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The Harmfulness Tax: A Proposal for Regulation and Taxation of Drugs

Lester Grinspoon*

In the era of Prohibition, it was said of the alcohol problem that, between the distillers and saloonkeepers on one side and the prohibitionists on the other, no intelligent person thought there was any solution at all. The same may be true of the illicit drug problem today, with its traffickers and users on one side and its moralists and police on the other. The drug problem is perhaps more serious because the acceptable range of solutions is so narrow. The report of the President’s Commission on Organized Crime and the more recently elaborated Bush-Bennett plan suggest how things are going right now: there is very little effective opposition to prohibition.

The American war on drugs began with the Harrison Narcotics Act in 1914 and has escalated in the last twenty years. Federal, state, and local governments now spend an estimated eight to nine billion dollars a year on direct drug enforcement activities and millions more to house and feed the drug dealers and users who now comprise one-third of the federal prison population and contribute substantially to the need to build more prisons. It is sometimes said that the pendulum of public opinion swings back and forth between harshness and leniency in drug control. If there was some swing toward leniency in the early 1970s, it now appears to be going the other way, as indicated by the September 1989 White House paper on national drug control strategy. This paper, referred to as the Bush-Bennett plan, calls for even more spending on law enforcement.

Drugs continue to enter the United States at a growing rate despite the war effort. That effort does, however, inflate prices and keep the drug dealers’ franchises lucrative. Another consequence of the war effort is a black market in drugs, which results in drug-related crime and violence, just as the black market in alcohol did in the 1920s. The threat to civil liberties grows as the drug warriors,

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1 Dec. 17, 1914, c. 1, 38 Stat. 785.
already by necessity using entrapment and informers, now make plans to send in the army and periodically examine everyone's urine. They are already randomly testing the urine of federal employees.

Any serious approach to this problem demands a recognition of the problem's complexity and ambiguity. We have to compromise between social reality and the dream of a drug-free society. We may have to acknowledge that the use of drugs and alcohol has benefits as well as dangers. The main obstacle to thinking about any serious alternative to present policies is that no one in government wants to give up the symbolism of the criminal law or the commitment that has been made over the last seventy years, not only in the United States but all over the world, to treating drugs as a criminal problem.

But there is a great deal of public ambivalence, or, to put it less kindly, hypocrisy, where this issue is concerned. The moral consensus about the evil of drugs is often passionate but sometimes shallow. We pretend that eliminating drug traffic is like eliminating slavery or piracy, or sometimes as though it is like eradicating smallpox or malaria. No one would suggest that we legalize piracy or give up the effort to eradicate infectious diseases, yet conservative authorities like the economist Milton Friedman and The Economist of London have suggested legalization of drugs. Despite the hysterical rhetoric we often hear, drug control is not, in the same sense, a settled issue. Rather, the need for that kind of rhetoric is a sign that it is not a settled issue. On the one hand, it is accepted in public discourse that everything possible has to be done to prevent everyone from ever using any controlled substances. On the other hand, there is an informal lore of drug use which is more tolerant. At one time it looked as though the forms of public discourse and this private language were coming closer together. Now they seem to be drifting apart again. A type of pretense that we have long abandoned in the case of alcohol is still considered the only respectable position where other drugs are concerned. Ambivalence, or hypocrisy, has always been an undercurrent in the public attitude toward drugs, even while the criminal control system becomes more and more entrenched. That undercurrent is what leaves room for the possibility of change.

I would like to suggest a proposal for a non-criminal approach to recreational drugs. Let currently controlled substances be legalized and taxed. The tax revenues could be used for drug education and for paying the medical and social costs of drug abuse. A commission could be established to determine these costs separately for each drug, and the rate of taxation would be adjusted periodically to reflect the information gathered by the commission. Thus the government could acknowledge the impossibility of eliminating all drug use and utilize its taxing power and educational authority to encourage safer drug use. Drugs that are now legal, alcohol and tobacco, would not be distinguished from the others.
To illustrate the kind of calculation involved, it was recently estimated that direct health care costs plus indirect losses in productivity and earnings due to cigarettes amount to sixty-five billion dollars a year, or about two dollars per pack. (The exact figures depend on how costs are defined; for example, the economic loss from smoking may be “balanced,” in a perverse way, by the lowered cost of caring for chronic disabling diseases of old age in a society where many die young of smoking-related illness.) Such a taxation policy might be regarded as a way of making people buy insurance for the risks to themselves and others in their use of drugs. Life insurance companies already offer substantial discounts in their premiums for non-smokers, and this insurance preference is slowly being extended to fire and other insurance policies.

My proposal might be instituted in phases, so that we could adjust and learn more before committing ourselves fully. Phase one might involve alcohol, tobacco, and cannabis: alcohol and tobacco because they are already legal; cannabis because it is probably the least dangerous drug used for pleasure. They could all be sold through specially licensed outlets at prices determined by the commission. Advertising would be banned. Present prices might be maintained at the start. As the commission collects more information, pricing could be adjusted to reflect social costs. If this system works as hoped, data will eventually indicate that these drugs are causing less and less harm. At that point we could consider bringing other drugs into the system.

The advantage is that we would no longer have the expense, corruption, chaos, and terror of the war between drug traffickers and narcotics agents. In this war, a kind of self-reinforcing cycle is developing as drug enforcement operations begin to pay for themselves by funds confiscated from the drug traffickers whose operations drug enforcement operations make enormously profitable. The taxing system suggested here would establish a different kind of revenue cycle, in which society would pay for the costs of drug abuse by extracting funds from the drug users in proportion to the amount the users contribute to the problem. The commission that supervised this taxing system would also serve as an educator and guide to society—an educator not constrained by the present totally unrealistic assumption, built into the criminal law, that any use of certain drugs must be evil or dangerous, while other drugs have a range of benign and harmful uses. Honest drug education would become possible.

Is it plausible to think that this arrangement would work? Would it be possible to tax drugs enough to pay for their costs? Even if it was possible, would drug abuse increase so much that we would be paying too high a price in personal and social misery? Is the elasticity of demand great enough that taxing would substantially influence the amount of drugs consumed, especially by heavy users?
Evidence on all this is very uncertain, even in the cases of alcohol and tobacco, where most research has been done. There is much literature on the distribution curve of alcohol consumption among individuals in society, most of which concludes that any policy designed to cut total consumption will at least proportionately reduce alcohol use among problem drinkers and therefore the medical and social costs of alcohol abuse. That is, the demand is elastic enough, even among alcohol users who create problems by their use, to be affected by a rise in price. In fact, there is some evidence that in countries where the price of alcohol is relatively higher, there are fewer alcohol problems, and the same is true for states within the United States.

There is also some evidence of elasticity of demand for heroin addicts. Several studies suggest that addicts adjust the size of their habits to the price of heroin. One authority on heroin control has said that the criminal law would be effective in cutting down heroin use if it raised the time needed to get a dose of heroin from five minutes to two hours. This is the "crime tariff." The criminal law makes it risky to manufacture and distribute the drug. This raises its cost to the consumer, who therefore needs more time to earn or steal enough money to obtain it, thus restricting accessibility, so that the consumer has to spend more time finding out where to get it. The question is whether through taxation we could impose a limitation similar to the crime tariff, but more efficiently and with fewer monstrous side effects.

Inelasticity of demand is greatest in the case of tobacco because nicotine is one of the most highly addictive substances. Nevertheless, it is clear that even here raising the price by taxation has a considerable effect on consumption. Research suggests that for every ten percent increase in cigarette prices, consumption will decrease about four percent. Some studies suggest that the price mainly affects the decision to start smoking regularly rather than the quantity smoked by an already addicted smoker. Thus, although extra taxation would have only a small short-run impact, cigarette smoking would be reduced in the long run. Other studies find that as the average cost of tobacco is raised the income elasticity of demand increases; indicating that more poor (rather than rich) people are deterred from cigarette consumption by its rising cost.

One problem confronting any system of authorized sales is the black market. The drug tax would have to be set low enough to prevent a black market from operating profitably. It is possible to do this and still considerably reduce demand for the drug, as the case of alcohol seems to show. On the other hand, it is not clear whether any tax low enough to prevent a substantial black market would be high enough to pay for the social and medical costs of the drug use. Certainly, present taxes on alcohol have not covered the social and
medical costs attributable to its use. It might prove impossible to create a system that would make the abusers of a drug, or even its users, pay for the full costs of abuse. This problem may be practically insoluble. Clearly, however, the criminal law approach offers no solution for it whatsoever.

We simply do not know the amount of drug use and the seriousness of drug problems that would exist under this kind of system—whether a legal taxation system would have the same effect as the current crime tariff. One way to study the issue might be to examine the effect on gambling habits of the institution of state lotteries in competition with illegal numbers games. In any case, to undertake such a bold move we would have to decide that the deprivation of freedom and the damage wrought by prohibition are greater than the damage attendant on an increment of drug use, much as we did when we decided to repeal Prohibition.

There are already some models available for legalization or quasi-legalization. In Amsterdam there is a union or organization of drug users and addicts that advises officials. Heroin addicts get free methadone, and marijuana is sold at openly tolerated cannabis cafes. Alaska allows its citizens to grow marijuana for household use, and several other states have reduced the penalties for marijuana possession to fines similar to traffic tickets. In one of these states, Maine, a three-hundred thousand dollar a year outlay on law enforcement was converted to a twenty thousand dollar gain for the state treasury with no increase in marijuana use.

Many might agree that the harmfulness tax approach would work if it was limited to alcohol, tobacco, and cannabis. But what about cocaine? Well, consider the present alternatives. The Bush-Bennett plan, perhaps because its authors realize that demand reduction, particularly in the inner city, will be difficult to achieve, aims at eliminating the production of cocaine. But the so-called Andean strategy of interrupting South American supplies is bound to fail for simple reasons of botany. The assumption seems to be that coca grows only in Peru, Bolivia, and Colombia. In reality, the coca bush will grow in any place where certain conditions are met: where there is an altitude of 1500 to 6000 feet, continuous high humidity, a uniform average temperature of sixty-five degrees throughout the year, and soil free of limestone. Coca thrives on land that is too poor for other crops. In the past it has been grown commercially in Jamaica, Madagascar, India, Ceylon, and especially Java. Even if, implausibly, the coca bush could be destroyed in the Andes, it would soon be blooming again elsewhere, just as the cultivation of opium poppies increased in Iran and Afghanistan when it was curtailed in the Far East. Let us hope we do not have to see United States soldiers coming home in body bags before we realize that the Andean strategy will never eliminate the supply of drugs.
Parenthetically, it is worth noting the absurdity of our national self-righteousness with respect to Colombian cocaine entrepreneurs. The United States manufactures six-hundred billion cigarettes a year and sends one-hundred billion overseas. The five-hundred billion cigarettes consumed yearly at home cause four-hundred thousand deaths; by extrapolation, our export trade causes eighty thousand deaths abroad—far more than the number of deaths cocaine produces in this country. Furthermore, the Colombian government at least offers no official encouragement to the cocaine traffic; our government subsidizes tobacco cultivation and cigarette exports with the enthusiastic support of some of the fiercest congressional anti-drug warriors. Our government has no right to be morally indignant.

What about cocaine demand? The barrage of drug-war publicity has obscured the fact that the number of people using cocaine is declining. The reason is that the middle class is giving up the drug, just as it continues to give up the even more addictive nicotine. When people who are not otherwise desperate become aware of the dangers of drugs, they begin to avoid them. The cocaine problem is not improving, however, because it is largely a problem of the inner cities. Conditions there are worse now than they were when the Kerner Commission made its report twenty years ago. Increasingly, cocaine users are people who feel hopeless, trapped, and alienated, who are able to find only miserable jobs at low pay or no jobs at all. When these people are exposed to crack cocaine, they have three choices: (a) they can ignore it; (b) they can seek respite by using the drug for a twenty minute holiday during which they feel good about themselves and hopeful about their situation (it is an illusion, but they have nothing better); or (c) they can decide to sell crack in hope of getting rich and buying the luxury products with which our consumer society tantalizes them. This, at least, is not always an illusion—crack provides a genuine entrepreneurial opportunity for a few.

The social, psychological, and economic pressures moving young people in the inner city toward options (b) and (c) are enormous. Crack cocaine is powerfully attractive to demoralized people in a desperate social situation. Admittedly, the harmfulness tax is not an answer to this problem. But the answer is even less likely to be found in criminal law enforcement, which the Bush Administration practically equates with prevention. No policy aimed directly at drugs and drug users can deal with the social issues that are the true heart of what is loosely, inadequately, and propagandistically labelled the “drug problem.”