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A Proposal for Regulation and Taxation of Drugs

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Abstract

H.L. Mencken said of the alcohol problem during the 1920s that between the distillers and saloonkeepers on one side and the Prohibitionists on the other, no intelligent man thought there was any solution at all.

KEYWORDS: taxation, drugs, illicit

A Proposal for Regulation and Taxation of Drugs

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H. L. Mencken said of the alcohol problem during the 1920s that between the distillers and saloonkeepers on one side and the Prohibitionists on the other, no intelligent man thought there was any solution at all. The same may be true of the illicit drug problem, with its traffickers on one side and its moralists and police on the other. Only the problem is worse because the acceptable range of solutions seems to be so narrow. The report of the President's Commission on Organized Crime suggests the way things are going right now: there is no effective opposition to prohibition.

I would like to propose a utopian exercise that would take us in an entirely different direction. It would be foolhardy to suggest that it is currently a feasible policy, but I offer it to the conference tentatively, for discussion. The suggestion is that currently controlled substances be legalized and taxed. The taxes would be used for drug education and for paying the medical and social costs of drug abuse. A commission would be established to decide how much each drug should be taxed on the basis of its cost to society. The rate of taxation would be adjusted annually for each drug in accordance with the most recent data on those costs. Data may not now be available, but with modern data collecting and processing techniques, it certainly could be. In this way the government would acknowledge that inevitably some people are going to use drugs, and would try to shift them toward the use of safer drugs by means of taxing policy and education. In this system the currently legal drugs, alcohol and tobacco, would not be distinguished from the others.

The advantage, obvious to most of us here, is that we would no longer have the expense, corruption, chaos, and terror of the war between drug traffickers and narcotics agents. Steven Wisotsky has exhaustively explored the economics and politics of the War on Drugs in the case of cocaine in his recent book *Breaking the Impasse on the War on Drugs*. One of the byproducts of Drug Wars is, as most of the participants in this conference will recognize, a threat to civil liberties. Where the current line of thinking is leading is suggested by the propo-

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sal of the Organized Crime Commission for random urine testing of federal employees and of those of companies contracting with the federal government.

As Professor Wisotsky has pointed out, it is possible that a self-reinforcing cycle is beginning to develop, as drug enforcement operations begin to pay for themselves by funds confiscated from the drug traffickers whose operations they make enormously profitable. The utopian 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 them from the drug users in proportion to the amount they 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 were 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 so 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 a large 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,

and restricts 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 addicting substances. Nevertheless, it is clear that even here raising the price by taxes has 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 affects mainly the decision to start smoking regularly rather than the quantity smoked by an already addicted smoker. Thus the short-run impact of extra taxation would be small, and it would reduce cigarette smoking only in the long run. Other studies find that as the average cost of tobacco is raised the income elasticity of demand increases; that is, poorer people are more deterred from cigarette consumption than richer ones.

It has been estimated that the direct health care costs plus the indirect losses in productivity and earnings due to cigarettes amount to a total of slightly over two dollars a pack — 22 billion dollars in health care for smoking related diseases and 43 billion dollars in productivity losses. This is only an illustration of the kind of calculation that would be involved in trying to set a taxing policy. 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.

A problem raised by any system of authorized sales is the black market. The tax would have to be set low enough so that a black market would not be profitable. It is possible to do this and still reduce demand for the drug considerably, 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 are far from doing that. 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. Maybe this problem is practically insoluble. Certainly the criminal law approach offers no solution for it.

We simply don't 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 crime tariff

or not in this respect. Even if drug use increased with legalization, the Oregon and Alaska experiences with decriminalization of marijuana suggest that the increase might not be nearly as much as anticipated. And in order to undertake such a bold move, society would have to decide that the deprivation of freedom and the damage wrought by prohibition is less than the damage attendant on an increment of drug use, much as it did in the decision to repeal the Volstead Act. 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. But there is a great obstacle to even thinking about this as a serious alternative: 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. It is sometimes said that the pendulum of public attitudes swings back and forth between harshness and leniency in drug control. If there was some swing toward leniency in the early 70s, it now appears to be going the other way, as indicated by the report of the President's Commission.

Nevertheless, there is a great deal of public ambivalence or to put it less kindly, hypocrisy, where this issue is concerned. On the one hand, it is accepted in public discourse that everything possible has to be done to prevent everyone from ever using any of the 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. Would a policy of legalization and taxation change these ambivalent (or hypocritical) attitudes? Unfortunately, it is hard to see how the legal change can come about until attitudes change.