented site on mind-altering substances named Erowid[1], and this interview[2] with a lawyer involved with an effort to import absinthe into the USA.

From what I gather, thujone is banned, but the test used for checking for thujone is not very sensitive, which opens the question of what to do with beverages with low thujone levels; the decision was eventually made that they are OK.

Beyond the thujone issue, the Alcohol and Tobacco Tax and Trade Bureau (TTB) felt that the word *absinthe* was a drug term, and therefore could not be used to sell

[1] `http://www.erowid.org/chemicals/absinthe/absinthe_law1.shtml`
[2] `http://www.oxygenee.com/absinthe-america/legalization.html`

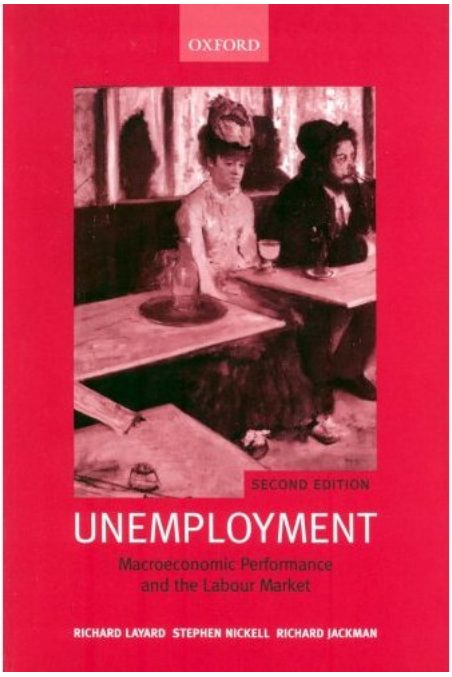

Figure 1: My favorite textbook on labor theory.

a product. This was basically an arbitrary opinion of the bureau, and was eventually arbitrarily reversed.

With those roadblocks eliminated, absinthe was once again legal for import and sale.

The "law" The anecdote is an interesting demonstration of how often law is entirely unclear. We like to think that there's a list of regulations out there, and they tell the world's bureaucrats what to do or not do, and it's all very simple. In most cases, it really is that simple. But then there are those other cases where it's hard to tell exactly where to draw the line, or what authority the individual bureaucrat has.

After all, Congress (or the head of any organization) can't possibly dictate everything that every bureaucrat all the way down the chain will do with his or her hands. In any organization, the top sets broad rules, and grants limited authority to the individuals at the lower levels who will make up whatever needs to be made up along the way.

The patent office is especially prone to the conflict between top-down law and bottom-up rulemaking, because patents are a technical field and most of the distinctions to be made are fine line-drawing rather than night-and-day. Under the clearest of rules, we would expect that some applications would still be considered novel and non-obvious by one examiner and rejected by another.

Further, patent law is, more than other fields of law, decided by judicial rulings, not by the U.S. Code. Congress hasn't bothered to touch the law for patents in any significant way since 1952, and you can see why from the massive, ineffective effort that has been the Patent Reform Act of 2008. Instead, we have centuries' worth of rulings, each about a single test patent (sometimes several), and a resulting rule based on the test patent regarding how to draw the line between the patentable and unpatentable. Judges try to be careful, but it's common enough that two rulings will contradict each other.

Naturally, there are many efforts and mechanisms to create standardization, and there is largely one patent law. For example, there is a Manual of Patent Examination Procedure (not written by anybody in Congress or the courts) that examiners are expected to follow with perfect uniformity. But to a great extent, the concept of one patent law is just a convenient fiction, and every examiner has a slightly different concept of what's going on. As with the change in opinions regarding absinthe, things can go from illegal to legal with just a change of opinion by a bureaucrat somewhere along the chain. That's how it is with a law built from the ground up on judgment calls like what is novel and non-obvious, and how it always will be.