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THE INCREMENTAL TRAIL IN DEVELOPING FALSE DOCTRINE AND ITS CONSEQUENCES IN THE AMERICAN DRUG SCENE

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ABSTRACT

The trail of what has turned out to be the criminalization of drug taking behavior illustrates a major criticism of incrementalism in developing policy--the acceptance and maintenance of specific values and attitudes. The effects of false doctrine accepted more than fifty years ago are with us today and will continue in their effect until a radical change is seen in our society. The purpose of this paper is to map the old trail, identify those times where false doctrine was accepted, and to present a radical alternative for the future.

The non-medical use of drugs has attracted attention from many disciplines during the last few years. Many descriptions of the drug user have been presented along with large numbers of reasons explaining the motivations for drug taking behavior. The thrust of what can be termed a social movement is credited to two former psychologists at Harvard, Timothy Leary and Richard Alpert. Their directive of "Tune-In, Turn-On and Drop-Out" was the catalyst to a ground-swell of drug experimentation on the part of young people that stimulated panic, thought and writing about using drugs.

For a student in Social Policy, the history of drug legislation in the United States illustrates a prime example of incrementalism. The trail of what has turned out to be the criminalization of drug taking behavior illustrates a major criticism of incrementalism in developing policy--the acceptance and maintenance of specific values and attitudes. The effects of false doctrine accepted more than fifty years ago are with us today and will continue in their effect until a radical change is seen in our society. The purpose of this paper is to map the old trail, a radical alternative for the future.

Beginnings:

The Pure Food and Drug Act of 1906 is a significant milestone. Before this time morphine could be purchased as easily as cigarettes or flour. Many medicines incorporated it in their "healing" formulae. When the public began to understand the effects of these patented medicines, addiction was thought of as nothing more than a non-desirable behavior--like having bad breath in today's world. Many members of the middle class and pillars of the community were addicts. This

included many former soldiers of the Civil War who were given morphine for pain and developed what was called "the soldier's disease".[1]

During the period of 1875 until 1900, a number of states enacted laws against smoking opium. No thought was given to any law pertaining to drinking medicine with morphine or injecting morphine. (Pharmacologically, morphine is a derivative of opium, and hence, the effects on a human body are the same). This contradiction of behavior related to a value and moral problem in the society that had as its foundation a prejudicial feeling against the Chinese.

Many Chinese had been brought to this country to help build the railroads. Being that they were involved in a very difficult labor and working conditions, they required an acceptable release and relaxation method for themselves. They adopted their mother country's vehicle of smoking opium for relaxation. The prejudice against the Chinese was translated into an anti-opium smoking obsession which then initiated the "aggressive, debauched, and sexually aggressive image of the opium smoker."[2]

Two patterns of opium use developed during this time. There were the smokers--Chinese, and the drinkers or injectors--the rest of the users. This latter group was made up of mostly upper and middle-class, white Anglo-Saxon Protestants who were generally female. The latter pattern was viewed as acceptable because "good people did it. The other pattern was viewed as a growing menace".[3]

The Pure Food and Drug Act did not do much to decrease the supply for the drinkers and injectors, it merely brought the supply under closer control and centralized the purchasing in pharmacies instead of an open wagon or grocery store. What it did do, however, by implication, was to legitimize one type of use and sanction an attitude about the other type. Thus began the "dope fiend" myth in the United States.

The second milestone in our trail is the Harrison Narcotics Act of 1914. Although there are some international foreign policy issues that enter the trail at this point, it is suffice to say that for the purposes of this paper, the Harrison Act came around at a convenient time to provide a national regulatory mechanism. In brief, the act was not meant to be a prohibitionary statute in any way, rather "a mild regulatory measure consisting of registration and record-keeping requirements to which a moderate federal tax was added in 1919. Its avowed purpose was to bring the domestic drug traffic into observable channels."[4]

The Harrison Act did not impose any restrictions on who might register and deal with narcotic drugs so long as the records were kept and taxes paid. The issue of addiction was never mentioned in any wording of the Act. Physicians were allowed to dispense narcotics in the course of their treatment for patients. What about drug-addicted patients? That is another story.

Dr. Robert Felix believes that the moralists won out in any struggle in relation to the drug addicted since they believed it wrong to take drugs in order

to feel good. They did not consider any disease elements in this need, nor for that matter, the need to have an opiate drug merely to feel normal.[5] So when the possession of smuggled drugs became illegal, the addict was forced to go to a physician as the only remaining source for legal drugs. This did not make a good illicit market in drugs as the police and pushers "found themselves identically interested in squeezing the addict and cutting him off from possible help as a patient and have maintained a defacto partnership ever since."[6]

It must be remembered that the Harrison Act did not disallow physicians from treating patients who needed opiates. There were pressure groups in the country that did not approve of this apparent loophole in the Harrison Act. The squeeze play became finalized in a number of Supreme Court decisions surrounding the activities of physicians. The physicians chosen were involved in questionable activity with respect to their procedure in handing out opiate prescriptions. The most significant decision, United States vs. Behrman, 1922, "....launched a reign of terror threatening any doctors who had anything further to do with drug addicts, and sending a goodly number of recalcitrant practitioners off to prison...."[7] This activity saw the end of the addict-patient and the birth of the addict-criminal. The only remaining source for the needed opiate drug was the underworld. The American Medical Association supported this with attacks on drug addicts as "malefactors rather than patients."[8]

Three years later in Linder vs. United States, the Court dismissed the Behrman decision and allowed the physicians once again to treat addicts. But the medical profession had dissassociated itself from the problem generally and physicians specifically withdrew their activities in helping the addicted individual.[9] Even in the 1960's, four decades after Linder, narcotics bureau regulations advising doctors and pharmacists of their rights in dealing with addicts, continued to ignore what the Supreme Court had so plainly said.[10]

The Middle:

In 1930, Henry J. Anslinger became the first Commissioner of Narcotics. He He had little background in narcotics during the ten years of government experience, including diplomatic assignments, although he did show himself to be a capable assistant commissioner of prohibition and learned a great deal of what not to do in this capacity. While with the Federal Bureau of Narcotics from 1930-1962, Anslinger met with almost no counter force to his attitudes, ideas and policy formulation.[12] His position on narcotics became the official United States position, and he played a major role in influencing narcotic control on the world front as well.[13] While World War II was raging, the level of addiction declined significantly, however, by 1948 Anslinger said that addicts number 1 in 3,000 population. Other observers said that there were no striking post-war increases in addiction and suggested that drug addiction might not be so great a national hazard after all.[14]

It did not take long for the Narcotics Bureau to get into action. Anslinger and others began to publicize the "alarming upswing of addiction and they focused on young people, who, it was said, were the target of the criminal drug addict, pusher types, who derived real pleasure from inducing others to

follow the same vices."[15]

The United States Special Senate Committee to Investigate Organized Crime in Inter-State Commerce, commonly called the Kefauver Committee brings the historical perspective of our trail in false doctrine to a significant milestone: The Boggs Bill was enacted in 1951. Anslinger was one of the first witnesses to Kefauver's Committee and he emphasized his Bureau's contribution to the reduction of addiction. He testified that his Bureau's enforcement of the narcotics law for the past generation had reduced the problem by half.[16] In the conclusion to his testimony, Anslinger urged more severe sentences for all drug offenders. There was no mention of any medical or health issues involved, rather, there was a reinforcement of the idea that drug use was a criminal activity. As a result of this testimony and the continued propaganda on the same criminal theme, the Kefauver Committee adopted the Boggs Bill as one of the recommendations in 1951 and the Bill was enacted by the 82nd Congress. Anslinger's request was honored.

Passage of the Act required the signature of President Harry Truman. It is curious to note a contradiction in Truman's behavior with respect to the continued criminalization of drug taking and his concern about a national health program. In his Memoirs, Truman states, "I believe that the United States should be the healthiest country in the world and lead in finding and developing new ways to improve the health of every citizen."[17] In his first comprehensive statement on national health delivered on November 18, 1945, Truman called for "health security for all, regardless of residence, station or race."[18] He went on to call for research on mental diseases and abnormalities.

In 1946 the National Institute of Mental Health was established. According to its first director, Dr. Robert Felix, the Institute came about because of an early thrust in narcotic addiction.[19] This seems to imply that Truman was not unaware of the association between drug addiction and mental health. At about the same time in 1946, the Group for the Advancement of Psychiatry (GAP) was organized out of the annual meeting of American Psychiatric Association. The GAP had as its working objective, a commitment to pay more heed to the relation between psychiatric problems and the social environment.[20] If what we mean by social environment includes legislative behavior, then drug taking behavior and the criminalization process that accompanies this behavior enters the picture in a significant way. The GAP and a small number of other professionals saw addiction as a public health problem, but the overpowering force of Anslinger and his propaganda became the mode of thought and action with respect to the drug addict. Since most physicians already had preconceived ideas about accepting addicts as patients due to the Behrman decision, there was little help from their quarter, irrespective of the fact that the American Medical Association became involved in a bitter fight over Truman's proposal for national health insurance.

When Truman spoke out about the nation's health, his comments reflected concern that could easily and acceptably be identified by the general public, and it would have been inconceivable to have mentioned drug addiction when talking about health. That issue had already been imprinted in the public mind as a criminal activity disassociated with any concern about health. The value and

attitudes of the American public seemed to be a static form. This phenomenon continued even with the opposition of Dr. Robert Felix who led a group that believed....

> there were people who functioned better if they were taking some kinds of drugs; but this went contrary to the moralistic approach that was typified by the Bureau of Narcotics--Harry Anslinger. Anslinger felt that there was only one way to treat addiction--throw all of the addicts in jail.[21]

There can be little question that Anslinger put his message across not only to the American public, but to President Truman himself who sent a letter to Walter F. George, Chairman of the Senate Committee on Finance. In it we read the Boggs Bill, HR-3498, passed the House of Representatives. The President urged its passage through this committee and the Senate in order to make it law. Although the letter is signed by H.S.T., the language is familiarily H.J.A. and the Bureau of Narcotics. Conspiciously absent from the letter is any reference to addiction as a health concern.[22]

The Chairman of the Criminal Section of the American Bar Association sent Truman a telegram on October 24, 1951. In this letter Arthur J. Freund, the chairman, clearly states and strongly words an objection to the Boggs Bill. We read in this telegram that "the legislation was approved without a hearing and without an opportunity to present amendments which would make it applicable only to peddlers and those who profit from the narcotic trade"[23] Irrespective of the pressures, the Bill was signed. In a statement to the press about the Bill, Truman also announced the creation of the Inter-Departmental Committee on Narcotics made up from representatives from Treasury, State, Defense, Justice, Agriculture and the Federal Security Agency. On November 29, 1951, Under Secretary Foley of the Treasury Department sent a letter to Mr. Truman designating the Commissioner of Narcotics, Harry J. Anslinger, as representative for the Treasury Department. Harry J. Anslinger and his empire was being reinforced through the creation of this Inter-Departmental Committee on Narcotics. President Truman appointed him chairman in an executive order.[25]

There was no input from the medical profession or other health related professions of this committee. This author can only assume that Mr. Truman accepted the Anslinger line and further enhanced the Anslinger image which reinforced the concept of drug taking behavior as a criminal activity. Public attention had been directed at a powerful figure, Anslinger, along with an emotionally laden idea, drug addiction as criminal behavior which proved to be an extension of the early values and attitudes created in our society about drug use....Another example of the old dictating the new.

Endings:

The final enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970 was the signing ceremony at the headquarters of the Bureau of Narcotics and Dangerous Drugs on October 27, 1970. "Everything about this new

measure focused on repression".[26] This was another piece of incrementalism that can only be understood in light of some of the activities that were carried on during the 1960's. It is difficult to rank significant issues and events arising from those issues in the 1960's as they relate to the United States. Such a discussion must include the Vietnam War, racism, assassination, and the drug culture. It is not the purpose of this paper to attempt to show relationships between the drug-counter-culture and the other events. It is important, however, to suggest that drug-taking behavior increased dramatically in all populations and policy makers were faced with a force that was producing some disequilibrium. It was not important to the policy makers that individuals were turning to drugs in order to find "peace and tranquility." It did not occur to the policy makers that for a large segment of the population, equilibrium did not exist and the response to this equilibrium was in the direction of drug use. It did not occur to the policy makers that drug-taking behavior allowed an individual to become passive and uncaring about his environment. The policy maker ignored the fact that alcohol was the most used and abused drug in the United States, was the force behind most traffic fatalities, caused losses in the billions of dollars in American business and industry, but was accepted because of its legality. In contrast to this, policy makers turned their attention to existing laws that said particular kinds of drugs and their use was illegal and, therefore, attention was gained for a law-and-order posture. The result of this attention was the aforementioned Comprehension Drug Abuse Prevention and Control Act of 1970. It "pulled together everything congress had done in the field since the opium smoking curbs of 1887...."[27]

So far as we know, it is only the intellectually elite that was heard when questions were raised about the existing policies. In their book, The Road to H, the authors make the following statement:

> The gravity of the problem, drug addiction, has to our minds been grossly misassessed, not so much in terms of the investment in it as in terms of the gains which the investment is calculated to achieve. Judging from the development of efforts, from policies adopted, from the emphasis and conclusions of legislative commissions of inquiry, from statements made by responsible individuals in testimony before such commissions of inquiry and in the public media of information, the major goal is to suppress the problem, rather than to deal with its causes.[28] The basis for sanctions (of drugs) is predominently attitudinal-moral; culture and custom support the use of a substance, considerations of this substance's harmfulness are remarkably ineffective. When culture and custom prescribe the use of a substance, arrangements based on scientific arguments are far from effective.[29]

Robert DuPont, director of the Special Action Office of Drug Abuse Prevention, has recently made a statement calling for the decriminalization of marijuana use. The American Bar Association has made a similar statement and has done so over two year ago. Are these helpful? Are they meaningful? Are these statements anything more than incrementalism? The answer to the first two questions is maybe; the answer to the last question is an unequivocal--No. What these statements prove is that "current policy is largely the result of reactions

of the moment to the present political pulse of the country."[30]

What is required is not that we maintain our sacred cow values and attitudes. Rather, we should question these values and attitudes in ways that direct us to adopt those that are entirely in opposition. Thomas S. Szasz offers a direction that may be just that. He does so by illustrating the absurd and oftentimes contradictory values under which we now lead our lives. In an essay entitled, "The Ethics of Addiction", he writes:

> I believe that just as we regard freedom of speech and religion as fundamental rights, so should we also regard freedom of self-medication as a fundamental right, and instead of mendaciously opposing or mindlessly opposing illicit drugs, you should paraphrase Voltaire and adopt as our position, "I disapprove of what you take, but I will defend to the death your right to take it".[31]

Szasz' prescription would certainly require us to confront our value systems. What he is calling for sounds like a precondition to change our paradigm of life style. This would not be unlike what Thomas Kuhn suggests occurs in the scientific world when new discoveries force scientists to change their theoretical paradigm. Perhaps we have done this already. Historians will look to the 1960's as an era of revolutionary behavior. Perhaps we have already changed our paradigm in life styles so that we are in the process of reaching that goal to which Szasz ascribes.

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