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Fraser Institute Digital Publication
Sensible Solutions to the Urban Drug Problem

edited by Patrick Basham

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Canadian Drug Policy

Persons using this narcotic [marijuana] smoke the dried leaves of the plant, which has the effect of driving them completely insane. The addict loses all sense of moral responsibility. Addicts to this drug, while under its influence, are immune to pain, and could be severely injured without having any realization of their condition. While in this condition they become raving maniacs, and are liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty without, as said before, any sense of moral responsibility.

Edmonton magistrate Emily Murphy, in 1922, in *The Black Candle*, one year before cannabis was added to the Schedule of the Opium and Narcotic Control Act

To legalize or not to legalize? That ... is not really the right question. The appropriate question is much broader, and it is one that incorporates the “legalize or not” question with respect to particular psychoactive drug products: What, simply stated, are the best means to regulate the production, distribution, and consumption of the great variety of psychoactive substances available today and in the foreseeable future?

Ethan A. Nadelmann, Thinking Seriously about Alternatives to Prohibition, (1992) *Journal of the American Academy of Arts and Sciences* 121: 86.

Canada’s drug laws, the laws prohibiting the possession, sale and distribution of certain psychoactive substances, were the greatest shame of twentieth-century criminal justice and promise to be even more destructive in this century. These laws have dishonoured the purpose of the criminal law—to contribute to the maintenance of a just, peaceful, and safe society. They have evolved instead into the tools for a modern-day witch hunt that greatly surpasses in excess even the communist witch hunts of the American McCarthy era.

Drug prohibition started formally in Canada with Mackenzie King’s 1908 *Opium Act*. The decades that followed have seen a pattern of increasingly repressive and irrational measures that have done little to stop the use of the targeted drugs. What they have done is to further the profitability and violence associated with the drug trade and perpetuated misunderstandings about drug use. These same measures have also forced those unfortunate enough to have chosen the “wrong” drug—marijuana, heroin or cocaine, instead of alcohol, nicotine or prescription drugs—to be stigmatized, alienated, and prosecuted. They have significantly reduced the civil liberties, not just of drug users, but of all Canadians.¹

Instead of showing the tolerance of which democratic societies boast, Canada has turned hundreds of thousands of otherwise law-abiding citizens into criminals and thrown many of them into prison for their involvement with drugs. Among the many other

flaws of prohibition, throwing people into prisons for what are most often non-violent activities represents pure economic folly.²

Prohibition has encouraged marketers to sell, and users to use, more potent forms of drugs or more dangerous methods of ingestion. Users have no guarantee of quality. As a result, some—especially the young and inexperienced—will die and others will be maimed. The story of the American prohibition of alcohol in the 1920s and of similar attempts to limit the availability of vodka in the Soviet Union in the mid-1980s is being repeated, only this time with adulterated drugs or drugs of unknown potency.³

Trafficking and organized crime

Instead of looking for policies that might minimize the harm flowing from the use of all psychoactive substances, Canada has arbitrarily created a black market for some. In so doing, it has poured billions of dollars into the hands of those willing to milk the prohibition cow and to use violence to do so. And, Canada's active support for prohibition is helping to destabilize countries around the world by giving terrorist organizations a lucrative source of revenue. The report of the Criminal Intelligence Service of Canada for the year 2000 points out the strong link between organized crime and sales of the illegal drugs:

Asian-based organized crime groups continue to be extensively involved in the importation and trafficking of drugs ... Traditional organized crime groups continue to be involved in the importation and distribution of drugs ... Outlaw motorcycle gangs, particularly the HELLS ANGELS, continue to expand both in terms of criminal activities and membership. The armed conflict between the HELLS ANGELS and the ROCK MACHINE in Quebec continues and more violence is expected with the expansion of the HELLS ANGELS and the ROCK MACHINE's recent move into Ontario. The HELLS ANGELS continue to be involved in the importation and distribution of drugs, the illegal trafficking of firearms and explosives, extortion, fraud, prostitution, and money laundering.⁴

One example mentioned in the report of the involvement of organized crime in the profitable enterprise created by prohibition is the Hells Angels:

The HELLS ANGELS will likely increase membership, add new chapters and puppet clubs throughout the country and increase alliances with other organized crime groups.

Members of the HELLS ANGELS continue to be involved in the importation and distribution of cocaine, the production and distribution of methamphetamine,

as well as the cultivation and exportation of high-grade marihuana. The HELLS ANGELS use a vast network of associates to recruit marihuana grow operation sitters, to set up grow houses, to harvest the drug and to move it at street level.⁵

Our support for the criminal prohibition of drugs is also posing threats even to the institutions of strongly democratic countries such as Canada. Commissioner Giuliano Zaccardelli of the Royal Canadian Mounted Police (RCMP) recently warned that powerful criminal organizations have drafted plans to use bribes to destabilize the country's parliamentary system.⁶ Much of the financial might and coercive power of criminal organizations comes from the sales of drugs made highly profitable by their prohibition. Just last year, a sitting member of Parliament, Bloc Quebecois MP Yvan Loubier, and his family were given 24-hour protection by the RCMP after he received death threats for his defence of farmers in his riding targeted by Montreal drug gangs. The farmers claimed that drug gangs planted marijuana on their farms and then used threats to keep the farmers from telling police.⁷ Not only politicians may be the target of corruption. Numerous examples of police corruption have emerged, even in Canada, along with corruption of other institutions.⁸

Drug use and HIV

Beyond all this, our attitude towards "evil" drugs has encouraged a dangerous inattention to the calamity of HIV infection and drug use. More than 30% of HIV infections in the United States result from injecting drugs. The percentage is increasing at an alarming rate in Canada. Globally, injecting drugs is one of the major sources of new HIV infection. The scope of the problem with hepatitis C in Canada is equally alarming. A study by the Canadian HIV/AIDS Legal Network in 1999 summarized recent findings about prevalence rates in various cities:

- HIV prevalence among injection-drug users in Montréal increased from approximately 5% prior to 1988 to 19.5% in 1997.
- In the high-risk downtown eastside of Vancouver, HIV prevalence among injection-drug users increased from about 4% in 1992/1993 to 23% in 1996/1997; the prevalence of hepatitis C among injection drug users there was 88%.
- HIV prevalence among injection-drug users in Toronto increased from 4.8% in 1992/1993 to 8.6% in 1997/1998.
- In Ottawa, a 1992/1993 study of injection-drug users found an HIV prevalence of 10.3% among persons who attended needle exchange programs; a 1996/1997 study showed that prevalence had increased to 20%.

- Data from needle-exchange programs in Québec City and smaller cities in Québec indicate that HIV prevalence among injection-drug users is 9% in Québec City and as high as 9.6% in some semi-urban areas.⁹

Threats of prosecution for running needle-exchange programs eventually waned after such programs were introduced in Canada but how many users became infected with HIV while our policy-makers and politicians dithered? And, even with needle-exchange programs, addicts who inject drugs are afraid to carry evidence of their habit with them. Some forsake their own needles and drugs for the short-term relative safety of the shooting gallery. In the gallery, they may share dirty needles and infect themselves—and ultimately others who do not use drugs—with HIV and hepatitis C.

What about prisoners? First, we sentence drug users to prison; then we do not give them the means to prevent HIV infection from the high levels of drug-use in prisons. Not until recently did we make condoms available to prisoners, in part out of fear that condoms would be used to hide drugs. Still, despite finally acknowledging that drug use in prisons is widespread, we have refused to help prisoners with some of the essential means that are available outside prisons to prevent the spread of blood-borne diseases.

Society cared little about HIV infection among drug users and prisoners because it had been taught to care little for drug users and prisoners themselves. Later, when AIDS struck the partners of such people, it still did not raise great concern for these were obviously people cut from the same cloth. Now it is beginning to strike people further afield—people far removed from prisons and the drug-using community—perhaps the sons and daughters, nieces and nephews of “respectable” Canadians.

Futility of prohibition

Despite all our efforts, we do not stop the flow of drugs into Canada: the vast bulk of the illegal drugs destined for Canada manage to get past our borders. And, Canada is not alone in this failure to stem the influx of drugs by using the criminal law. The United States, the most powerful nation on earth, which has some of the most repressive drug laws in the world, scores little, if any, better.

The RCMP's *National Drug Intelligence Estimate 1990* reported that more cocaine was available in Canada in 1989/1990 than ever before. Regions where relatively little cocaine had been sold were reporting wide availability and prices in many centres had dropped considerably.¹⁰ The same report spoke of the increasing availability of heroin in Montreal¹¹ and the active heroin markets in Toronto and Vancouver. Cannabis remains widely available in Canada: it is imported from a host of countries and Canada is becoming an increasingly important producer of marijuana itself. Home-grown marijuana has become

a major agricultural commodity.¹² Perhaps the most telling message of the futility of trying to control the marijuana market through the criminal law comes from the RCMP's own *National Drug Intelligence Estimate 1990* in what could be an advertisement for a marijuana franchise operation: "A hydroponic growing operation of a few hundred plants requires only basic horticultural knowledge and a minimal investment to set up, yet it can generate thousands of dollars in revenues."¹³ Nine years later, the 1999 RCMP drug situation report for Canada makes almost the same "advertisement": "Given the relatively low cost of setting up a grow operation and the considerable profits it generates, this activity has become increasingly attractive, even to otherwise law-abiding citizens."¹⁴

The 1999 report also paints a picture that many consider indicative of the continuing failure of prohibition:

- For all drug types, supply and demand have remained stable but will likely increase in the near future.
- The abundance of high-purity cocaine and heroin at street level increases the risks of death by overdose. The sharing of needles to inject drugs, including heroin, cocaine, methamphetamine and other substances, represents one of the main vectors for the transmission of HIV/AIDS and Hepatitis B and C.
- Conspiracies to import multi-tonne shipments of drugs in mothership operations or aboard private aircraft will continue. Smuggling by marine container and air cargo will be the preferred transportation means, however, primarily because of lower costs and risk of detection.
- New technologies in marijuana cultivation will become more prevalent. Export of marijuana to the United States will remain an important illicit industry in British Columbia and will continue expanding in other parts of Canada, particularly Quebec and Ontario.¹⁵

What these stories and messages point to—decade after decade—is the utter inability of prohibition to stem the flow of drugs, and the abundance of additional harms that prohibition generates. In short, it is hard to imagine policies better suited to generating and perpetuating violence, corruption, organized crime, destruction of civil liberties, needless death, misery and social dysfunction than the prohibitionist schemes that Canada's policy-makers and Parliamentarians have promoted over the last 90 years. If the lives and liberties of Canadians did not hang in the balance, this would be a farce. Instead, it has become a tragedy.

Opposition to the “War on Drugs”

The *Economist*, the widely respected British current-affairs publication has, strongly and often, criticized the continuing blind reliance on prohibition in Western countries. For years, its message has been: legalize, control and discourage drugs. George Shultz, former Secretary of State under President Reagan and former Secretary of the Treasury under President Nixon, has called for an examination of forms of controlled legalization of drugs. Milton Friedman, Nobel laureate in economics, called for the decriminalization of drugs, claiming that the path of more police, more jails, and a whole panoply of repressive measures can only make a bad situation worse.¹⁶ In February 1996, the conservative American *National Review* ran a series of thoughtful essays on drug prohibition. The conclusion of the editors of the *National Review*? The War on Drugs is Lost:

[I]t is our judgment that the war on drugs has failed, that it is diverting intelligent energy away from how to deal with the problem of addiction, that it is wasting our resources, and that it is encouraging civil, judicial, and penal procedures associated with police states. We all agree on the movement toward legalization, even though we may differ on just how far.¹⁷

The Drug Policy Foundation of Washington, DC has chronicled and condemned the floundering machinations of American prohibitionist policies for years. The Religious Coalition for a Moral Drug Policy, based in the United States, is equally blunt. The primary moral obligation of government, it asserts, is to secure liberty, not to promote “virtue at the point of a gun.”

Mr. Justice Michael Kirby of the Court of Appeal of New South Wales remarked recently that drug prohibition has scarred nations around the world.¹⁸ Two prominent federal judges in New York City announced in April 1993 that they would no longer preside over drug cases, “going public with a protest that calls attention to what dozens of Federal judges are doing quietly across the country.”¹⁹ Both were protesting the futility of applying the criminal law. Said Robert W. Sweet, a Federal judge in Manhattan, who began speaking in favour of legalization several years ago: “[Using the criminal law] is a policy that is not working. It’s not cutting down drug use. The best way to do this is through education and treatment.”²⁰

Several respected Canadian criminologists, lawyers, psychologists and drug policy researchers have called either for an end to prohibition, or at least an honest evaluation of its harms. Some of the most progressive literature in the Western world on alternatives to prohibition originates in Canada. Before its unfortunate demise, the Law Reform Commission of Canada had set up a drug policy group to look at the application of the

criminal law to drugs issues. This group was preparing a working paper on the topic when the plug was pulled on the Commission. The thrust of the working paper and the broad consensus of the group to that point was that applying the criminal law to the control of drugs created serious harms.²¹

Rethinking Canada's outmoded drug policies

Pleas for a rethinking of Canada's outmoded drug policies, and those of other countries, have often encountered walls of silence, contempt, and hostility. This is so even within governments, such as Canada's, that preach restraint in the use of the criminal law. The Government of Canada's 1982 statement of principles, *The Criminal Law in Canadian Society*, maintained that the criminal law should be employed to deal only with that conduct for which other means of social control are inadequate or inappropriate. Nice words, but no reflection of reality. Instead, the criminal law has become the instrument of first resort in dealing with drugs. Ignoring the restraint that our official policy proclaims, our drug laws exhibit excess. Instead of compassion and tolerance, our drug laws signal insensitivity to the human condition. Instead of justice, they preach oppression.

Some people call it a surrender to abandon the use of the criminal law against drugs. It is no more a surrender than failing to prohibit eggs means a surrender to cholesterol. We do not need to make everything we disapprove of into a criminal offence. Ending prohibition is common sense: instead of propping up an enormously profitable black-market in drugs and pushing drug users to the margins of society, governments could focus on productive means of trying to control the harmful use of substances, be they alcohol, tobacco, marijuana, heroin or cocaine.

Moving away from prohibition also means that governments could turn off the propaganda machine that has inhibited free expression and open debate on the drugs issue. For decades, this machine has spewed forth on the "evil" of some drugs while largely ignoring others.²² Governments have needed such propaganda to justify increasingly repressive laws and to maintain public support for applying these desperate measures. In place of this propaganda machine, Canada needs an honest dialogue about the harms (and, in some cases, benefits) of all drugs, not just those that have been arbitrarily vilified by policy makers, moral entrepreneurs, vote-hungry politicians, and those with a vested interest in prohibition. We must start to talk openly and honestly about drugs and about alternatives to prohibition, even if it is "administratively" easier to accept the status quo.

Above all, we must question why we continue to copy American "solutions" to the drug problem. The United States represents the most glaring failure of prohibitionist drug policy in the world. Blood has run in the gutters of too many American cities, largely because of the violent trade in drugs spawned by prohibition. Washington, DC the capital of the

most powerful nation on earth, recently had one of the highest murder rates in the world. Between 1988 and 1991, the years of President Bush's "war on drugs," the murder rate in Washington increased by 32%—from 369 in 1988 to 489 in 1991.²³ A significant portion of those murders over those four years—varying between 30% and 50%—have been related to the illicit trade fostered by prohibition.²⁴

Prisons in the United States are overflowing with convicted drug offenders. In February 2000, the population of American prisons topped 2 million. The United States has earned the distinction of having a quarter of the world's prison population, despite having less than 5% of the world's population.²⁵ The United States imprisons 100,000 more persons for drug offences alone than the entire European Union imprisons for all offences, even though the European Union has 100 million more citizens than the United States.²⁶ Since 1980, the number of persons imprisoned for drug offences in the United States has increased 11-fold while the number of violent offenders entering state prisons has doubled and the number of nonviolent prisoners has tripled.²⁷ And, despite massive infusions of law, money and rhetoric, particularly over the past several years, drugs remain widely available and many drug prices have remained constant or fallen.²⁸

Yet, Canada applies many of the same failed policies and laws that have proved unworkable in the United States. Do we persist because we are basically an authoritarian society that tries to repress with the sledgehammer of the criminal law conduct that society's ruling groups do not like? Or, have we been so wildly misled about "good" and "bad" drugs that even our leaders cannot apply logical thought to drug policy? Perhaps we persist with prohibition simply because our legislators and policy makers, like their targets, have become addicted—only, in this case, to the criminal law.

Canada needs a dramatic change in the direction of its drug policy. Canada's Drug Strategy preached the rhetoric of a more moderate approach but we are doing more of the same. Parliament had an opportunity to review its drug policies on two occasions in 1990s. The Conservative government introduced Bill C-85, the Psychoactive Substance Control Act before Parliament in the Spring of 1992. Bill C-85 died when the 1993 election was called. The Liberal government then introduced a very similar bill, Bill C-7, the Controlled Drugs and Substances Act. Both bills demonstrated unswerving loyalty to prohibition. On June 20, 1996, after extensive hearings before both House of Commons and Senate committees, Bill C-7 (since renamed Bill C-8) became law; it was proclaimed in force on May 10, 1997. The Controlled Drugs and Substances Act has further entrenched the unnecessary use of the criminal law. It has further entrenched police action against what should be treated as a health issue. It has ensured that our approach to drugs will generate further violence and further death. Why are we doing this to ourselves? It is time to stop pretending that there is any intellectual, ethical or moral justification for continuing this violent, destructive and inhumane policy of prohibition.

Other voices

The remainder of this paper relies on the eloquent words of others challenging prohibition, both in Canada and elsewhere. Some of these voices are the voices of radicals. Some are the voices of moderates. Surprisingly, at least initially, some are the voices of conservatives.

Canadian voices

Much of the writing about the failure of prohibition has come from the United States. This is likely because prohibition has done such profound damage to American society (although certainly not as profound as the damage to countries like Colombia, Peru, and Bolivia). Some of the most progressive writing, however, has come from Canadian authors.

The late Professor Chester N. Mitchell, in his 1990 text, *The Drug Solution*, summarized the case against current prohibitionist drug policies of many countries as follows:

- (1) prohibition publicizes obscure drugs and, with enthusiastic media support, generates new fashions in drug use;
- (2) prohibition fails to eradicate the importation or domestic production of illicit drugs but perversely succeeds in shifting users to more potent forms of a drug or to more dangerous methods of ingestion;
- (3) efforts to eliminate illicit drugs “at the source” in Third World countries are futile, expensive and destructive;
- (4) mass demand for prohibited drugs creates an extensive black market that feeds organized crime, increases violence, destroys respect for the law, corrupts enforcement, aids tax evasion, glamorizes crime, and wastes police resources;
- (5) drug law enforcement relies on informants, entrapment, and undercover agents, and creates a warlike atmosphere conducive to the abuse of human rights;
- (6) current drug laws ignore constitutional guarantees of equality;
- (7) current drug laws are elitist and undemocratic because they minimize voter input and reject citizen autonomy while granting unjustified drug control monopolies to police and physicians;

- (8) ending prohibition would destroy black markets, unclog prisons and courts, decriminalize millions of citizens, better protect youngsters and restore a good deal of tolerance and civility to society.²⁹

In his conclusion, Mitchell states:

When will the drug wars end? Unlike military campaigns, internal wars of persecution are notoriously long-lived. Past wars against witches, Jews, Moslems, Christian martyrs, and other scapegoats often lasted for centuries, and the drug war may be no exception. The drug battle lines were drawn up years before the 1917 Communist revolution in Russia, and when the first people to walk on Mars return to Earth sometime in the 21st century, they will probably be greeted by newspaper headlines announcing the familiar, depressing catalogues of drug busts, corruption scandals, and violent deaths of inner-city youths killed in drug turf battles. For now, compromise seems impossible because governments keep demanding the unconditional surrender of all drug offenders. But possessing no organization, army or headquarters, drug offenders cannot surrender en masse. Strictly speaking, they cannot be warred against; they can only be persecuted.

As modern people we like to flatter ourselves that the problems we face are entirely new. None have passed this way before, so why look for historical parallels? Canada's Supreme Court held in *Hauser* (1979) that "narcotics" were a genuinely new matter, like aviation or telecommunications. The alleged novelty of our problems explains our failure to solve them, and it also rationalizes a reliance on technological fixes, like herbicides, wire-tapping and helicopter surveillance when, at heart, the drug crisis is a replay of the ancient battle between faith and science, between the haves and the have-nots, between the judges and the judged.

That modern drug myths repeat the time-worn divisions of blessed and cursed is apparent from the way the healing properties of medical psychoactives and the destructive properties of illicit narcotics are equally exaggerated in opposite directions. Once it was "God's Own Medicine," now heroin is reviled as a godless curse. Without good evidence, most people accept these exaggerations and lies because they are enshrined in law and re-inforced daily in the mass media. But ours is still a relatively sceptical age, and the weight of the pulpit, court, and public opinion has failed to prevent certain psychologists, economists, anthropologists, lawyers, physicians, sociologists and other researchers from investigating drug issues and questioning official claims. Such investigation continues to grow and broaden, and a rough consensus has begun to emerge on a number of important points ... At some juncture, the research results will be powerful enough to undermine the drug myths. The vitality and freedom of science must therefore be

maintained and, wherever possible, law reforms should concentrate on creating decision-making systems that allow a full and fair consideration of the evidence. We do not yet know enough to provide complete or totally adequate answers about drug regulation, but we do know how to find those answers.³⁰

Psychologist Bruce Alexander of Simon Fraser University speaks of the impact of decades of drug propaganda:

In the case of the War on Drugs, the impact of decades of propaganda is such that it is impossible to discuss psycho-active substances like heroin, LSD, cocaine, and airplane glue as anything but “fathomless evils.” A plan to treat them in a normal way, allowing a reasonable amount of use under reasonable conditions, and providing regulations to control dangerous use, would seem defeatist, or treasonous. Yet, use of these substances is not more dangerous, unhealthy, or addictive than countless other practices that Canadians engage in such as driving motorcycles or automobiles, skiing, smoking cigarettes, white-water rafting, playing hockey, playing poker, or eating chocolate. In each of these cases, and in the case of the feared drugs, most people use these practices in a constructive way, but a few people use them in such extreme and hazardous ways that their health is affected. In the most extreme cases, some people lose their lives.³¹

...

The biggest cost of the drug war propaganda may be the systematic reduction about people’s ability to think intelligently about drugs. Society faces genuinely terrifying, immensely complex problems in the last decade of the twentieth century. The environment, educational institutions, value systems, health institutions, and economy all need urgent attention. But the obsessive concern with drug problems stirred up by incessant propaganda distracts us from these to the point of collective stupidity.³²

Criminologist Neil Boyd of Simon Fraser University states:

When we take drugs we do so to alter ordinary waking consciousness. The criminal control of a citizen’s desire to alter consciousness is unnecessary. We have other at least equally useful and less punitive methods available for control: taxation, prescription, and prohibition of public consumption.

But most important, we should confront our own hypocrisy. We can no longer afford the illusion that the alcohol drinkers and tobacco smokers of Canada are engaging in methods of consciousness alteration that are more safe or socially desirable than the sniffing of cocaine, the smoking or drinking of opiates, or the

smoking of marijuana. The answer is not to usher in a new wave of prohibitionist sentiment against all drugs, nor is the answer to allow the free-market promotion of any psychoactive. The middle ground is carefully regulated access to drugs by consenting adults, with no advertising, fully informed consumers, and taxation based on the extent and harm produced by use. There is a need for tolerance, for both tobacco and heroin addicts. And there is a need for control of the settings and social circumstances of drug use. There are no good, or bad, drugs, though some are more toxic, some are more likely to produce dependence, and some are very difficult to use without significant risks.

...

The task is to dismantle the costly and violent criminal apparatus that we have built around drug use and distribution, mindful that our overriding concern should be public health, not the self-interested morality of Western industrial culture.³³

Patricia Erickson, Senior Scientist at Ontario's Addiction Research Foundation, has written of the recent results of Canada's muddled approach to drug policy:

The 1990 RCMP [Drug Intelligence Estimates] not only documented falling prices and greater purity of cocaine, but also projected easier availability of almost all illegal drugs in Canada in the next two years. In this context, the Solicitor General ... remarked: "What we're saying is that the war has not been won yet but that we are making steady progress." One can only wonder what a "setback" would be.³⁴

Erickson also refers to a statement made by a former Canadian prime minister:

Prime Minister Pierre Trudeau, in a session with students in 1977, said: "If you have a joint and you're smoking it for your private pleasure, you shouldn't be hassled."³⁵

As the "G8" leaders met in 1998, the *Toronto Globe and Mail*³⁶ challenged their continuing blind acceptance of prohibition:

IRRATIONALITY is doing the same thing over and over again, expecting different results. Judged by this yardstick, the illicit-drug policies of most Western governments are indeed irrational. These policies do not achieve their stated aims—reducing the supply of drugs, cutting crime, making citizens safer or weakening organized crime—but rather the reverse ...

Illicit-drug prices show a long-term decline, indicating plentiful and growing supply of a commodity that the UN estimates represents about 8% of international

trade. At the same time, prohibition makes drugs far more expensive than their cost of production. The price of pure heroin for medicinal purposes is about one-thirtieth of the street price, and the difference goes straight to organized crime, a state-dictated subsidy to gangsterism.

The criminalization of drug use has massively increased crime, particularly of the victimless variety. Thousands of people in North America are in prison solely because they bought, sold or were in possession of illicit drugs. Many real crimes against persons and property are carried out by people whom drug-criminalization has marginalized and who have no other way of paying the prohibition-inflated costs of their drugs. In countries like Canada, citizens are endangered by street violence and the rise of blood-borne diseases like HIV and hepatitis C. Internationally, armed insurrections have been financed by drug money in countries like Peru, Afghanistan and Cambodia, and in Latin America and the Caribbean, judges, ministers, police and even presidential candidates are murdered by drug cartels.

Throughout the world, drug money finances corruption on a massive scale, undermining the rule of law and transferring power to those segments of the population brutal, clever and ruthless enough to supply a need that governments have naively tried to suppress. Raise the stakes by stepping up the war effort, and the outcome must be more lives ruined for victimless crimes and even fatter profits for even scarier people.

Of course drugs are harmful and their use has social costs, but reasonable people weigh these against the human and social cost of prohibition, which is measured not only in dollars, but in lost liberty, the coarsening of the law, the courts, the police and the prisons ...

Prohibition does not work and cannot work, and its costs are higher than those of a policy of properly supervised and regulated access to drugs. Given that the elimination of drugs from our society is not an option, the G8 leaders should have been asking themselves how they can minimize the harm that drugs represent. As it is, their policies maximize the damage.

Voices from other countries

In September of 1989, *The Economist* spoke out:

Prohibition, and its inevitable failure, make a bad business more criminal, more profitable and more dangerous to its customers than it need be. Lifting the ban, and replacing it with detailed regulation, might certainly expose more people to

risky experiments with drugs. That danger is real—even if experience shows that relatively few people are foolish enough to go beyond experiments.

But prohibition's failure is more dangerous yet, both for individual drug-takers and for societies corrupted, subverted and terrorized by the drug gangs. The trade is banned by national laws and international conventions. Repeal them, replace them by control, taxation and discouragement. Until that is done, the slaughter in the United States, and the destruction in Colombia, will continue. Europe's turn is next.³⁷

The Economist has not allowed this issue to rest. On several occasions, it has reiterated its position. In its May 15, 1993 edition, it spoke out again in a lead editorial:

The attitude of most electorates and governments is to deplore the problems that the illegal drug trade brings, view the whole matter with distaste, and sit on the status quo—a policy of sweeping prohibition. Yet the problems cannot be ignored. The crime to which some addicts resort to finance their habits, and in which suppliers of illegal drugs habitually engage, exacts its price in victims' lives, not just money. The illegal trade in drugs supports organized crime the world over. It pulls drug-takers into a world of filthy needles, poisoned doses and pushers bent upon selling them more addictive and dangerous fixes.

Yet most people still balk at exploring ways in which a legal regime might undermine such effects. Their refusal owes something to a distaste for addiction in itself. This is an argument shot through with inconsistency. The strongest disapproval often comes from those who scream about liberties if their own particular indulgences—for assault rifles, say—are attacked. Addiction to cigarettes is reckoned to be the chief avoidable cause of death in the world. Alcohol deprives boozers of their lives and their memories, and ends the lives of all too many innocents who get smashed on the roads by the inebriated. Yet here the idea of dissuasion within the law is broadly accepted.

Five years earlier, on April 2, 1988, *The Economist* had published a lead editorial called, "Getting gangsters out of drugs". The editorial's answer to drugs—including heroin, cocaine, marijuana, alcohol and tobacco—was "legalise, control, discourage." It continued:

A sensible public policy might be to treat all three—alcohol, tobacco, marijuana—the same, with licensing, taxes and quality control ...

Cocaine most needs to be brought under the aegis of controlled and thus legal suppliers, either by treating it like alcohol, tobacco and marijuana ... or like heroin ... depending how statistically awful it proves to be.

[T]he best policy towards existing heroin users might be to bring them within the law, allowing them to register for the right to buy strictly limited doses. Taxes should be high enough to discourage consumption, but low enough to put illicit dealers out of business.

Mr. Justice Michael Kirby, now of the High Court of Australia, has spoken about the unquestioning acceptance of traditional “truths” about drugs:

A recent documentary on Ceausescu’s Romania presented a parade of chastened politicians, intellectuals and lawyers who confessed that they had never stopped to question the fantastic laws and policies (not to say personality cult) which the dictator inflicted on them. They, at least, had the excuse of the Securitate. The inhibitions upon questioning apparently universally accepted wisdoms are very great: this is so even in less authoritarian societies.

One of the great “truths” of modern times is said to be the need for an international “war against drugs.”³⁸

In 1989, Milton Friedman, Nobel laureate in economics, addressed a letter pleading for the end of prohibition to William Bennett, the former American drug “Czar.”

In Oliver Cromwell’s eloquent words, “I beseech you, in the bowels of Christ, think it possible you may be mistaken” about the course you and President Bush urge us to adopt to fight drugs. The path you propose of more police, more jails, use of the military in foreign countries, harsh penalties for drug users, and a whole panoply of repressive measures can only make a bad situation worse. The drug war cannot be won by those tactics without undermining the human liberty and individual freedom that you and I cherish.

...

Drugs are a tragedy for addicts. But criminalizing their use converts that tragedy into a disaster for society, for users and non-users alike. Our experience with the prohibition of drugs is a replay of our experience with the prohibition of alcoholic beverages.

...

Postponing decriminalization will only make matters worse, and make the problem appear even more intractable.

...

Decriminalization would not prevent us from treating drugs as we now treat alcohol and tobacco: prohibiting sales of drugs to minors, outlawing the advertising of drugs and similar measures. Such measures could be enforced, while outright prohibition cannot be. Moreover, if even a small fraction of the money we now spend on trying to enforce drug prohibition were devoted to treatment and rehabilitation, in an atmosphere of compassion not punishment, the reduction in drug usage and in the harm done to the users could be dramatic.

... Every friend of freedom ... must be as revolted as I am by the prospect of turning the United States into an armed camp, by the vision of jails filled with casual drug users and of an army of enforcers empowered to invade the liberty of citizens on slight evidence.³⁹

Britain's *The Independent* newspaper had this to say in an editorial entitled, Time to License the Drug Trade:

A recent analysis by the Cato Institute in Washington concluded that the prohibition of drugs criminalized users, forced them into contact with professional criminals, tempted entrepreneurial young people from impoverished backgrounds into a lucrative criminal life, encouraged gang warfare, resulted in people taking impure mixtures in often dangerously strong doses by dangerous methods, and created heavy policing costs. It is, in short, not drug abuse itself which creates the most havoc, but the crime resulting from its prohibition. It is time for the Bush administration, and other Western governments, to contemplate some form of licensed sale of drugs which would deprive the pushers of their market while obliging registered addicts to take treatment. The key to beating the traffic is to remove its prodigious profitability and to deglamorize drug abuse by a heavy programme of public education.⁴⁰

Lewis H. Lapham, editor of *Harper's* magazine, said this:

The war on drugs is a political war, waged not by scientists and doctors, but by police officers and politicians. Under more fortunate circumstances, the prevalence of drugs in American society—not only cocaine and heroin and marijuana but also alcohol and tobacco and sleeping pills—would properly be addressed as a public health question ...

Given the folly and the expense of the war on drugs (comparable to the folly and expense of the war in Vietnam), I expect that the United States eventually will arrive at some method of decriminalizing the use of all drugs. The arguments

in favour of decriminalization seem to me to be irrefutable, as do the lessons of experience taught by the failed attempt at the prohibition of alcohol.

But for the time being, as long as the question remains primarily political, the war on drugs serves the purposes of the more reactionary interests within our society (i.e., the defenders of the imagined innocence of a nonexistent past) and transfers the cost of the war to precisely those individuals whom the promoters of the war say they wish to protect.

...

[Former President] Bush offers the nation the chance to deny its best principles, to corrupt its magistrates and enrich its most vicious and efficient criminals, to repudiate its civil liberties and repent of the habits of freedom. The deal is shabby.⁴¹

The Religious Coalition for a Moral Drug Policy also decries Prohibition. The Coalition draws its membership from most major American religious groups, including Baptists, Jews, Roman Catholics and members of the United Church:

One day we shall look back at this period of our nation's history, in much the same way that we now look back upon the days of prohibition of alcohol. Perhaps then, when the pain isn't quite as immediate and when the gaping wounds of our communities have healed, we will be able to wonder how in the world some people ever thought they could battle a moral and spiritual problem with guns and jails.

But until that day comes, as moral leaders, as clergy, as human beings, we will cry out for an end to the violence of the Drug War, and a beginning of the process of healing and liberation that our people so desperately need.⁴²

...

It is, to us, clearly immoral to continue a policy that results in a violent and corrupt society, to pursue a policy that pretends to uphold our values even as it destroys them.

Much of these grave consequences of the drug war spring from the ideological assumption that we must make everything we disapprove of illegal. We reject this notion, as it forgets the difference between vice and crime. Enforcing positive morality is our responsibility as individuals, as parents, and as clergy. To put the government in charge of all morality is to abdicate our individual responsibility, to weaken the moral authority of our religious institutions, and thus to fail in the execution of our duties.

...

As all the great classic liberal thinkers argued the primary moral obligation of the government is to secure liberty, not to promote what is called virtue at the point of a gun.⁴³

Harvard medical professor Lester Grinspoon sums up the difficulty of having a rational discussion about drugs:

I began to study marijuana in 1967 ... I had not yet learned that there is something very special about illicit drugs. If they don't always make the drug user behave irrationally, they certainly cause many non-users to behave that way.⁴⁴

Ethan Nadelmann,⁴⁵ then a member of the Princeton Working Group on the Future of Drug Use and Alternatives to Drug Prohibition, states:

To legalize or not to legalize? That ... is not really the right question. The appropriate question is much broader, and it is one that incorporates the "legalize or not" question with respect to particular psychoactive drug products: What, simply stated, are the best means to regulate the production, distribution, and consumption of the great variety of psychoactive substances available today and in the foreseeable future? For a variety of reasons, the efforts of myself and others to answer that highly complex question have been captured by the label of "legalization." The term itself proved immensely successful in drawing the attention of tens of millions in the United States and elsewhere to what was at once a radical sounding but quite sensible critique of American drug control policies. But it exacted a stiff price with its implication that the only alternative to current policies was something resembling current US policies with respect to alcohol and tobacco. Few of those publicly associated with legalization in fact advocated such an alternative, but the misimpression has stuck in the public mind.

Legalization has always meant different things to different people. From my perspective, it has been first and foremost a critique of American drug prohibitionist policies which stresses the extent to which most of what Americans commonly identify as part and parcel of "the drug problem" are in fact the results of those policies. The failure of most Americans to perceive the extent and content of this causal relationship, and to distinguish between the problems that stem from the misuse of drugs per se and those that stem from drug prohibitionist policies, remains the greatest single obstacle to any significant change in American drug control policies. The recognition of this causal relationship does not, it should be stressed, lead automatically to a public policy recommendation that all of drug

prohibition be abandoned. But it does suggest that alternative policies less dependent upon prohibitionist methods are likely to prove more effective.⁴⁶

Professor Jerome Skolnick of the University of California, Berkeley, sums up the limitations of law enforcement in dealing with drugs:

Working narcotic police understand the limitations of law enforcement, perhaps more than anyone. I asked an experienced New York narcotics officer, a trainer of undercover operatives, whom I accompanied in 1990 to observe the drug dealing scene in New York City's Washington Heights (a major marketing centre for crack cocaine), how effective narcotics enforcement was in interfering with cocaine trafficking. His succinct and evocative reply: "We're like a gnat biting on a horse's ass."⁴⁷

Notes

- 1 One need only think of Canada's history of powers of search and seizure, the increasing militarization of policing, the use of entrapment, informers, reverse onus provisions, mandatory minimum penalties, body cavity searches and "bed pan vigils," choke-holds, reporting requirements for large cash transactions and drug testing to see where some of those liberties have been cast aside in the name of battling drugs.
- 2 And, the folly does not end with the cost of imprisonment (about \$50,000 per year per person in a federal institution) and the loss of those imprisoned from the work force and their families. Take, for example, a drug bust reported in the *Ottawa Citizen*, November 28, 1992. Twenty-one alleged drug dealers and users were charged in a raid involving nearly 20 officers. The average value of the drugs (mostly hashish, marijuana and LSD) seized was \$50. Add to that the cost of prosecuting (court administrative costs, and the value of the time spent by the police, prosecutors, social workers and judges, plus the possible cost of legal aid for the accused.) Most of these offenders, of course, would not go to prison.
- 3 The 1998 report of provincial health officer, Dr. John Millar, *HIV, Hepatitis and Injection Drug Use in British Columbia—Pay Now or Pay Later*, stated that overdose from injection drug use had become the leading cause of death for adults age 30 to 49 in British Columbia, with more than 300 deaths annually, and that injection drug use had become the leading cause of new cases of HIV infection. A 1994 task force reported similar results. It found that 331 illicit drug deaths occurred in British Columbia in 1993. That year, illicit drug deaths were the leading cause of death in the province for males and females between 30 and 44 years of age: Task Force into Illicit Narcotic Overdose Deaths in British Columbia, *Report of the Task Force into Illicit Narcotic Overdose Deaths in British Columbia* (the "Cain Report"), (Ministry of the Attorney General (B.C.) 1994) at 8, 11.
- 4 Criminal Intelligence Service Canada, *Annual Report on Organized Crime in Canada: 2000*, web site (accessed September 12, 2000).
- 5 Criminal Intelligence Service Canada, *Annual Report on Organized Crime in Canada: 2000*, web site (accessed September 12, 2000).
- 6 *National Post*, Sept. 8, 2000.
- 7 *Ottawa Citizen*, October 6, 1999.
- 8 Among recent media reports of corruption among Canadian police and other justice system officials: Jail Guard Faces Six Drug Charges (*Halifax Daily News*, January 21, 1999); Judge Found Guilty of Money Laundering (*United Press International*, January 25, 1999); 7 Held in \$1 Million Customs Thefts [including a Pearson Airport inspector] (*Toronto Star*, January 26, 1999); Cop Admits Drug Charges (*London Free Press*, December 7, 1999); Veteran Drug Cop Charged (*Toronto*

Sun, January 15, 2000); Officer Is Held over Bogus Drug Raids (*Toronto Star*, March 11, 2000); Former Mountie Won't Do Time for Corruption (*The Toronto Star*, January 20, 1999): "Accused of taking more than \$200,000 in bribes from Colombian drug lords, former Mountie Jorge Leite has walked out of court here with a suspended sentence and a \$1,500 fine [T]he three judges were satisfied Leite had been corrupted by the Colombians and found that he had sold RCMP information 49 times to a drug network run by Montreal drug queen Ines Barbosa."

- 9 Canadian HIV/AIDS Legal Network, *Injection Drug Use and HIV/AIDS: Legal and Ethical Issues* (1999). Web site: <http://www.aidslaw.ca/Maincontent/issues/druglaws/e-idu/background.htm> (accessed Sept. 12, 2000) [footnotes omitted]. The Vancouver statistics on hepatitis C come from Dr. John S. Millar, BC Provincial Health Officer, *HIV, Hepatitis, and Injection Drug Use in British Columbia—Pay Now or the Pay Later?* (June 1998), at 8.
- 10 (Ottawa: Ministry of Supply and Services 1991) at 28.
- 11 *Ibid.* at 14–15.
- 12 The *Globe and Mail* reported on December 7, 1992 that marijuana had become the top cash crop in British Columbia.
- 13 *Supra* note 10 at 59.
- 14 Royal Canadian Mounted Police, *Criminal Intelligence Directorate, Canada: 1999*, at 6–7.
- 15 Royal Canadian Mounted Police, *Criminal Intelligence Directorate, Canada: 1999*, at 12.
- 16 *Wall Street Journal*, September 5, 1989.
- 17 February 12, 1996, pp. 34–48.
- 18 Mr. Justice Kirby was speaking at an international conference on legal issues arising from the Human Genome Project in Bilbao, Spain, in May 1993.
- 19 *New York Times*, Saturday, April 17, 1993, p.1.
- 20 *Ibid.*
- 21 In the absence of a credible, independent national voice for drug policy reform, several of Canada's leading independent drug policy researchers formed the Canadian Foundation for Drug Policy in early June 1993. The immediate concern of the Foundation was to seek a reconsideration of Bill C-85, the *Psychoactive Substance Control Act* then before Parliament.
- 22 Simon Fraser University criminologist Neil Boyd refers to the role of Emily Murphy, an Edmonton magistrate and suffragette, in spreading misinformation about marijuana in the early 1920's, just before marijuana was outlawed. Judge Murphy wrote a series of articles for *Maclean's* magazine on drug issues. These

- were later published as a book, *The Black Candle*. Neil Boyd, *High Society: Legal and Illegal Drugs in Canada* (Toronto: Key Porter Books, 1991) 10.
- 23 Drug Policy Foundation, *The Bush Drug War Record: The Real Story of a \$45 Billion Domestic War* (Washington, DC: Drug Policy Foundation, 1992) at 16.
- 24 *Ibid.*
- 25 Justice Policy Institute, *The Punishing Decade: Prison and Jail Estimates at the Millennium*. Digital document: <http://www.cjci.org/punishingdecade/punishing.html> (accessed Sept. 12, 2000)..
- 26 Justice Policy Institute, "New study finds one in four prisoners locked up for drugs," web site (accessed Sept. 12, 2000).
- 27 Justice Policy Institute, *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States*, web site (accessed Sept. 12, 2000).
- 28 Drug Policy Foundation, *The Bush Drug War Record: The Real Story of a \$45 Billion Domestic War* (Washington, DC: Drug Policy Foundation, 1992) at 11–14.
- 29 Chester N. Mitchell, *The Drug Solution* (Ottawa 1990: Carleton University Press) 1–2 (references to footnotes omitted).
- 30 *Ibid.* at 347–48 (references to footnotes omitted).
- 31 Bruce K. Alexander, *Peaceful Measures: Canada's Way Out of the War on Drugs* (Toronto: University of Toronto Press, 1990) 71.
- 32 *Ibid.*
- 33 Neil Boyd, *High Society: Legal and Illegal Drugs in Canada*, *supra* note 22.
- 34 Patricia Erickson, Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism, (1992), 121 *Journal of the American Academy of Arts and Sciences* 239 at 255.
- 35 *Ibid.* at 247.
- 36 What Are G8 Leaders Smoking? (May 18, 1998).
- 37 September 2, 1989.
- 38 Book review, (1992), 66 *Aust. L.J.* 232.
- 39 *Wall Street Journal* (September 7, 1989).
- 40 *The Independent* (September 7, 1989).
- 41 *Harper's* (December, 1989).
- 42 Religious Coalition for a Moral Drug Policy, *Reason, Compassion and the Drug War: A Statement by Religious Men and Women* (Washington, DC, 1990) 4–5.
- 43 *Ibid.* at 43–44.

- 44 Lester Grinspoon, Marijuana Enhances the Lives of Some People. In Arnold Trebach and Kevin Zeese, eds., *Drug Prohibition and the Conscience of Nations* (Washington, DC: The Drug Policy Foundation, 1990) 157.
- 45 Ethan Nadelmann now heads the Lindesmith Center—Drug Policy Foundation, a drug-policy think-tank based in New York and Washington, DC.
- 46 Ethan A. Nadelmann, Thinking Seriously about Alternatives to Prohibition (1992), 121 *Journal of the American Academy of Arts and Sciences* 85 at 86–87.
- 47 Jerome K. Skolnick, Rethinking the Drug Problem (1992), 121 *Journal of the American Academy of Arts and Sciences* 133 at 134.

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Eugene Oscapella, B.A., LL.B., LL.M., is a Barrister and Solicitor in Ottawa, Canada. Mr. Oscapella completed undergraduate studies in economics at the University of Toronto in 1974 and received his bachelor of laws degree from the University of Ottawa in 1977. He obtained his Master of Laws degree from the London School of Economics and Political Science in 1979. He was called to the Ontario Bar in 1980. From 1980 to 1981, Mr. Oscapella served as a commission counsel with the McDonald Commission of Inquiry into the Royal Canadian Mounted Police. From 1982 to 1985, he was Director of Legislation and Law Reform for the Canadian Bar Association. Since 1985, Mr. Oscapella has been an independent adviser on Canadian legislative and social policy issues. Mr. Oscapella has written and lectured extensively in Canada and abroad on privacy and drug policy issues. He is a former chair of the drug-policy group of the Law Reform Commission of Canada and a founding member of the Canadian Foundation for Drug Policy. He sat for several years on the policy committee of the Canadian Criminal Justice Association and is a member of the Canadian Civil Liberties Association and the Lindesmith Center— Drug Policy Foundation, a drug-policy think-tank based in New York and Washington, DC.

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