

ZERO TOLERANCE, NAMING AND SHAMING:

IS THERE A CASE FOR IT WITH CRIMES OF THE POWERFUL?

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PART I

Zero tolerance and public shaming are increasingly being advocated for both crimes of the powerless and crimes of the powerful. In this essay I argue against zero tolerance with respect to both kinds of crime. However, I will defend naming and shaming with respect to crimes of the powerful. Drug abuse will be used as a case study to explore these distinctions. It will be contended that zero tolerance is a prescription for increasing drug abuse, but that naming and shaming is essential to its prevention.

The New Politics of Crime

Public shaming of criminals as by putting a sign on a fence saying an assaulter lives here, a bumper sticker saying I am a drink driver or a T-shirt saying I am a thief are part of a new politics of crime in the US that has had some influence in other countries including Australia. We have a Prime Minister who believes in zero tolerance to the point of advocating automatic expulsion of dope smokers from school. It is hard to think of any policy better calculated to increase crime than automatic expulsion from school, with all the stigmatization that involves, for minor offences. Even though zero tolerance is an incoherent, uncivil and dangerous criminal policy (Dixon, 1999; Cunneen, 1999), there are aspects of its vaguely specified set of prescriptions that might actually reduce crime in

the context of large US cities. The main one is reducing homicide by targeting gun carrying at the hot spots where the majority of serious crimes occur.

The new politics of criminal justice does tap an underlying truth that if we want a society with less violence, we do want a society where people are ashamed of violence. The problem with zero tolerance and public shaming is that they leap from that truth to policies that stigmatize and degrade, even for minor incivilities on the street. It is not simply that stigmatization is a less effective way of making people feel ashamed of wrongdoing than reintegrative shaming; it actually makes them feel less ashamed. It is not that respectful disapproval within communities of care works while stigmatization does not; stigmatization actually increases crime. Restorative practices is the more productive path to inducing the remorse, constituting the shamefulness that prevents crime (and averting the humiliation that causes it) than zero tolerance.

But how are we to react to the entreaties for zero tolerance, naming and shaming from the progressive side of politics. How do we think about the critic who says to John Howard that he ought to apply his philosophy of zero tolerance to his parliamentary ethics code, to members of his party who fiddle their expense accounts. How do we respond to Steve Biko's family's assertion that it was unjust for Archbishop Tutu's Truth and Reconciliation Commission to extend forgiveness to so many criminals of apartheid in the name of restorative justice. In the context of East Timor, how are we to respond to pleas for zero tolerance for crimes against humanity? What do we think of the feminist who says "no excuses ever, ever" for violence against women?

Zero Tolerance of Organizational Crime?

In this section I will address only one kind of public advocacy of zero tolerance and public shaming – that which we see in the corporate crime literature. My conclusion will

¹ My thanks to Brent Fisse for the influence he has had on my thinking in this area over more than two decades.

be that zero tolerance is always a bad prescription in this arena, but that naming and shaming is often a necessary part of an effective criminal policy.

I spent a decade as a Part-time Commissioner with the Trade Practices Commission between 1985 and 1995. During each of those years we would receive around 50,000 complaints. Many of them did not involve breaches of the law, but in my opinion the majority did (obviously an opinion I cannot prove). In a good year we would take about 30 of them to court. Most business regulatory scholars see the Australian Trade Practices Commission as a comparatively tough agency, with a sophisticated enforcement strategy that makes the business community sit up and take notice. We might refer to Amanda Vanstone as the Minister for not arresting Christopher Skase, but we do not speak of Allan Fels in those terms.

A lot of the effectiveness of the TPC then and the ACCC today is about the sophistication of its triage: 1) This one is an allegation we can help the complainant sort out with a bit of advice as to what they should say to the trader. Or it is an allegation we can sort out ourselves with a couple of phone-calls or a conference with the principals to negotiate an informal settlement. 2) Another complaint is viewed as spurious or a hard allegation to prove and impossible to settle; the complainants are advised “no action”; they are welcome to take a private action. 3) This is one of the 30 we should take to court.

The key is to select those 30 cases so that they send out the widest possible ripples. The main significance of the cases the Commission had the resources to litigate was not what they achieved in those 30 cases, but in the clout they deliver to the regulator to settle thousands of other matters on the strength of a single phone-call. Australian consumers in the long run get better protection from a regulator that vigorously litigates a modest number of strategic cases than from one that pretends to be doing something about every breach of the law that arrives in its mailbag.

Yet whenever I would argue with my colleagues on the Commission that we should be completely honest with the Australian people that this was our enforcement strategy, they

would resist going far down this track. They did not want Ministers complaining that the Commission was failing to prosecute large numbers of traders who had committed clear breaches of the criminal law. We were all sophisticated enough to understand that it never could be otherwise, but we could not count on the tabloid press to so view it.

I will not labour here the conclusion that zero tolerance is an irresponsible policy for the ACCC or any other business regulatory agency because Ian Ayres and I have done that job in *Responsive Regulation* (Ayres and Braithwaite, 1992). It is hardly necessary in a world where we are regularly plied with stories that “5 per cent of all trading on the Australian stock exchange involves a criminal use of insider knowledge” (Goodfellow, 1999) that 14 per cent of the Australian economy is a shadow economy where each transaction involves multiple criminal offences to avoid company tax, payroll tax, personal income tax and obligations to take out workers compensation insurance (Schneider, and Enste, 1999). We can’t aspire to put 14 per cent or more of the Australian population in jail.

Some might say that we basically buy your argument there, but with some really serious matters like the safety of nuclear reactors, we must have zero tolerance. The evidence does not bear that out. Joe Rees (1994) research shows that over the last 20 years, some lessons of disasters like Three Mile Island have been learnt. The most important one is that you do not want operators to be rule-following automatons as a result of a tough regime of regulatory enforcement. You want them to be thinking systemically as team players about problem prevention, not about protecting their backside against a prosecution. After Three Mile Island, US nuclear safety regulation became more responsive, a more communitarian industry-wide approach to self regulation was adopted. Rees’ empirical work also found a lot of reintegrative shaming within the industry, more than stigmatization when things went badly. Plants which had above average numbers of automatic shut-downs for safety reasons were treated with respect and helpfulness. This restorative approach to nuclear regulation sees SCRAMS (automatic shut-downs for safety reasons) today in the US industry running at one-tenth

the rate that they were at the time of Three Mile Island (see Braithwaite and Drahos, 2000: Chapter 13).

Air safety is another example. One of the reasons the aircraft that brought you to this conference was so safe is that when pilots breach a safety rule they can report this in confidence without fear of prosecution. Their case becomes part of industry learning and is widely disseminated, but without their name attached to it.

But what about the most morally repugnant crimes of the powerful like genocide and other war crimes? Zero tolerance in this arena could be a policy guaranteed to deliver just deserts to the lieutenants in the Timor militias and impunity for the more malevolent criminals in Djakarta. Or consider the war crimes of World War II committed in that part of the world. As a matter of law, I happen to believe that Emperor Hirohito was criminally responsible for the death of my mother's two husbands, one who died in the Sandakan death march, the other who died many years later from illness classified as a result of it. It also seems clear today that at least one of the junior Japanese officers who did hang as a scapegoat for the death march was innocent. It has now been admitted that false testimony was adduced against him by Australian survivors; in one case a motivation for this may have been that the survivor survived because he was a collaborator with the Japanese. A policy of zero tolerance for serious war crimes would standardly see rough justice for the minnows, impunity for the sharks (on scapegoating see generally Fisse and Braithwaite, 1993). Better to be principled about it, as I believe General MacArthur was in resisting the Australian government's pleas for the execution of Emperor Hirohito. In extending restorative justice to Hirohito, just as in the reintegration of Germany by the Marshall Plan and other acts of grace, the Americans showed a wisdom in building a peaceful Japan and Germany that the allies failed to show at Versailles.

Hence with every kind of organizational crime, especially the most dangerous and evil, zero tolerance is an irresponsible policy.

Naming and Shaming of Organizational Crime

If zero tolerance is a pie in the sky policy for dealing with the crimes of East Timor, is naming and shaming? Decidedly not. John Howard named the Indonesian military and General Wiranto. He even did something Australian Prime Ministers never do. He shamed President Clinton after his announcement that the US was cutting military ties to Indonesia: Howard pointed out that this would cost \$700,000, that he was looking to the President to do more in terms of diplomatic and military support for a peacekeeping operation. In all of this naming and shaming, Howard was impeccably respectful as were Mary Robinson and John Dowd in their constructive interventions in the public debate foreshadowing the prospect of strategic criminal prosecutions of the Indonesian military. Not all of the denunciation of Indonesia was in the respectful style these actors maintained. Stigmatizing modalities of shaming - verbal abuse, flag and effigy burning - maximize the risks of counterproductivity. Kay Pranis (1999: 9) has captured well what restorative justice advocates should regard as preferred practice here:

Traditional social justice activism often involves confrontational approaches to advancing social justice issues – naming and attacking social injustice. That approach is sometimes adversarial, involves emphasizing distance or “otherness” of those who hold different views, is often framed around abstract intellectual questions of rights, and may seek to achieve its agenda through power over opposing forces. Restorative justice includes concerns about social justice issues but relates to those issues in a different way. Restorative justice holds a vision of mutual responsibility for the welfare of everyone and uses personal narratives in a non-confrontational exchange to build from individual experiences to an understanding of broader social needs or harms.

While this is preferred restorative justice practice (and what should have happened in East Timor years ago), rights discourse that names responsible actors is needed when it fails, as it often will. Yet even when it does, we still need to heed Pranis’s message about

trying to avoid “otherness”, seeking to persuade through non-confrontational exchange that communicates concern via narrative rather than moral categorization of the other.

To a degree any kind of naming and shaming is stigmatizing. That is why we have sensible policies about not conducting juvenile court proceedings in public or releasing the names of young offenders. Why is it wrong to name and shame them, but right to do so with BHP when it refuses to listen to concerns about polluting the Fly River? Why should we be against mug shots in the newspapers for street criminals, but in favour of this when it is the CEO of BHP? Why does it make sense to call a press conference as one of the outcomes of corporate crime restorative justice conferences, but not with conferences for common crimes?

Nathan Harris’s (1999) analysis of the RISE conferencing data shows that shaming by people the offender does not respect fails to induce shame. Indeed, the only shaming that induces shame is disapproval of the act by those who we respect very highly. Just respecting them a bit is not enough. So shaming by police, judges and mass publics who read newspapers is mostly beside the point. When we name and shame Bill Clinton for allowing slaughter of the innocents in East Timor, our target is Chelsea and the rest of his extended family, his secretary, his golfing buddy. The same targets as in a restorative justice conference. The difference is one of technique rather than substance. The need for it arises from certain realities of political and economic power. Presidents hire public relations professionals to render them invulnerable to shame. Their worst political enemies will regard their conduct as shameful no matter what they do. But the opinions of enemies are not at issue here. Chelsea’s is. Most of the time, Chelsea is going to buy the cover story manufactured by the President’s spin doctors and give her dad the benefit of the doubt. Most of the cut and thrust of politics will deliver very little shame from people whose respect the President deeply cares about.

Public but respectful naming and shaming is the best we can do with Presidents. It mostly will not work because politicians, like hardened criminals, are professionals at erecting shields to protect themselves from shame. When it does work, my hypothesis is

it works mostly through placing a story of human dimensions on the media that touches the heart of a Chelsea Clinton, that causes someone like her to say dad you must pay attention to this story. Again the psychological principles are the same as with the juvenile offender's conference. The nun's simple narrative of the suffering she saw as a result of the war crime has infinitely more power than saying shame on you for causing this crime. But the difference is that the juvenile offender does not have a PR person sitting beside her saying, "Yes it is terrible, but here is why there is nothing my President could have done to stop it." That is why public naming of a responsible person with political power (of the sort that Howard did with Clinton over East Timor) is often a moral imperative.

These arguments have even more power with the economic crimes of large corporations. The empirical literature demonstrates that white-collar criminals have incredibly effective power in segregating audiences. In their business dealings, they have a ruthless, exploitative ethos, while at their church on Sunday the members of their congregation view them as a paragon of gentility. The other side of this is that white-collar criminals report the experience of great shame when this segregation of audiences breaks down as a result of a criminal conviction reported in the newspapers (see Benson's (1989) interviews with convicted white-collar criminals).

Powerful corporate players have the same PR experts by their side as Presidents and they enjoy much greater anonymity than Presidents when wrongdoing occurs. It is these realities of power that often make it necessary to push for a press conference for public corporate confession following a restorative justice conference. Piercing the corporate veil, getting the message through to the members of the CEO's congregation, is therefore the rationale for a variety of naming of shaming policies – from an environmental group publishing a list of the Dirty Dozen (the top 12 corporate polluters) to the Affirmative Action Agency naming companies in the parliament for failing to comply with their act.

There is typically a two-step process with corporate naming and shaming. The corporation is named, then internal compliance systems go to work to define personal

responsibility for putting things right. Again, Joe Rees (1994) work on nuclear safety and my own on coal mine safety (Braithwaite, 1985) shows how effective internal processes involve a corporate kind of reintegrative shaming. The plant or the mine with a poor accident record is displayed on a graph at a meeting of managers. The person in charge is asked to indicate what she is going to do to get her safety performance up to the level of other plants. Other managers tend to be nurturant, offering help to the shamed manager: “There but for the grace of God go I”, they think. So as Rees points out, the internal shaming by respected peers tends to be reintegrative. This is an important point. There are structural reasons why even external shaming of the corporation which is stigmatizing is likely to be transformed internally into reintegrative shaming within the community of corporate peers. The corporate veil is a device whose very purpose is to protect both the wealth and the dignity of the powerful men it shrouds.

While powerless common criminals do not have the structural benefit of a corporate veil, strong families can be a functional equivalent, transforming external stigmatization into a loving, reintegrative kind of internal disapproval. The trouble is that the worst juvenile offenders are those least likely to have such families; often their families amplify internally the stigmatizing messages from outside. Hence with common crime it is irresponsible to promote external stigmatization in the hope that it will be transformed into internal reintegration.

Of course there are other values at issue. One is accountability. The feminist will say that the adult responsible for sexual assault should be named in public because we need assurance that the criminal justice system does not operate to protect powerful men at the expense of children. Yet the restorative justice movement is helping us see that the way western criminal justice systems balance these values is flawed. Here there is much we can learn from Canadian First Nations feminists like Berma Bushdie (1999). She explains that in the remarkable accomplishments of Hollow Water in uncovering sexual abuse that afflicted the majority of children in that community, healing circles were at first confronting and private – for example “getting under the skin” of abusive men with help from other men who had already confessed who assist with piercing their pathetic

rationalizations (Ross, 1996). Only at the final stage is there a healing circle which is public to the whole community, at which attendances are very large. By this stage, there has been a lot of healing and forgiveness. Even many of the stoutest advocates of the victims, those who had earlier in the process been the most vigorous denouncers of the offender, by the stage of the final circle will be prepared to say positive things about how far the offender had come in owning responsibility for the evil he had done. The Cree wisdom here that our system lacks is to assure the community of public accountability for the agreements reached, but to defer the public accountability stage (often for years) until the prospects of a reintegrative public ceremony are at a maximum.

In summary, the simple fact is that when a child steals persistently, there is a good chance that this will eventually become known to her parents and/or teachers; she will not be able to escape their disapproval. When a senior company executive persistently pollutes, however, there is little prospect of her family finding out about this moral failure. In an unethical company she will even be shielded from disapproval of the moral failure by colleagues at work. Two-step processes of public naming and shaming of organizational responsibility and demanding individual responsibility from leaders is necessary. It is necessary in a way it is not with children because of a social structure of shame that leaves children vulnerable and elites invulnerable to effective disapproval.

PART II

CASE STUDY: SHMING AND THE PREVENTION OF DRUG ABUSE

Now I will work through this analysis to show why it is plausible that public shaming is the key to preventing drug abuse. I am not thinking of public shaming in drug courts or any kind of standard individualistic criminological analysis of the drug abuser here. The starting point is a structural analysis of political and corporate power. Then this is combined with my standard analysis of the social structure of shame – that bank robbery is shameful while the corporate criminals of the finance sector suffer little shame in a world where every criminologist knows the best way to rob a bank is to own it.

Structural Analysis

How do we avert the standard criminological trap of precipitate methodological individualism with respect to drug abuse? If the analytic prescription is to do a structural analysis of power relationships first, what are the power relationships relevant to understanding drug abuse? Peter Drahos and I have sought to grapple with this task in *Global Business Regulation* (Braithwaite and Drahos, 2000), where a more detailed treatment can be found.

Mass drug addiction is a phenomenon of late modernity. It took at least 6,000 years of the poppy being known to be a “plant of joy”, at least 4,000 years of international trade in opium (starting with the Cyprus-Egypt trade) before mass addiction occurred in China in the second half of the nineteenth century. Tobacco was used for centuries in South America before it finally reached fashionable Paris in 1556, thanks to the French Ambassador to Portugal Jean Nicot. Nicotine did not become a drug of mass consumption until 1890 when the Imperial Tobacco Company was on its way to becoming the biggest corporation in the British Empire and Buck Duke set up the American Tobacco Trust. They deploy new technologies of efficient manufacture and administration of the drug through the medium of the compact cigarette which is then sold as avant-garde with modern mass marketing techniques. Trade names like Vanity Fair, Napoleons, Opera Puffs, and High Life tap romantic appeals to different sorts of personal identities.

Cocaine did not become a drug of mass addiction until its mass marketing as patent medicines in the newly popular newspapers and as addictive consumer products such as Coca-Cola (Coca-Cola replaced cocaine with caffeine in 1903). Opium did not become a drug of mass addiction until the modern drug trafficking of the British East India company systematically created a Chinese market by adapting the product to Chinese taste through combining tobacco and opium in a pipe for smoking (to replace opium eating). Here the key to success was an early version of market research more than

marketing, though the latter was important too. Later the German pharmaceutical industry adapted its marketing appeal in another important way by synthesizing heroin.

While the 20th century US fought trade wars at the GATT to force developing countries to drop restrictions on tobacco imports, the 19th century British state fought literal Opium Wars to enforce free trade in drugs. One of Germany's hopes for winning World War I was that it would force the Allied powers to drop their plans to ban the international trade in cocaine that was dominated by the giant German pharmaceutical companies.

Alcohol, which can be brewed even in a prison cell, is an exception in becoming a drug of mass addiction centuries before modernity. With tobacco, opium, heroin, cocaine, LSD, barbiturates and amphetamines, we do not see mass addiction until modernity enables efficient production and distribution by transnationally deployed organizations like the British and Dutch East India Companies, the American Tobacco Trust, the I.G. Farben Chemicals Cartel, the Coca Cola Corporation, Hoffman-La Roche and the Mafia. Not until we see such organizations use modern market research and modern marketing to create demand do we see the therapeutic drug become the fashionable drug of mass consumption. Indeed, even with alcohol, the majority of the world's population who live away from the urban centres of developing countries still await the arrival of transnational peddlers of alcohol with sophisticated manufacturing, distribution and marketing capabilities before mass alcohol addiction becomes a problem in their villages.

Drugs of mass addiction this century become much bigger markets than therapeutic drugs, though prescription drugs also grow after World War II at a faster rate than any other product market. Mass addiction is a product of modernity and the globalizing qualities of modernity. Mass addiction requires that strong states offer protection to drug pushers for long enough to link organized production to distribution/marketing systems into new consumer markets. Britain was a strong state that protected the British East India Company while organized opium production was linked into the Chinese, Australian and other Asian markets. Germany protected its cocaine manufacturers as they were linked into new markets everywhere. Japan protected its heroin manufacturers and

pharmacy chains as they penetrated North Asian markets between the wars. Sicilian elites and the Italian state protected the Mafia. The Russian and Soviet states protected the networks of “Russian Mafia” and former nomenclatura. The CIA protected Kuomintang insurgents involved in trafficking, Burmese and Laotian drug lords in the Golden Triangle, the Mujaheddin in their Afghan drug trafficking, and many others like them.

European states and the US protected multinationals like Hoffman-La Roche who were the pushers of the new post-war psychotropic drugs of addiction such as Valium. The protection in the latter case was of a different kind. It was the protection of legitimating aggressive marketing of the product within the medical prescription regulatory framework—allowing aggressive marketing because consumers were safeguarded by the need for a prescription. Protection by hegemonic states involved supporting their multinationals against other states which sought to keep new psychotropic drugs off their market, which sought to “unreasonably” restrict the indications for which they could be prescribed, which sought to mandate warnings to doctors and patients which were “unreasonably alarming”, which sought to “unreasonably” regulate marketing practices by the pharmaceutical companies (Braithwaite, 1984).

It tended not to matter if the state protection of the drug pushers were later lifted, as it eventually was in most of the cases listed above. McCoy’s work shows how a sequence of protecting X against its enemies, then withdrawing X’s protection, followed by protecting Y, then withdrawing Y’s protection, then Z and withdrawal, can leave the world with an X, a Y and a Z all protected for long enough to become much more organized than other producers. The strong linkages into new markets are already secure by the time the state protection is lifted. Patent protection of “ethical” pharmaceuticals operates in much the same way. The state gives the patent holder a monopoly protected by the state. When it withdraws the protection upon expiry of the patent, the evidence is that the brand loyalty the old monopoly enjoys remains a barrier to competition (Slatter, 1977; Whitten, 1979; Bond and Lean, 1977). The key difference is that the street-level pushing is done by sales representatives in suits who give out free samples, even opera tickets to doctors (instead of addicts who are given free drugs and money so long as they

find friends to sell to). The common element is protection under the regulatory umbrella of a strong state for long enough to organize the linkages from local demand creation to transnational supply.

So the conditions for mass addiction are conditions of modernity: protection by a sufficiently powerful state for that protection to have transnational reach, efficient mass manufacture in a form of chemical delivery that market research shows to have mass appeal, sophisticated, organized and disciplined international distribution networks, marketing that portrays consumption as fashionable or identity-enhancing and a large (usually disorganized and fungible) street-level sales network who are corrupted by their own addiction, bribes or fraudulent claims about the safety and virtue of use.

The final connection of mass addition to modernity is through the desire to regulate bodies to comply with the industrial rhythms of modernity:

Bound to an industrial regimen which required a uniform level of performance throughout the twelve-hour working day, the nineteenth century factory worker was pressed to use stimulants which could tune his body's rhythms to the pace of industry. After a half century of unchanging dietary habits, the average Englishman's consumption of sugar (a quick energy source) jumped four-fold from 20 pounds per person in 1850 to 80 pounds in 1900, while average per capita consumption of tea increased three-fold... The simple eighteenth century English diet of milled grains had given way by 1900 to one spiced with large quantities of beef (protein), coffee (stimulant), sugar (energy rush) and tea (stimulant). If an energized diet of proteins, glucose and caffeine could be used to stimulate the body artificially and make it maintain a constant level of performance through a long working day, then patent medicines could be used to sooth and relax it during the hours of rest. Patent medicine manufacturers produced drugs to assist every bodily function and to induce any desired state of mind. There were cocaine-based drugs to overcome fatigue, morphine remedies to soothe worn

nerves, and heroin medications to calm the agitated mind or respiratory system (McCoy, 1980: 16).

And then there was viagra.

What Defeated the First Wave of Mass Opiate Addiction?

A social movement against the opium trade emerged in the west. The Society for the Suppression of the Opium Trade was founded in 1874 and the Woman's Anti-Opium Urgency Committee at around the same time in England. It had interlocking membership with the temperance movement. In India campaigners simultaneously picketed liquor shops and opium dens as integral to the same social movement against drugs (Ghandi, 1952). From 1893, Mahatma Ghandi had been a campaigner working with the Women's Christian Temperance Union and other Christian and women's groups not only in India and South Africa, but also in other parts of Asia, such as Burma, against both the opium and alcohol trades (Ghandi, 1952). Both social movements had enormous success in naming and shaming drug pushers and politicians who protected them and in persuading people to reject or moderate their use of drugs of addiction. The temperance movement, after decades of success in making drunkenness progressively more shameful, threw these gains into reverse through the error of successful campaigning for zero tolerance (prohibition) in the US.

The temperance movement in the English speaking world in the nineteenth century was huge in its following and many of its followers were progressives and radicals, preeminently most of the first wave feminists. It is important to note here, foreshadowing our conclusion, that it was "cool" to denounce the commercial exploitation of the liquor industry.

From the 1912 Opium Convention in the Hague, as incorporated into the Versailles Peace Treaty of 1919, the European multinationals, such as Bayer, Merck and Hoffman-La Roche, got out of the opium, heroin and cocaine trades as US companies had already

begun to do after the 1906 Pure Food and Drugs Act. Similarly, the successful US-led efforts to internationalize the prohibition, then criminalization of the distribution and use of marijuana took the transnational “ethical pharmaceutical companies” (as they liked to call themselves) out of this market.

This first campaign against opiates and cocaine was something of a success. Most of the world, including nations such as Japan, which was deriving considerable economic benefit from export of heroin to China and other parts of Asia, agreed to control promotion and usage of narcotics, then to prohibit exports, and eventually to restrict medically supervised supply to addicts.

Using League and United Nations figures, McCoy (1992: 268) concludes that global opium production fell from a peak of 41,600 tons in 1906 to 7,600 in 1934, continuing to fall to 1,000 tons by 1970 after which (according to the US Drug Enforcement Agency) it rose to 4,200 tons by 1989. While the earlier figures can be questioned because they reflect generally licit production voluntarily reported by governments, the 1989 US government estimate includes estimated illicit production, suggesting that while the drop in opium consumption was not as sharp as the League of Nations figures suggest, it still almost certainly was substantial. The International Narcotics Control Board in 1969 estimated illicit production of opium at around 1,200 tons a year (Bruun, Pan and Rexed, 1975: 24).

After the 1925 Geneva accord tightened controls and the League’s Limitation Convention of 1931, legal heroin production dropped from 9,000 kilograms in 1926 to 1,000 five years later (McCoy, 1992: 268). Again, we do not know to what extent this must be counterbalanced by a rise in illegal heroin production in the years before the depression. Here we must be especially careful because rising regulation increased the comparative attraction of illicit demand for heroin over opium, because heroin is more concentrated and less bulky. Seizures of raw opium internationally peaked in 1936 at 124,497 kilos, falling to a low of 35,970 kilos in 1960. Between 1936 and 1960, prepared opium seizures fell from 18,063 to 672 kilos, heroin from 867 to 390, and cocaine from 70 to 10

kilos, notwithstanding improved international enforcement capabilities. This improved capability is reflected in the massive growth in cannabis seizures from 16,283 kilos in 1936 (before cannabis prohibition in most countries) to 875,849 in 1960 (Bruun, Pan and Rexed, 1975: 229). In the United States, as in China, it seems that the peak of opiate addiction occurred “about the turn of the century, when the number [of addicts] probably was close to 250,000 in a population of 76 million, a rate so far never equalled or exceeded” (Musto, 1996:2).

With cocaine as well as opiates, there is no doubt that getting big business to stop indiscriminate use in their products reduced addiction and demand, with cocaine trafficking almost disappearing by the 1950s before the rebound of the 70s and 80s. But the period of decline in opiate and cocaine trafficking lasted only as long as the new illicit trade remained a totally disorganized small business activity. That period of disorganized marketing lasted for only two or three decades mid-century. One must also bear in mind that big pharmaceutical companies, such as Hoffman-La Roche, covertly supplied the illicit opium trade through the 1920s before they finally got right out of the illicit opiate and cocaine trade in response to international shaming after the Canton Road Smuggling Case of 1925 (Bruun, Pan and Rexed, 1975: 223-4). Fifty years later we saw the same phenomenon, with 20 per cent of US amphetamine manufactures diverted to the illicit traffic (Bruun, Pan and Rexed, 1975: 236).

In the 1960s, the possibility of drug trafficking becoming an organized activity that generated new demand was barely recognised, as reflected in the quaint optimism of a 1966 review of “Twenty Years of Narcotic Control Under the United Nations”: “By now the problems have been clearly defined and some of them have been solved, or the instruments of their solution have been created: non-medical consumption of opium, coca leaf, cannabis, and of the drugs manufactured from them is outlawed in principle and is bound to disappear after transitional periods of adaptation” (Bruun, Pan and Rexed, 1975: 33). Closure of shipping lanes during World War II greatly disrupted the organizing of drug trafficking, with merchant seamen important in the limited and disorganized trafficking in opiates that occurred during the 1940s.

Unfortunately US-led global enforcement policies increased the competitive advantages of more organized (networked), politically protected drug traffickers by crushing their less organized opposition. An additional important factor here was the way anti-communist insurgency movements learned that they could combine their capacity for systematic violence, their discipline, experience in money laundering and ability to call on the political protection of the US Central Intelligence Agency (and other intelligence agencies, such as that of Taiwan) to fund their military activities through the drug trade.

Scholars such as McCoy (1972, 1980) have documented how the CIA supported a variety of anti-communist forces who relied on drug trafficking: Kuomintang insurgents against the Peoples' Republic of China from bases in the Golden Triangle, Burmese and Laotian drug lords during the period of Indo-Chinese instability from the 1950s to the 70s (Lintner, 1992; McCoy, 1992), the Contras in Nicaragua (Block, 1992; Scott, 1992), Miami and Tijuana Cubans (Kruger, 1980; Marshall, 1992; Scott, 1992) the Mujaheddin in Afghanistan and elements in the Pakistani military (Lifschultz, 1992), and Noriega in Panama (Scott, 1992). In Asia the result was that "By attacking heroin trafficking in the separate sectors of Asia's extended opium zone in isolation, the [US] Drug Enforcement Administration inadvertently diverted heroin exports from America to Europe and shifted opium production from South West Asia to Southeast Asia and back again—raising both global consumption and production with each move" (McCoy, 1992: 267). For example, shutting down the export of Turkish production through Marseilles expanded opportunities for Golden Triangle traffickers protected by the CIA. Then when the post-Vietnam US turned its war on drugs against these very Golden Triangle producers, they responded by shifting their supply to Europe and Australia, which were then flooded with heroin dealers.

What the CIA did was protect new narcotic entrepreneurs from regulation for long enough for new production areas to be linked into the world market and new trafficking organizations to be established. Drug organizations are most vulnerable during the periods when these linkages are being established. Once these were organized, they

continued to flourish after CIA protection was withdrawn, just as the Russian organized crime groups continued to flourish after KGB protection evaporated.

While mass alcohol addiction is the exception, appearing prior to organized capitalist trafficking and marketing of drugs under state protection, Australia is the exception to the exception. One important reason Australia became an extraordinarily heavy drinking society in the nineteenth century is that the NSW Corps became its first capitalists, trafficking rum under the protection of successive Governors.

Modernity and the Mobilizing of Disapproval

Our structural analysis of modernity is a pessimistic one: once misguided or corrupt states protect organized drug pushers for a period their marketing becomes established to the point where they do not need protection. Mass addiction disasters are therefore cumulative. But only to a degree, as the successful campaigns against opium, heroin, marijuana and cocaine until the 1960s and the successful campaign against alcohol for a century until the 1930s showed. Just as modernity delivered globalizing mass addiction, it also delivered globalizing social movement politics, with the anti-slavery, temperance and anti-opium movements being the first of these. Just as the contemporary women's and environmental movement have more important effects on crime than the criminal justice system (by rendering domestic violence and environmental crimes shameful) (Braithwaite, 1995) so did these early social movements have an enormous impact on drug use.

The message is that the most important thing we can do to prevent drug abuse is to stop new surges of state-protected marketing of addiction before the new markets they create are permanently established. Preventing cigarette manufacturers from moving on from marketing to boys to marketing to girls, from marketing in Australia to marketing in New Guinea. Preventing drug companies from persuading men they cannot live a full life without viagra. Have we ever accomplished that since the cocaine was taken out of Coke? Yes.

Bex and Vincents (combining phenacetin, aspirin and a megadose of caffeine) was the most dangerous new addiction in Australia since tobacco. It was marketed particularly aggressively on radio and television during the 1950s to mothers as a pick-me-up to deal with the stresses of family life (Hennessy, 1993). You cannot buy this drug in Australia today and there are no addicts left, though many ended their addiction through death. Police peddling zero tolerance enforcement had nothing to do with this accomplishment. The key actors were a social movement against the drug led by the Australian Kidney Foundation, certain specialist colleges of the medical profession, certain journalists who campaigned against the drug, and health regulators who eventually banned advertising and negotiated reintegratively with the manufacturers to withdraw the product from the market in a way that gave them time to diversity into safer drugs. In fact they were allowed to continue selling a safe formulation of Bex and Vincents, weaning many off their addiction without them realising it. But without the naming and shaming of the Women's Weekly, they never would have been brought to this responsible reaction. It was a noble moment in Australian history. Australia was the only nation in the world that had Bex and Vincents addiction. And it had the highest death rate in the world from kidney failure to prove it. The product's enormous commercial success was evidence of a global marketing opportunity that was voluntarily relinquished. Note in terms of our conclusion that the social movement against Bex and Vincents left my generation in the 60s thinking our parents' generation had been decidedly uncool to be swayed by advertising urging upon them "a cup of tea, a Bex and a good lie down" or to "take Vincents with confidence".

Another Australian innovation in social movement politics of which we can be proud according to this analysis is the Medical Lobby for Appropriate Marketing (MLAM). This Adelaide-organized global network of medicos nips failures of supply-side regulation in the bud by the simple means of letter writing campaigns to pharmaceutical companies and regulators combined with the occasional press release. Along with the UN, the consumer movement and others, the evidence is that they are a useful strand in a

web of controls against commercial marketing of new dangerous drugs (Braithwaite and Drahos, 2000: Chapter 15).

The drug abuse prevention strategy commended here has two elements. First, active social movement politics to denounce failure of state regulators to prevent highly organized linkage of drug marketing into new markets (from MLAM to grass roots campaigns against political corruption by the Mafia in Sicily to Transparency International's more global work using institutions like the IMF and World Bank as weapons against corruption). Once supply linkages are disorganized rather than organized, there is good reason for hope that restorative justice in local communities, social investment in drug education and rehabilitation, can keep demand at low levels. There are centuries of experience (millennia with opium) of community control and community help working to manage demand in the face of disorganized supply which is not allowed to market for identity-enhancement.

This experience gives us confidence that drug abuse can be kept under reasonable control with minimal police involvement. Organized criminal drug traffickers need to be given an incentive to shift their capital out of the shadow economy into the legal economy simultaneous with their markets being threatened by legal state supply to addicts. Licenced private supply of tobacco and alcohol could continue (subject to the kinds of regulatory checks documented as effective in Homel's (Homel et al., 1997) work), a total ban on any kind of marketing, gradually-expanding regulation of exposure to passive smoking and heavy taxation to fund education and rehabilitation. There is also every reason for confidence that this could reduce this kind of drug addiction, that drug abuse could become decidedly uncool if social movements against drug abuse could succeed in recruiting the kinds of cool people that the temperance movement recruited in the nineteenth century and the social movement against Bex and Vincents recruited in the 1960s.

Zero addiction would never be achieved, just as it never has been in the past. But then neither could zero tolerance achieve this. The error of zero tolerance seems transparent

in the disaster that was prohibition. The potential of naming and shaming seems evident in the demise of cocaine addiction after its removal from patent medicines at the turn of the century. It seems evident in the 1960s demise of Bex and Vincents addiction.

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