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Brian Alexander Rosborough

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## NOTES

### LSD: A CHALLENGE TO AMERICAN DRUG LAW PHILOSOPHY

*It should be our earnest intention to insure that drugs not be employed to debase mankind, but to serve it.*

—John F. Kennedy

LSD has blossomed into a topical controversy involving distinguished scientists, artists, and intellectuals; university professors and their students; congressmen; and self-appointed watchers of public morals. At once a movement, a religion, a national obsession; this mysterious hallucinogen stands to challenge existing creeds and philosophies throughout our American culture. Such a movement could not have started without fertile social ground in which to grow. Its acceptance is in part attributed to a reaction against conventional patterns of living. There is little question that the requirements for individual self-control and conformity are becoming more burdensome today. Our mechanized society requires efficient and rational behavior from its members. Modern technology and integral organization allow fewer opportunities for emotional or cultural self-expression. In short, much of life has become impersonal. Consequently, many of life's participants are suffering from a loss of identity. The LSD movement appears to be one symptom of this underlying social "illness."

For the medical sciences LSD offers inroads to the intricacies of the human mind. For the law the concern will be the rights of persons to use such drugs—the propriety of their aims and values and the acceptability of the kinds of experiences and social behavior that will ensue. The developing conflict is none other than that between the individual and society. In our society, which stresses free choice and self-determination, the individual's right to engage in full gratification of life's activities has always been honored. Yet the community itself has rights—the right to protection from its members; the right to protection from unnecessary dangers and expense. Whether LSD actually threatens community rights is yet to be determined. Of immediate concern, however, is whether our present drug law philosophy will tolerate LSD's challenge to conventional beliefs about nonmedical use of drugs. As there is no legal framework into which the psychedelic drugs can smoothly fit, existing law will need to be reevaluated in order to deal effectively with the means and philosophy espoused by what should be called the "psychedelic movement."

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## THE PSYCHEDELIC MOVEMENT

The LSD phenomenon amounts to a social movement with an ideology. The movement accents personal freedom and self-growth. Emphasis is placed on the enhancement of inner experience in hope of finding and developing hidden personal resources. As one scholar has noted:<sup>1</sup>

It is an optimistic doctrine, for it holds that there are power and greatness concealed within everyone. It is an intellectual doctrine, for it values experience and understanding more than action and visible change. It concerns itself with areas dear to the thinker: art, philosophy, religion, and the nature and potentials of man. It is a mystical doctrine, for it prizes illumination and a unified world view with meaning beyond that drawn from empirical reality . . . . And it is, explicitly, a revolutionary doctrine . . . [that] calls for freedom from internal constraints, freedom to explore oneself and the cosmos, and freedom to use LSD and other drugs as a means thereto.

In their natural states, hallucinogens have been used by primitive peoples for thousands of years. The same visionary euphoria attained through the ingestion of LSD and other chemical derivatives can be experienced from a galaxy of exotic flowers, roots, seeds, and plants.<sup>2</sup> The hallucinogens or psychedelic<sup>3</sup> drugs are not addictive in the sense of creating physical dependence, but many feel that repeated use could lead to a subtle psychological dependence. The more commonly known psychedelic drugs can be divided into four levels. In reverse order of potency, they are:<sup>4</sup>

(1) *Nutmeg, morning glory seeds, and marijuana.* Each is relatively mild. The latter is a derivative of the female Indian hemp plant and is closely related to hashish, although not so potent. Marijuana is a true hallucinogen even though it has been lumped together with narcotics under federal and state laws.<sup>5</sup>

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1. Blum, *Background Considerations*, in *UTOPIAS: THE USE & USERS OF LSD-25* 6-7 (Blum & Assoc. ed. 1964).

2. Wakefield, *The Hallucinogens: A Reporter's Objective View*, in *LSD: THE CONSCIOUSNESS-EXPANDING DRUG* 51 (Solomon ed. 1964).

3. Literally "mind-manifesting," the word "psychedelic" was coined by Dr. Humphrey Osmond and is the most frequent label for the hallucinogenic family of drugs. Earlier the term "psychotomimetic," mimicker of psychosis, was used to describe the experience many felt to be like going out of one's mind. Osmond, *A Review of the Clinical Effects of Psychotomimetic Agents*, in *id.* at 148.

4. Cohen, *Uncanny Power of the Hallucinogens*, in *TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS* 91 (1965).

5. *INT. REV. CODE OF 1954*, §§4731 (a), 4761 (z) (1964); *FLA. STAT.* §§398.02- (13) (a)-22 (1965).

(2) *Mescaline*. A chemical synthesized from peyote or bitter button tops of a cactus that grows wild in the Rio Grande Valley and southwestward. Peyote is best known for its ceremonial use by Navajo members of the Native American Church.<sup>6</sup>

(3) *Psilocybin*. A chemical extracted from the magic Mexican mushroom *Psilocybe Mexicana*. Hallucinogenic mushrooms are rare in the United States.

(4) *LSD-25*. A synthetic made from d-lysergic acid diethylamide. LSD is in a class all by itself and is by far the most potent of the psychedelic family. It has 100 times the potency of psilocybin and 7,000 times that of mescaline, which itself is considerably more powerful than marijuana.<sup>7</sup> The average dose is only 1/300,000 of an ounce, enough to send its user off on a "trip" for eight to ten hours.

Like penicillin, LSD was discovered largely by chance. In 1938, Dr. Albert Hoffman of the Sandoz, Ltd. laboratories in Basel, Switzerland, was working with ergot, a purple fungus (containing lysergic acid) that blights rye in wet summers. During the course of his experiments Dr. Hoffman added chemicals that created a totally new compound, d-lysergic acid diethylamide tartrate. Working with this same compound again in 1943, Dr. Hoffman happened to inhale enough to produce "fantastic images of extraordinary plasticity."<sup>8</sup> The drug he synthesized, LSD-25, was the first hallucinogen produced in a laboratory since Sir Humphrey Davy concocted laughing gas (nitrous oxide) in 1799.

As early as 1950 research workers had access to LSD. Clinical research followed laboratory work and medical practitioners began to use LSD in experiments with patients and friends. Nonmedical use first appeared about 1956, and black-market trade was established in metropolitan areas by 1959. Still the drug was relatively unknown. Notoriety of LSD occurred in 1963 when Harvard University discharged Timothy Leary and Richard Alpert for using students in their psychedelic experiments. Since that date public commentary on psychedelic drugs has been exaggerated in a manner paralleling the evolution of social and legal attitudes toward marijuana. Magazines rushed to the fore with irresponsible and misleading studies. An alarmist press fanned the artificially created hysteria by contrasting isolated abuses of LSD ingestion with the rapturous "happytalk"

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6. See *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964). See also LaBarre, *Twenty Years of Peyote Studies*, 1 CURRENT ANTHROPOLOGY 45 (1960); LaBarre, *The Peyote Cult*, Yale University Publications in Anthropology, No. 19 (1938).

7. Wakefield, *supra* note 2, at 55.

8. *Id.* at 52.

of Leary and his apostles. Finally, adding unwarranted confirmation to all that had been said, Sandoz Pharmaceuticals, Ltd. recalled LSD from legitimate experimenters, stifling for a time the much-needed research into LSD's effects and capabilities.

While there appears to be a wide range of reactions from LSD, the most common are reports of extraordinary perceptual alterations, sensory changes, self-diagnosis, shifts in interest, and new integrative experiences that may be delusional or mystically religious.<sup>9</sup> In the words of Aldous Huxley: "It lowers the barrier between [the] conscious and subconscious and permits the patient to look more deeply and understandingly into the recesses of his own mind."<sup>10</sup> Most authorities seem to agree that when LSD is administered in a controlled environment with suitable preparation and aftercare for the subject, the therapeutic potential is enormous. It helps the patient to remember and recount traumatic experiences. It activates the patient's unconscious bringing forth fantasies and emotional phenomena that may be handled by the therapist as dreams. At the same time it allows the patient to recognize his customary defenses and often enables him to alter them.<sup>11</sup> Accordingly, LSD has been used in the successful treatment of alcoholics, neurotics, narcotic addicts, schizophrenics, and maladjusted married couples.<sup>12</sup> Furthermore, doctors have suggested that if properly administered, LSD can relieve the remorse and anxiety of dying patients. It enables the subject to transcend his anticipations of death and view with some detachment the intrinsic meaning of life's experiences. In this respect the psychedelic experience has a mystical or religious import.<sup>13</sup>

Nonmedical experimentation with LSD is highly concentrated among the educated upper middle class. It is they who suffer from loss of identity and social discontent. Members of this class have reflected their discontent in writings about the quest for identity and meaning, the decline of traditional values and religion, and modern man's deep sense of alienation.<sup>14</sup> It is not surprising that those who suffer from a "loss of meaning" would find the psychedelic experience

9. Sanford, *Foreword to UTOPIATES*, *op. cit. supra* note 1, at xii.

10. Huxley, *Drugs That Shape Men's Minds*, in *ADVENTURES OF THE MIND* 90-91 (Thruelsen & Kobler ed. 1959).

11. Schmiege, *The Current Status of LSD as a Therapeutic Tool: A Summary of the Clinical Literature*, 60 *J. MEDICAL SOCIETY OF N.J.* 203 (1963).

12. See examples in Unger, *Mescaline, LSD, Psilocybin and Personality Change*, in *LSD*, *op. cit. supra* note 2, at 200-01 nn.3, 7, 8; Terrill, Savage & Jackson, *LSD, Transcendence, and the New Beginning*, in *id.* at 182 n.7, 183 n.8, 184 nn.9, 10.

13. See Downing & Wygant, *Psychedelic Experience and Religious Belief*, in *UTOPIATES*, *op. cit. supra* note 1, at 187-97. See also Smith, *Do Drugs Have Religious Import?*, in *LSD*, *op. cit. supra* note 2, at 155-69.

14. Moger, *Search and Research with the Psychedelics*, 22 *ETC.: A REVIEW OF GENERAL SEMANTICS* 399 (1963).

appealing. They turn to LSD seeking some unique creative experience that will add meaningful purpose to their empty lives. Some hope to solve existing conflicts while others partake out of sheer curiosity. Nevertheless, a common denominator is found in the hope of discovering and activating personal aptitudes or potentialities that will enrich their lives. It is an exploration, an adventure, a trip. The goal is self-growth, enlightenment, a personal renaissance.

Unfortunately the dissolution of a personality that has been structured to cope with the stresses of life can, in some cases, prove to be a nightmare. The upsurge of repressed materials from the unconscious may precipitate severe depression, psychosis, and even suicide. As possible post-LSD psychosis cannot be reliably determined with any degree of predictive accuracy, most responsible authorities inveigh against the unsupervised self-administered, nonmedical use of LSD. It should be absolutely understood that safe and effective work with LSD (or other psychedelic agents) presupposes specialized training and experience.<sup>15</sup> Yet despite the warnings against nonmedical use of psychedelics, the practice will undoubtedly continue. The seething push-pull attraction of LSD has a magnetic appeal. The promise of possible reward outweighs for many the inherent risks involved. As could be expected the drug's popularity has led to an alarming trend in illicit use among young people. While the interest in some cases is academic, a great number of youthful takers are simply looking for "kicks"—something extraordinarily exciting, aesthetic, euphoric, or orgiastic. Government officials have viewed this trend with jaundiced eye. Accordingly, steps are being taken to control the psychedelic movement.

#### THE LEGAL STATUS OF LSD

As the LSD eruption was concurrent with federal efforts to tighten existing legislative controls over depressant and stimulant drugs, Congress engrafted hallucinogens into the Drug Abuse Control Amendments of 1965.<sup>16</sup> The purpose of this act is to stifle the rampant pill epidemic in which Americans each year swallow nearly thirteen billion doses of potentially injurious barbiturates, amphetamines, and tranquilizers over half of which are distributed through illicit channels.<sup>17</sup> While in some respects the "psychedelic movement"

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15. See Cohen & Ditman, *Prolonged Adverse Reactions to Lysergic Acid Diethylamide*, 8 ARCHIVES GENERAL PSYCHIATRY 475 (1963).

16. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §352 (1964), as amended, 79 Stat. 227 (1965).

17. Davidson, *Spread of the Great Pill Epidemic*, in TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS 79 (1965).

presents a different problem, it does involve the nonmedical use of drugs. For this reason, Congress deemed it expedient to write hallucinogens into its new law.

Under the provisions of the bill, depressant and stimulant drugs are defined to include barbiturates, amphetamines, or any drug that has "a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect."<sup>18</sup> The regulation of these drugs is authorized regardless whether they move in interstate or intrastate traffic.<sup>19</sup> The bill prohibits the manufacture, the sale, or the disposal of depressant and stimulant drugs except by persons expressly authorized.<sup>20</sup> Additional penalties are prescribed for adults convicted of illegally selling such drugs to minors.<sup>21</sup> Furthermore, unauthorized possession of depressant and stimulant drugs is prohibited except where the drugs are held for use by the possessor, his household, or some animal owned by him. The burden of proof that possession did not fall within the listed exceptions is laid to the Government.<sup>22</sup> Of those persons authorized to handle LSD, excepting licensed practitioners,<sup>23</sup> the bill requires that complete records of drug stocks be compiled and held for possible government inspection up to a period of three years.<sup>24</sup> Finally, the act authorizes drug abuse control officers to carry firearms, to execute and serve search and arrest warrants, to make arrests without a warrant on probable cause, and to seize contraband.<sup>25</sup>

On January 18, 1966, the Food and Drug Commissioner proposed seventeen new drugs for specific control under the 1965 amendments.<sup>26</sup> Six of the seventeen were hallucinogens—DMT (dimethyltryptamine), LSD-25, mescaline and its salts, peyote, psilocybin, and psilocyn. On March 19, 1966, these drugs were formally incorporated under the umbrella of drug abuse control laws.<sup>27</sup> In May 1966, the Food and Drug Commissioner followed through by adding lysergic acid to the list in an attempt to dry up the sources of this essential component of LSD.<sup>28</sup> A number of citizens wrote the Food and Drug Commissioner questioning the inclusion of hallucinogenic drugs under the

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18. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §352 (1964), as amended, 79 Stat. 227 (1965).

19. *Ibid.*

20. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §360 (a) (1964).

21. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §333 (a) (1964).

22. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §360 (1964).

23. *Ibid.*

24. *Ibid.*

25. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §372 (1964).

26. 21 C.F.R. §166 (1965), 31 Fed. Reg. 565 (1966).

27. 21 C.F.R. §166 (1965), 31 Fed. Reg. 4679 (1966).

28. 21 C.F.R. §166 (1965), 31 Fed. Reg. 7245 (1966).

control provisions of the 1965 amendments. Generally, three objections were voiced:<sup>29</sup>

- (1) Congress did not have the authority to control psychedelic agents,
- (2) there was insufficient proof of actual "danger to public safety" to justify control of psychedelic agents, and
- (3) the Food and Drug Administration had not laid down standards for determining who was an appropriate "research investigator" of hallucinogenic drugs.

In each instance the objection was summarily rejected for failing to present adequate grounds for a hearing on the matter. An exception was made, however, for peyote. The law was not to apply to its non-drug use in bona fide religious ceremonies of the Native American Church.<sup>30</sup> Nevertheless, persons supplying peyote to the church were directed to register and maintain appropriate records of receipts and disbursements of the article.

Prosecution of the revised drug laws has been delegated to 300 freshly trained investigators who operate out of nine Drug Abuse Control Bureaus across the nation. Execution of the law marks a culmination of twenty-five years of exhaustive inquiry into nonnarcotic drug abuse, a problem that has been the perennial topic of congressional debate and White House conferences under the last four Presidents.<sup>31</sup> The 1965 amendments are only the beginning of what appears to be a national campaign against drug abuse. The President

29. 21 C.F.R. §166 (1965), 31 Fed. Reg. 7174 (1966).

30. 21 C.F.R. §166 (1965), 31 Fed. Reg. 4679 (1966). See authorities cited note 6 *supra*. In April 1965, the Neo-American Church was founded on the theory that psychedelic drugs *do* produce valid religious insight. To date, the Neo-American Church has no charter, no doctrine, and no ritual. The church exists merely to provide fellowship for the psychedelic experience. Its leaders are called "Boo Hoo's" in order to signify that the Neo-American Church is in no sense a serious established religion. To join, conscripts must pay two dollars and "agree" to the following principles: (1) every person has the right to expand his consciousness and stimulate visionary experience by whatever means he considers desirable and proper without interference from anyone; (2) the psychedelic substances, such as LSD, mescaline, peyote, marijuana, and psilocybin are the TRUE HOST OF THE CHURCH, not "drugs." They are sacramental foods, manifestations of the Grace of God, of the infinite Imagination of the Self, and therefore belong to everyone; (3) members of the Neo-American Church do not encourage ingestion of psychedelic substances by those who are unprepared. See *State v. Bullard*, 267 N.C. 599, 148 S.E.2d 565 (1966), commented on in this issue, holding that the first amendment of the United States Constitution did not authorize a member of the Neo-American Church to use peyote and marijuana in contravention of a North Carolina statute.

31. *Hearings on the Drug Abuse Control Amendments of 1965 Before the House Committee on Interstate and Foreign Commerce*, 89th Cong., 1st Sess., 21-25 (1965).



has indicated that he expects to double the current drug abuse control budget of three million dollars in 1967.<sup>32</sup> In addition, the federal government has selected six states (California, Florida, Georgia, New Jersey, New York, and Texas) to serve as proving grounds for the new drug laws.<sup>33</sup> The Food and Drug Administration will pilot the program of state enforcement by providing funds and instructors for the training of local investigators from their respective state boards of health and pharmacy. On the completion of training, the states will assume the responsibility for enforcing drug abuse control laws. If successful, the decentralized program of enforcement will be extended to other states.

While the coverage of hallucinogens by federal law was largely a matter of timing, publicity has moved some states to draft legislation specifically covering LSD in an attempt to quell the "psychedelic revolution." The New York State Senate and Assembly approved a law effective July 1, 1965, restricting the sale and possession of psychedelic agents.<sup>34</sup> The new legislation provides, in part:<sup>35</sup>

The possession, sale, exchange or giving away of hallucinogenic drugs or preparations by other than registered manufacturers or licensed physicians who hold a license issued by the commissioner of mental hygiene to receive such drugs shall constitute a violation of this section.

Violation of the New York law constitutes a misdemeanor subjecting a first offender to imprisonment of not more than one year, or a fine of not more than 500 dollars, or both. Subsequent convictions subject the offender to penalties of up to two years imprisonment, or fines up to 1,000 dollars, or both.<sup>36</sup>

On May 30, 1966, California and Nevada followed suit with similar legislation aimed at psychedelic drugs.<sup>37</sup> The Nevada law proscribes the possession or use of LSD except under direct administration by a physician, osteopath, or qualified research scientist who must remain with the patient until all effects wear off. The first offense is a "gross misdemeanor" punishable by a maximum fine of 1,000 dollars and a year in jail.<sup>38</sup> Subsequent offenses are felonies carrying a penalty of one to ten years in prison. California has made unauthorized possession or knowing use of the drug a misdemeanor

32. *The President's Message to Congress*, March 9, 1966, 2 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 353, 356 (1966).

33. Miami Herald, June 21, 1966, p. 1 B, col. 2.

34. N.Y. PEN. LAW §1747-d (1965).

35. *Ibid.*

36. *Ibid.*

37. N.Y. Times, May 31, 1966, p. 1, col. 8.

38. Nev. Laws Spec. Sess. 1966, ch. 10, Senate Bill. No. 17, §1 (4) (a) (1966).

punishable by a maximum of 1,000 dollars or a year in jail. Illegal manufacture, possession, possession for the purpose of sale, or sale of LSD constitutes a felony punishable by imprisonment of one to five years for the first offense.

Developing, then, is a pyramid of criminal sanctions that authorities hope will deter individuals from experimenting with psychedelic drugs for nonmedical purposes. Though the number of states to legislate against LSD is small, their propensity to employ prohibitive tactics sets a disturbing precedent. LSD has been branded as an "illegal drug." Before the scope of the psychedelic problem has even been determined, LSD is having to bear the brunt of mushrooming controls while trying to prove itself. It is as if in fear of allowing another "thalidomide," authorities have embarked on a course of controls that will lead to a second "marijuana." In the name of public safety lawmakers have elected prohibition over toleration at the expense of creating another deviant subculture. If society is to derive full benefit from future drugs, it must avoid attaching social stigma to drugs of promise. Inoffensive use of drugs for nonmedical purposes needs to be recognized.

#### ANOTHER MARIJUANA

Like marijuana, the psychedelic agents are being treated as if they were solely a police problem. Since its inception American drug law has had next to nothing to do with medical opinion.<sup>39</sup> Efforts at narcotics control are grounded upon the Harrison Act of 1914,<sup>40</sup> which was intended to control the nonmedical use of narcotics. Since then narcotics law has evolved into the prohibition of nonmedical use as well as the control of medical use. American drug law operates from the premise that it is possible to stop the spread of drug use by criminal sanctions. Deprivation of the drug is sought by stopping the supply. Punitive measures are felt to be the best deterrent. Until recently<sup>41</sup> little distinction was made between addicts and nonaddicts. The exclusive emphasis has been on the total elimination of addiction.

39. LINDESMITH, *THE ADDICT AND THE LAW* 3 (1965).

40. The Harrison Act, 38 Stat. 785 (1914), as amended, INT. REV. CODE OF 1954, §§4701-36 (1956).

41. Cf. *Robinson v. California*, 370 U.S. 660 (1961). On June 1, 1966, the United States House of Representatives passed its version of The Narcotic Addict Rehabilitation Act of 1966 (H.R. 9167). The bill marked a significant change in congressional policy on the disposition of addicted persons charged with narcotic offenses under the criminal laws. It provided for voluntary commitment of such persons to medical institutions, instead of to prison, for long-term treatment of their affliction. Provision for intensive aftercare was included to assist the former addict in returning to normal life without renewing his habit. See 24 CONG. Q. 1139 (1966).

Despite the persuasive advocacy of change,<sup>42</sup> unbending adherence to visionary goals of elimination and cure have hindered much-needed experimentation and police reform.

With the passage of the 1965 Drug Abuse Control Amendments, a similar campaign has been launched to control the gross misuse of amphetamines, barbiturates, and tranquilizers. While concern in this area is certainly justified, and the act is tailored to meet many of the existing problems, there is still little recognition that drug control is not solely a police problem. Medical controls continue to be more directive than permissive.<sup>43</sup> Research and experimentation are highly restricted.<sup>44</sup> Numerous drugs of different properties have been lumped together under a single set of controls. As a result LSD and the hallucinogens have been squeezed into a framework of regulations designed for marketable stimulants and depressants. Failure to fashion the controls after the drugs may create more problems with psychedelics than the act was intended to eliminate.

Marijuana is a mindful example of what can occur when lawmakers fail to make elemental distinctions among drugs. Just as the hallucinogens have been grouped with stimulants and depressants, so was marijuana incorporated into existing efforts to control narcotic drugs. Marijuana is a derivative of the female Indian hemp plant that grows readily in any temperate climate. It has been used by man as an intoxicant for thousands of years. Its users experience a wide range of effects including exhilaration, unusual sensitivity to sights and sounds, ease in tension, release of inhibitions, distorted sense of time, and occasionally hallucinations.<sup>45</sup> The marijuana cult is a culture within a culture. It is impossible to estimate its population. Both young and old from every social group defy the law for the exotic experience.<sup>46</sup>

Marijuana became popular in the 1930's from its association with Harlem jazz musicians. It was controversial from the outset. The use of drugs for pleasure or for the attainment of artificial tranquility involved grave questions of morality for many Americans.<sup>47</sup> Un-

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42. See ELDRIDGE, *NARCOTICS AND THE LAW* (1962); LINDESMITH, *THE ADDICT AND THE LAW* (1965); SCHUR, *NARCOTIC ADDICTION IN BRITAIN AND AMERICA; THE IMPACT OF PUBLIC POLICY* (1962).

43. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §360 (1964).

44. The only legal supplies of LSD in the United States are being held by the National Institute of Mental Health (NIMH) and twelve investigators who were given permission to continue testing the drug. 24 CONG. Q., 1149 (1966).

45. LINDESMITH, *op. cit. supra* note 42, at 223.

46. Cohen, *Uncanny Power of the Hallucinogens*, in TIME-LIFE SPECIAL REPORT, *THE DRUG TAKERS* 91, 102 (1965).

47. Excerpts from a book by E. ROWELL & R. ROWELL, *ON THE TRAIL OF MARIHUANA, THE NEED OF MADNESS* (1939) quoted by LINDESMITH, *op. cit. supra*

substantiated rumors were reenforced by alarmists and the press. Mild concern turned into general apprehension. Finally, in 1937 Congress passed the Marijuana Tax Act modeled after the Harrison Act.<sup>48</sup> While in theory a revenue measure, the Marijuana Tax Act was simply moral legislation leveled at deviant social behavior. Since that date this relatively mild hallucinogen has been purged and prosecuted as if it were a narcotic. Even today penalty provisions applicable to marijuana users under state and federal law are about the same as those applied to heroin users.<sup>49</sup>

In comparison with alcohol, another "drug" that alters the mind, it becomes clear that America discriminates among its vices. For example, marijuana is not physically addictive whereas alcohol can be.<sup>50</sup> While alcohol often substitutes for food, marijuana sharply stimulates the appetite. Where marijuana's physical effects are rather trivial, alcoholism is destructive of mind and tissue.<sup>51</sup> From the standpoint of public health and socioeconomic consequences, alcohol is far the more serious problem. Of eighty million American consumers, six million have some sort of dependence on alcohol.<sup>52</sup> In comparison, available data indicates that there are only 5,000 chronic marijuana users.<sup>53</sup> Each year drunken driving accounts for approximately 15,000 deaths and 200,000 injuries. One-third to one-half of traffic arrests and nearly two-thirds of all arrests are attributed to alcohol.<sup>54</sup> Yet the use of marijuana is punishable as a felony while alcohol may be consumed with relative impunity. Accordingly, Americans spend a staggering twelve billion dollars a year on alcohol.<sup>55</sup>

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note 42, at 229: "We know that marijuana—(1) destroys will power, making a jelly-fish of the user. He cannot say no; (2) eliminates the line between right and wrong, and substitutes one's own warped desires or the basic suggestions of others as the standard of right; (3) above all, causes crime; fills the victim with an ir-repressible urge to violence; (4) incites to revolting immoralities, including rape and murder; (5) causes many accidents both industrial and automobile; (6) ruins careers forever; (7) causes insanity as its specialty; (8) *either in self-defense or as a means of revenue, users make smokers of others, thus perpetuating evil.*"

48. The Marijuana Tax Act of 1937, 50 Stat. 551.

49. LINDESMITH, *op. cit. supra* note 42, at 239.

50. *Id.* at 223.

51. *Ibid.*

52. Fort, *Social and Legal Response to Pleasure-Giving Drugs*, in UTOPIATES: THE USE & USERS OF LSD-25 210 (Blum & Assoc. ed. 1964).

53. Winick, *Narcotics Addiction and Its Treatment*, 22 LAW & CONTEMP. PROB. 9 (1957). Chronic users must be distinguished from occasional users. The total marijuana population may be several hundred thousand users. *Hearings on the Drug Abuse Control Amendments of 1965, supra* note 31, at 72. The comparatively small number of marijuana users is largely due to its illegality.

54. Fort, *Social and Legal Response to Pleasure-Giving Drugs*, in UTOPIATES, *op. cit. supra* note 52, at 210.

55. *Id.* at 209.

The chasm between marijuana and alcohol has been perpetuated largely through myth. Marijuana, it is said, creates criminal tendencies, but the high percentage of "alcohol crimes" makes this a spurious distinction. Actually it is because of marijuana's illegality that its users are exposed to individuals who are likely to be immoral or unethical. One must find the illicit source in order to keep in supply. For some this constitutes a major step toward identification with unconventional values and activities. It is also said that the use of marijuana leads to unpredictable behavior whereas alcohol does not.<sup>56</sup> The principal reason a marijuana user's behavior is unpredictable is because there is nothing to indicate he has been taking a drug. An alcoholic, on the other hand, is betrayed by his breath. People know what to expect. Furthermore it is widely believed that marijuana acts as an aphrodisiac while, in fact, it dulls the sexual appetite.<sup>57</sup> As for the breakdown of inhibitions alcohol has certainly played its role. Finally, authorities argue that marijuana is a stepping stone to "hard" narcotics.<sup>58</sup> While most heroin addicts probably try marijuana, the reverse is not true. One writer indicates that very few marijuana smokers go on to heroin just as few cigarette smokers take up marijuana.<sup>59</sup> What progression there is can be attributed to the contagious nature of addiction. It spreads by association. The longer a marijuana smoker associates with an opiate addict, the more likely he will be proselytized. Progression, however, is by choice and not from need of a stronger agent. The real distinction between alcohol and marijuana lies in the label. The use of alcohol is a moral decision—acceptable, social, and legal. The use of marijuana is an act of deviancy—offensive, antisocial, and illegal. It is a distinction without a difference.

It is not illogical that the policing of LSD will produce similar consequences. While psychedelics differ both qualitatively and quantitatively from existing stimulants and depressants, the drugs have been lumped together by congressional design to facilitate control. Though users are not subject to punitive measures under the federal law, the initial trend in state legislation is to punish unauthorized possession and use. As with marijuana LSD traffic has been driven underground. By curbing legitimate supplies and restricting clinical research, the law is creating another deviant cult or subculture.<sup>60</sup> LSD must be sought at black-market levels. Because the principal chemical com-

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56. *Id.* at 228.

57. LINDESMITH, *op. cit. supra* note 42, at 228.

58. *Hearings Before the Subcommittee on Improvements in the Federal Code of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess., Ser. 1, pt. 5, at 16 (1955).

59. LINDESMITH, *op. cit. supra* note 42, at 223.

60. See SCHUR, *CRIMES WITHOUT VICTIMS* 138 (1965).

ponent is controlled as closely as the drug, illicit operations will rely on smuggled goods thus expanding the orbit of secondary crimes. The staggering profits in black-market trade<sup>61</sup> will induce bootleggers to flood the market with counterfeit psychedelics often more dangerous than the actual drug. Because the drug must be obtained unlawfully, it is not likely that users will solicit proper medical advice and supervision. The provisions of the new Nevada law<sup>62</sup> actually discourage doctors from becoming involved. While it allows licensed practitioners to administer the drug, the law demands that they remain with the patient until the hallucinogenic effects have completely worn off.<sup>63</sup> Even if the subject were properly prepared and wisely counseled, the doctor would be liable for imprisonment if he did not personally remain with the subject for the duration of the experience.<sup>64</sup> This places an undue burden on the medical profession and would be impractical in many cases. Such restrictions can only work to discourage much-needed medical participation in the development of psychedelic drugs. Few doctors are willing to play Russian roulette with their careers. So long as LSD has a negative connotation, both legally and socially, its use to medical science will be curtailed.

Some would argue that the prohibition of LSD, at the expense of creating a deviant cult, is the better alternative.<sup>65</sup> It is felt that legal condemnation of psychedelic drugs, even if supported by exaggeration and misconception, deters thousands of potential adolescent users. But this is illogical. Those who choose to experiment with hallucinogens, such as LSD and marijuana, do so on the basis of personal contacts and associations. An adventurous, inquiring youth is quick to discover for himself, either through use or from conversation, the true effects of such drugs. One confidant proselytizes another and before long "pot" parties and "trips" are the fashionable weekend sport. The very fact that such conduct is illegal often makes it appealing. Its social attractivity is contagious. Eventually the drugs become the focal point of groups who espouse unconventional views, and a deviant subculture is formed.

At best, then, the emphasis on complete elimination of nonmedical

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61. The current price varies from \$2.00 to \$6.00 a dose. A sufficient dose can be as small as 1/10,000 gram or 1/300,000 ounce, enough for an eight to ten-hour "trip." LSD is generally black marketed in impregnated sugar cubes or capsules of powder. However, this tasteless, colorless, odorless drug can be passed in every imaginable way including "treated" parsley, spitballs, or handkerchief strips. See *Dangerous Drugs: What They Do*, in TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS 106, 110 (1965).

62. Nev. Laws Spec. Sess. 1966, ch. 10, Senate Bill No. 17 (1966).

63. Nev. Laws Spec. Sess. 1966, ch. 10, Senate Bill No. 17, §1 (3) (1966).

64. Nev. Laws Spec. Sess. 1966, ch. 10, Senate Bill No. 17, §1 (4) (1966).

65. LINDESMITH, *op. cit. supra* note 42, at 235.

drug use only regulates traffic in much the same manner that more liberal measures would do. As a consequence deviant cults are formed, black-market trade runs rampant, and secondary crimes ensue. Of those who would ordinarily try the drug, most succeed in finding it. Others, more reluctant to tamper with the chemistry of their minds, stay away. Perhaps their abstinence is attributable to fear of losing rational control or of doing something shameful or of discovering something about themselves that they do not want to face. Whatever, these built-in controls are generally what deter some and not others.<sup>66</sup> The network of stringent statutory prohibitions is more a legal wasteland than an effective deterrent.

#### CAN LSD BE DISTINGUISHED?

A "drug" is defined in Webster's *Dictionary* as: "[A]ny substance used as a medicine."<sup>67</sup> The law appears to be bound to this view for it persists in condemning all nonmedical use of drugs. Herein lies the weakness of our drug law philosophy. Society has not accepted the use of drugs for pleasure. To experience synthetic emotions is believed to be immoral. Yet science forecasts that we are on the threshold of a drug culture. The vast potential of synthetic human experiences staggers the imagination. If the law is to cope with the drugs of tomorrow it must begin today to reorient its inflexible policies of control. Aside from sophisticated pharmacological differences, lawmakers should endeavor to differentiate between drugs on the basis of the drug's appeal, its users, and their goals. To be sure gross misuse of drugs has its damaging effects in every case. Opiates can enslave their users. Massive doses of marijuana can produce anxiety and physical effects. Overdosage of barbiturates can turn sleep into a coma and often into death. Multiple ingestion of amphetamines or pep pills can lead to blackouts, hallucinations, and even paranoia. With LSD, misadvised use could shatter a brittle personality. For these reasons some measure of control must be exercised, but this control should be tailored to the specific problem and not to every nonmedical use. The drug experience is like any experience. Its meaning lies primarily within the person. The drug merely liberates. Accordingly, if it is to protect society, the law should concern itself with the ends as much as it does with the means. In this respect the psychedelic drugs can be distinguished from all others.

Generally speaking, an opiate (heroin) is a panacea for human woes and psychic weaknesses. Whether to relieve pain and anxiety or to produce euphoria, the ingestion of "hard" narcotics provides

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66. Leary, *Introduction*, in *LSD: THE CONSCIOUSNESS-EXPANDING DRUG* 25 (Solomon ed. 1964).

67. WEBSTER, *THIRD NEW INTERNATIONAL DICTIONARY* 695 (1961).

temporary relief from the discomforts of life. It is used to postpone decisions and urgencies. "The drug is the decision."<sup>68</sup> It establishes a temporary sense of self-sufficiency dispelling for the moment all tension, fear, anxiety, and tribulation. Everything becomes right again. Unfortunately the sensation is so fulfilling that the drug becomes a crutch and finally a physical necessity.

Heroin addiction is largely confined to the poorest, most crowded, most dilapidated districts of large metropolitan areas. The dwellers are among the lowest in income, the lowest in education, and have the greatest breakdown in normal family structure.<sup>69</sup> These are the have-nots. Four out of five are said to be young males; two out of three are reported to be Negroes and Puerto Ricans.<sup>70</sup> Their addiction is an escape from a bleak existence. Whether addiction is a disease or a human weakness does not really matter. The stigma costs them no place in society for they had none to lose. Nevertheless, the addict is society's problem. The high cost of heroin compels its users to engage in prostitution and crimes against property in order to sustain their addiction. Efforts to suppress black-market trade and to fight secondary crimes are an incessant drain on the economy. Because opiates are potentially crippling to their users and society, they are rightfully controlled.

Barbiturates are central-nervous-system depressants used in a variety of conditions where a hypnotic or sedative effect is desired.<sup>71</sup> The appeal of the barbiturate lies in its powerful calming action. The intoxicating effect is similar to that of alcohol. Its use during the waking hours is to ease anxiety and during the evening hours to induce sleep. Among the greatest abusers are urban women between the ages of thirty and fifty.<sup>72</sup> For them the barbiturate is a chemical crutch. Because the body develops a toleration to the drug after repeated use, the tendency is to increase the dose. As with heroin this leads to addiction. Consumption of twenty to forty capsules a day must be maintained to prevent withdrawal symptoms.<sup>73</sup> To be cured, the addict must be withdrawn through a series of diminishing doses, which often takes weeks. Abrupt withdrawal can be fatal.<sup>74</sup>

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68. Winick, *supra* note 53, at 14.

69. Clausen, *Social and Psychological Factors in Narcotics Addiction*, 22 *LAW & CONTEMP. PROB.* 9 (1957).

70. *Drug Abuse Turns Out To Be Everybody's Problem*, in *TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS* 4 (1965).

71. *Hearings on the Drug Abuse Control Amendments of 1965*, *supra* note 31, at 21.

72. *Id.* at 72.

73. Davidson, *Spread of the Great Pill Epidemic*, in *TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS* 79, 81 (1965).

74. *Ibid.*



Many, however, choose an easier way out. Barbiturates account for 3,000 suicides a year.<sup>75</sup> Finally, barbiturates are highly sought by opiate addicts. The ease of obtaining them and their low cost (compared with heroin) encourages heroin addicts to supplement their addiction with barbiturates.<sup>76</sup> Fifty per cent of narcotic addicts have indicated that they substitute barbiturates completely when heroin is in short supply.<sup>77</sup> For their abuse as a crutch and their use by narcotics addicts, barbiturates quite properly belong within the ambit of federal controls.

Amphetamines are prescribed for the treatment of depression and the control of the appetite.<sup>78</sup> While not addictive, they too are highly susceptible to misuse. Known in black market circles as pep pills, amphetamines create a feeling of euphoria, exhilaration, and unusual perceptiveness.<sup>79</sup> Users are deluded by a feeling of confidence and energy. Actually the drug does not relieve fatigue, it masks it. When misused, amphetamines borrow energy that the body cannot afford to spend.<sup>80</sup> Oftentimes the deception is fatal. Truck drivers, for instance, have tried to drive for longer periods without rest on the strength of pep pills.<sup>81</sup> Having pushed their stamina beyond its limits, the truckers are driven from the road by impaired reflexes, mirages, and blackouts. Of far greater concern, however, is the stimulant's appeal to thrill-seeking youths. Like glue sniffing, pep pills provide the restive young with a means of escape, if only for the moment, from an officious adult world. With an excess of free time and a minimum of responsibility, teenage delinquents hold "pill parties" and "sprees" alternating the sensations of barbiturates and amphetamines. It is at such gatherings that children made stuporous by barbiturates or orgiastic by amphetamines are most vulnerable or prone to sexual offenses—either as victim or perpetrator.<sup>82</sup> Because of their potential as a contributor to delinquency, amphetamines must also be subject to controls.

Marijuana is somewhat of a paradox. Its low toxic state and mild effects make it the least dangerous of the drugs under discussion. Yet marijuana's misassociation with narcotics has left it with a nega-

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75. *Hearings on the Drug Abuse Control Amendments of 1965*, *supra* note 31, at 72.

76. *Id.* at 64.

77. *Ibid.*

78. *Id.* at 21.

79. *Dangerous Drugs: What They Do*, in TIME-LIFE SPECIAL REPORT, THE DRUG TAKERS 106, 109 (1965).

80. *Hearings on the Drug Abuse Control Amendments of 1965*, *supra* note 31, at 58.

81. *Id.* at 208-17.

82. *Id.* at 58.

tive image. Those that use it must break the law. For this reason it could be said that marijuana appeals to deviants or individuals who indulge in unconventional behavior. Beyond this it is difficult to stereotype the marijuana user. Because youth is a time for unorthodox behavior, the drug is fashionable among dissident young adults and juveniles. Yet the drug is equally popular with entertainers, artists, and other creative types who have a flare for individualism and nonconformity.

Perhaps marijuana's adaptable nature is attributable to its hallucinogenic properties. While the biologic effects of opiates, barbiturates, amphetamines, and tranquilizers are relatively constant and predictable; the psychedelic experience is in large part determined by the personality of the user and the circumstances under which the drug is taken.<sup>83</sup> Marijuana bears this similarity to the other hallucinogens. When smoked at parties the intoxicating effects are conducive to social camaraderie and fellowship. When smoked alone it may provoke thought and meditation. For the artist it can activate spontaneity before undertaking a creative venture.<sup>84</sup> For the juvenile delinquent it can generate courage before embarking on a midnight adventure. Because it can be used in anticipation of an antisocial objective, most authorities would be reluctant to acquit it from control. After considering the trivial nature of marijuana in its 1963 study of drug abuse, the President's Advisory Committee paid lip service to reform by suggesting that mandatory sentences for marijuana convictions be replaced by discretionary sentencing.<sup>85</sup> A more realistic suggestion would have been to eliminate prison sentences and to deal with the abuses of marijuana as the law deals with abuses of alcohol.

When compared with other pleasure giving drugs, LSD differs substantially.<sup>86</sup> Unlike opiates and barbiturates, LSD is nonaddictive. It neither feigns energy nor manufactures exhilaration as do amphetamines. There is no desire or need to increase the dosage. The drug is not conducive to binges, nor is it a shortcut to security. For these reasons LSD would not satisfy those needful of a "crutch" or desirous of "escape." In no sense does LSD *obliterate* or *mask* past experiences. It *reveals* them. The psychedelic experience is conducive to perception, observation, analyzation, and inquiry. These are positive values.

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83. Sanford, *Foreword to UTOPIATES: THE USE & USERS OF LSD-25* xiv (Blum & Assoc. ed. 1964).

84. Burroughs, *Points of Distinction Between Sedative and Consciousness-Expanding Drugs*, in *LSD: THE CONSCIOUSNESS-EXPANDING DRUG* 174 (Solomon ed. 1964).

85. PRESIDENT'S ADVISORY COMMISSION, *REPORT ON NARCOTIC AND DRUG ABUSE* 42 (1963).

86. Fort, *Social and Legal Response to Pleasure-Giving Drugs*, in *UTOPIATES*, *op. cit. supra* note 83, at 219.

They imply *learning* goals not *forgetting* goals. In this respect the psychedelic phenomenon is prognostic of what drugs will be able to do for man in decades to come.

Apart from the personality of the user and the setting for the experience, LSD has a number of invariant responses. Users report<sup>87</sup> an intensification of the senses and a heightening of perception. At the same time the drug effects an eerie sense of detachment or disassociation from former cultural preconceptions. Stripped of the protective barriers of the ego, the subject is allowed to view with some objectivity both his external surroundings and associations and his internal makeup and character. Several writers have addressed themselves to this unique experience:<sup>88</sup>

It is difficult to classify the state of consciousness during the intoxication which allows such self-observation and, at times, seems to foster detachment and self-scrutiny.

To be shaken out of the ruts of ordinary perception to be shown for a few timeless hours the outer and the inner world, not as they appeal to an animal obsessed with words and motions, but as they are apprehended, directly and unconditionally . . . this is an experience of inestimable value to everyone and especially to the intellectual . . . .

[T]he whole experience is (and is as) a profound piece of knowledge.

Because of LSD's unique capabilities, it legitimately appeals to those persons who wish to examine themselves more closely. When correctly administered, it offers the individual an opportunity for self-diagnosis in the light of acceptable ideals. Its initial use has been significantly prevalent among persons with a college degree or better.<sup>89</sup> There is a more moderate dissent, a desire to fashion something out of their lives or to experiment by deviant means with new values. Certainly not all users approach psychedelics with the same academic interest. Since the drug's notoriety, for instance, there has been a marked trend toward the use of LSD for the sheer novelty of the experience. But those seeking "kicks" soon learn that the drug cannot be counted on to produce euphoric effects. The mental aberrations occurring to an unprepared mind can be, at the very least, an

87. Unger, *Mescaline, LSD, Psilocybin and Personality Change*, in *LSD*, *op. cit. supra* note 84, at 202-05.

88. HUXLEY, *THE DOORS OF PERCEPTION* 73 (1954); Mayer-Gross, *Experimental Psychoses and Other Mental Abnormalities Produced by Drugs*, 57 *BRITISH MEDICAL J.* 317, 319 (1951); P. Smith, *A Sunday with Mescaline*, 23 *BULL. MENNINGER CLINIC* 20, 27 (1959).

89. Blum, *Conclusions and Commentary*, in *UTOPIATES*, *op. cit. supra* note 83, at 277.

unpleasant experience. The nature of the subjective experience is such that it must be approached with an attitude of reverent curiosity.

Because LSD has significant beneficial properties, it can and should be distinguished from other pleasure giving drugs. Its predominate use thus far by a relatively intelligent segment of the public would indicate that prospective users could be effectively educated as to the imperative need for medical controls. This is not to say that psychedelic drugs should be freely marketed. Licensed medical and academic use does not necessarily mean general social approval. The manufacture and distribution of the drug are quite properly controlled. Nevertheless, the Government should consider a program to provide research grants for universities and metropolitan clinics where such drugs could be obtained under proper medical conditions. Availability of the drug under responsible supervision would alleviate the dependence on a black market. It might stem the formulation of a psychedelic cult. It would certainly hasten the development and refinement of the drug's medical potentialities and societal applications. Whatever, a tactical need for positive reform is evident if society is to attain maximum utilization of future drugs. The rapid advance of science is forcing a change on the law whether the law likes it or not.

BRIAN ALEXANDER ROSBOROUGH