

The Recreational Use of LSD-25 and Drug Prohibition

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Interpretation of conduct as a criminal act originates with the formulation of a criminal statute. Without a law that proscribes some activity there can be no crime. Members of society may dispute the behavior of an individual and even go so far as to retaliate against conduct that they consider offensive. However, in order for a person's conduct to be treated as criminal, it is necessary that the illicit features of the behavior be so stipulated by law. It is the criminal law that dictates the criminal qualities of behavior. Furthermore, it is the law that provides society with justified and legitimized grounds for retaliation. The criminalization process begins, therefore, with the formulation of criminal law by legislative bodies.

Application of the criminal law is one form of social control. A principal function of law is to regulate and constrain the behavior of individuals in their relationships with others. A legal system involves explicit rules of conduct, the use of sanctions to ensure compliance, and a group of officials who interpret the rules and punish violators (Hartjen 1974).

This article examines LSD-25 and the application of criminal law in an attempt to prohibit its recreational use. The thesis is that criminal penalties are inappropriate as a means of achieving conformity to politically-inspired standards of "correct" behavior concerning psychedelic drug use. While the article deals specifically with LSD-25, its implications have relevance to other

kinds of contemporary drug-using behavior.

D-lysergic acid diethylamide, a semi-synthetic psychedelic drug, was first synthesized in 1938 by Dr. Albert Hofmann, a chemist who was employed at the time by the Sandoz Pharmaceutical Laboratories in Basel, Switzerland. The natural component of LSD is lysergic acid, which is the basis of all major ergot alkaloids.

Dr. Hofmann initially failed to discern the consciousness-altering properties of LSD-25 (the number 25 behind LSD refers to the fact that D-lysergic acid diethylamide was the twenty-fifth compound that Hofmann had prepared in a series of lysergic acid amides). However, five years later, while searching for drugs that would produce more efficient uterine contractions, he accidentally absorbed a small quantity of it through the skin of his fingers. Shortly thereafter Hofmann experienced a number of perceptual and cognitive alterations and concluded that these must have been produced by one or more of the drugs he had been experimenting with that day. Three days later Hofmann deliberately ingested a measured quantity (250 micrograms) of LSD-25. The perceptual alterations, euphoria, and modification of thought reoccurred.

It is difficult to describe the LSD-25 experience because of the inadequacy of language and because there are few predictable effects of the drug per se. In the words of one observer (Gioscia 1972):

LSD... is almost impossible to describe to those who have not experienced it. Like sex, talking about it does not quite convey the qualities of the experience. For, in addition to

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its ability to vastly expand the range of sensory delights, LSD induces the most complex chronetic patterns yet known to man.

Similarly, Tom Wolfe (1964) has asserted:

you couldn't put it into words. The White Smocks like to put it into words, like *hallucination* and *dissociative phenomena*. They could understand the visual skyrocket. Give them a good case of an ashtray turning into a Venus flytrap or eyelid movies of crystal cathedrals, and they could groove on that. . . . That was swell. *But don't you see?* — the visual stuff was just the decor with LSD. In fact, you might go through the whole experience without any true hallucination. The whole thing was . . . *the experience* . . . this certain indescribable *feeling*. . . . Indescribable, because words can only jog the memory, and if there is no memory of . . . *The experience* of the barrier between the subjective and the objective, the personal and the impersonal, the *I* and the *not-I* disappearing . . . that *feeling*.

The effects produced by LSD-25 result from a complex interaction that involves the drug, the psychological and physical environment, the personality structure of the user, and the set or the user's expectations of the drug's effect. In most users, LSD-25 loosens emotional inhibitions. Spontaneous laughter, tears or smiling for no explicable reason can occur. A general relaxation of physical and psychic tensions is also frequently described. The mood of the individual who has ingested LSD-25 can range from euphoria to anxiety; the latter reaction is sometimes intensified to the point of panic. There is a tendency to attribute special significance to certain aspects of reality. In addition, LSD-25 can produce a preoccupation with perceptual distortions — particularly in the visual sphere — by increasing color intensity. Objects frequently assume increased significance; this is particularly true regarding perception of one's own body. In addition to the emotional and psychological sensations, LSD-25 produces pupillary dilation, increases in both blood pressure and spinal reflexes, as well as tachycardia (Straus 1971).

LSD-25 does not have a specific aphrodisiac effect. Some users have indicated an enhanced appreciation of sexual experiences, while others report a total disinterest in sex while "high." Sexual activity may be intensified as a result of the lessening of inhibitions and an increase in emotionality and interpersonal contact. The drug has been used to treat sexual disorders of psychological origin, although its general usefulness in this area has not been conclusively demonstrated.

There is little evidence that LSD-25 is toxic in the same sense as barbiturates, methyl alcohol or tobacco. These latter substances, unlike LSD-25, endanger the body by attacking its physiological substrate. In properly supervised circumstances, with subjects who have been screened for medical and psychiatric abnormalities, the incidence of adverse reactions to LSD-25 is low. However, in circumstances where proper supervision is lacking and individuals have not been psychologically screened before ingesting the drug, the incidence of adverse effects is significantly higher.

Tolerance to the psychological and physiological effects of LSD-25 can develop with repeated use, although the form it assumes is unusual in several respects. Tolerance to most drugs can be overcome and effects of full intensity obtained by increasing the dosage. With LSD-25, however, a period of three to four days must separate ingestion if the full effects are to be obtained, regardless of dosage size. A second unusual feature of LSD-25 tolerance is the rapidity with which it develops and dissipates. A reduction in effects can occur after only one or two consecutive administrations. Furthermore, many users of LSD-25 report a "reverse" tolerance, or increased sensitivity to the drug and may, after experience, use less to achieve the desired effects. These factors suggest that the pharmacological mechanism underlying LSD-25 tolerance is different from that which occurs with most other psychotropic substances (Canadian Government's Commission of Inquiry 1971).

The dependence liability of LSD-25 is low. The combination of rapid tolerance and psychological satiation minimize the likelihood of intensified or compulsive use.

For this reason, LSD-25 and other hallucinogens are generally utilized only for 'spre'e' circumstantial or recreational use. Consequently, dependence is not a significant social or personal concern (National Commission on Marihuana & Drug Abuse 1973).

Shortly after World War II efforts were made to investigate the military potential of various psychedelic substances. Moreover, as the visions which Hofmann's LSD-25 had induced seemed to resemble a genuine psychosis, some psychiatrists began experimenting with the drug hoping it might help them better understand the nature of schizophrenia and other mental disorders. It was at first believed LSD-25 produced a "model psychosis" in "normal" investigators that could be helpful in comprehending the nature of schizophrenia. However, this idea has since been abandoned by most mental health professionals. Claridge (1970) notes that the LSD-induced state differs from the schizophrenic in

several significant respects.

One reason [why model and natural psychoses are not exactly the same] is that there are a few symptoms that occur in schizophrenia which are not very common in the normal person who takes LSD. A notable example is the auditory hallucination. 'Hearing voices' is often found in schizophrenia, but is rarely experienced in the LSD state, where most of the perceptual distortions are visual. This may be an important difference because it has been suggested that in some forms of schizophrenia there may be a disturbance in areas of the brain that store and process auditory information.

... Another reason for the dissimilarity of the model and natural psychoses arises from the conditions under which they occur. In the one case an otherwise normal individual takes a drug, the effects of which last for a few hours. During this time he is usually fully aware that he is under the influence of a drug and can often, if necessary, shrug off its effects and return more or less to his normal self. In other words, there is not the complete disintegration of personality that is present in schizophrenia. The schizophrenic patient, on the other hand, is someone in whom difficulties in communication, thinking, and emotional expression have become built into his personality through a gradual deterioration of mental life which may have persisted over many years and indeed may never have been normal.

Notwithstanding these differences, it is conceivable that some understanding of the schizophrenic world can be acquired through the use of LSD-25 (Laurie 1971).

The military eventually lost interest and the hopes that psychiatrists had concerning the drug have yet to be fully realized. Albert Hofmann's early experiments with LSD-25 were recalled, however, when a resurgence of interest in psychedelic drugs occurred following publication of Aldous Huxley's *The Doors of Perception* in 1954 (Inglis 1975). By the 1950s many people in the United States and abroad had become receptive to Huxley's argument that altered perceptions resulting from the ingestion of psychedelic substances can provide new insights into reality.

The first people in the United States to use LSD-25 for what were essentially recreational purposes were the physicians, psychiatrists, and other mental health professionals who had come into contact with it in their work. Many of these people had volunteered to ingest the drug in an experimental setting and found the effects to be pleasurable and/or enlightening. A number of them then made the decision to continue using it outside the

laboratory and clinic. Professional use of LSD-25 was thus extended to their private lives, and these people subsequently introduced it to their friends.

As is well known, the LSD-25 chronicle is intimately associated with Timothy Leary, who was, for a brief time, associated with the Harvard University Center for Research in Personality. In the summer of 1960 Leary first became cognizant of the psychedelic realm when he consumed psilocybin mushrooms in Mexico. After returning to Harvard, Leary discussed the meaning and implication of psychedelic drugs with Aldous Huxley.

During the 1960-61 academic year Leary and a colleague initiated a series of experiments in which psilocybin was administered to Harvard graduate students. Leary's early work with the psychedelic drugs was conducted under proper scientific controls with a physician in attendance. However, the use of a physician was eventually eliminated, in violation of Massachusetts state law. Other controls were also subsequently suspended. These actions reflected Leary's conviction that the experimenter should ingest a psychedelic drug together with the subject so the two can communicate on the same cognitive level. In this connection note the following observation (Laughlin 1967):

One frequent charge against Leary was that his experiments with LSD were conducted in an unprofessional manner, that is, ... in some cases the researchers themselves ingested LSD along with the subjects. It is easy to see how shocking this would be to the typical medical researcher. However, Leary had a plausible explanation from his own perspective. LSD allegedly not only opens the inner resources of the mind but makes one demonstrably more sensitive to his environment; ... Leary argued that since the subjects were thinking and acting in totally new patterns as a result of the mind-expanding effect of LSD, the researcher himself would, in the psychedelic lingo, have to 'turn on' in order to 'tune in' on his subjects.

In March of 1966 Leary was convicted of smuggling marijuana into the United States and sentenced to a lengthy prison term. He appealed his conviction on the basis of the First Amendment to the U.S. Constitution, which guarantees religious freedom. Leary's case will be examined since it is germane to a discussion of the role that law can play in regulating the use of LSD-25.

Leary's defense strategy was based in part on a 1964 California court decision entitled *People v. Woody*. In that case a group of Navajo Indians, after lengthy litigation, had been granted an exemption from the California Health and Safety Code to use peyote as a

religious sacrament. The defendants were arrested while sitting in the California desert conducting a religious ceremony, which included the ingestion of peyote. All of them were members of the Native American Church, which had previously been incorporated in the State of California. The defendants pleaded not guilty and contended that application of the state law prohibiting their possession of peyote violated the First Amendment's Free Exercise Clause.

In upholding the lower court conviction of the Navajos the California Appellate Court argued that there is precedence for the use of the state's police power in the area of religion where the health, safety or welfare of the general public is concerned. The appellate decision further observed that the Native American Church has no rules of membership and does not formally restrict its ceremonies to members. The prosecution in the case contended that giving members of this church the right to use peyote would lay open the drug to the 'uncontrolled desire for adventure' of some persons and to 'that segment of our society whose conduct persistently reflects the bizarre.' In overruling the lower court decision the California Supreme Court indicated that the Free Exercise Clause did in fact bar application of state drug laws in this particular instance. The Court found that the use of peyote was the *sine qua non* of the Native American Church. It concluded that the state could not constitutionally apply a statute prohibiting the possession of peyote in order to prevent an Indian tribe from using it as a sacramental symbol (Notes 1969).

Timothy Leary was convicted in U.S. District Court of willfully violating the federal marijuana laws. His defense involved a claim of constitutional immunity for the religious use of marijuana, similar to the exemption that had been granted Native American Church members in their sacramental use of peyote. Leary's First Amendment argument was predicated on his conversion to Hinduism and membership in the Brahmakrishna sect in Massachusetts, which he had joined in the early 1960s. In India this sect uses marijuana (ganja) for religious illumination and meditation.

In September of 1967 the Fifth Circuit Court of Appeals unanimously affirmed Leary's conviction. In doing so the court refused to inquire into the verity of Leary's religious beliefs and dismissed as not pertinent evidence concerning the harmless nature and therapeutic value of marijuana as well as its accepted use in Hindu religious rituals. The federal appellate court, after first noting that it was not bound by decisions of the California judiciary, did try to distinguish *Woody* (in which peyote played a central role in Native American

Church ceremonies) from a situation involving the personal use of marijuana by an individual who claimed to be using it as a religious practice. The court also noted that in *Woody* the use of peyote was closely circumscribed by tribal traditions; children were never permitted to participate in peyote ceremonies and it was considered blasphemous for adults to use the plant outside the confines of those ceremonies. By contrast, Leary's "religion" failed to impose controls on the use of psychedelic drugs and, in addition, his children had been involved in the smoking of marijuana (Finer 1968). Leary's failure to obtain an exemption for the use of marijuana in what was purported to be a religious setting portended the course that the government would take with regard to the recreational use of LSD-25.

In retrospect, it is evident that for many individuals the use of LSD-25 during the 1960s resembled a social movement. Many of those persons who advocated use of the drug were held together by shared experiences and espoused an ideology that emphasized the values of introspection, personal freedom, mystical experience and love. This ideology can be understood in part as a reaction against major trends in contemporary Western society. During the 1960s the requirements for individual self-control and conformity with "straight" society became increasingly burdensome for many people. As work became more complex, demands were made on the individual to become more efficient and rational in order to adapt to the requirements of modern organization. At the same time, it was believed that the individual was being offered fewer opportunities for emotional release (Sanford 1964).

During the 1960s LSD-25 was publicized by warnings and by praise. It is difficult to determine which of these factors contributed more to the demand for the drug. However, the combination of warnings and praise did help to trigger a publicity barrage, the net effect of which was to make the drug familiar to many people and to arouse intense curiosity (Brecher et al. 1972). During the 1960s a trend developed among young people to use LSD-25 for something that was extraordinarily exciting, aesthetic and euphoric. Magazine articles and books extolling the beneficial effects of LSD-25 ingestion provided impetus to this trend. These publications stressed the drug's capacity to expand consciousness and generate greater self-understanding, increased artistic powers, and a more meaningful life. This popularization of the drug contributed to widespread, indiscriminate self-administration of substances that were purported to be LSD-25 (Frosch 1971).

By the mid-1960s many persons in government positions were expressing concern over the short and

long-term implications of LSD-25 use. In 1965 the U.S. Congress responded to this concern by enacting the Drug Abuse Control Amendments, which regulated the manufacture, sale and distribution of LSD-25 through the application of criminal sanctions but which did not prohibit possession. It was believed at the time that possession penalties needlessly penalized otherwise law-abiding citizens who were experimenting with drugs and that fear of arrest might discourage users from seeking psychiatric help, should they need it. Meanwhile three separate incidents during the 1960s involving LSD-25 received national publicity. The first involved a five-year-old girl who accidentally swallowed an LSD-impregnated sugar cube. She was rushed to the hospital, where her stomach was pumped. The girl eventually recovered and became the focus of much publicity. The second incident involved a thirty-year-old man who was accused of murdering his mother-in-law. When apprehended by the police the man claimed he had been so "high" on LSD-25 that he could remember nothing. The media sensationalized the case and referred to it as "Murder by LSD," in spite of the fact that the man was eventually found not guilty by reason of insanity. The question of LSD-25 ingestion did not enter into this determination. Finally, in 1968 it was reported that a group of students, after ingesting LSD-25, had stared at the sun for hours and, as a consequence, suffered severe retinal burns. This supposedly factual story also received much publicity. However, the correction that was subsequently issued by the Governor of Pennsylvania, which indicated that the story had been fabricated by the State's Commissioner for the Blind, went virtually unnoticed (Laurie 1971).

In 1966 the U.S. Senate held two separate LSD-25 hearings which were chaired respectively by New York Senator Robert Kennedy and Connecticut Senator Thomas Dodd. Both sets of hearings concluded with a call for the enactment of additional legislation. Early in 1968 President Johnson requested a supplement to the 1965 Amendments that sought to make the illicit manufacture, sale, or distribution of LSD-25 a felony and illegal possession a misdemeanor (Pekkanen 1973). Congress quickly responded to Johnson's request by enacting a law which did penalize personal use and possession, in spite of the fact that no new evidence of LSD-25 effects had been unearthed in the interim. The recreational use of LSD-25 had, in fact, probably declined since passage of the 1965 legislation. The political need for a tough stance against crime "seems to have been so strong that the lack of firm evidence and the still relevant arguments of 1965 could be ignored" (Zinberg & Robertson 1972).

In 1970 Congress enacted the Comprehensive Drug Abuse Prevention and Control Act, which establishes five schedules of controlled substances that are theoretically based on the relative pharmacological harm and therapeutic usefulness of particular drugs. LSD-25 was assigned to Schedule I, which contains drugs that are believed to have a high abuse potential and no currently accepted medical/therapeutic application. The 1970 legislation makes it unlawful for any person to manufacture, distribute or possess LSD-25 except for valid research purposes. An individual found guilty of violating this law can be imprisoned for not more than five years, fined not more than \$15,000, or both. Second offenses are punishable by a prison term of not more than ten years, a fine of not more than \$30,000 or both.

In addition to the federally-imposed sanctions, many states have adopted legislation that severely punishes individuals found guilty of possessing psychedelic substances. For example, the penalty in New York State for the unlawful possession of five milligrams or more of LSD-25 is one year to life imprisonment. LSD-25 and other psychedelics are referred to as "restricted dangerous drugs" in the California Narcotic Act. Severe penalties are provided in that Act for the unlawful possession, sale or administration of these substances. The use of LSD-25 for other than authorized medical research is prohibited by California law and the laws of most other states.

Passage of federal and state LSD-25 legislation was followed by increases in availability and demand of the drug. The former reflected the higher prices that law enforcement engendered, which attracted an increasing number of illicit drug distributors who were looking to make a quick profit. The increased demand, in part, was a response to the LSD-25 publicity that was so plentiful during the 1960s (Brecher et al. 1972).

The recreational use of LSD-25 reached a peak during the winter of 1967-68 and began to decline shortly thereafter (Robinson 1968). Two factors contributed to this decline. The press began to devote attention to the possibility of having adverse reactions from the drug. The likelihood of experiencing an adverse drug reaction was increased during the mid-1960s by the growing use of adulterated substances. Poorly synthesized LSD-25 and the addition of other drugs made the substance that was sold on the street risky to use (Frosch 1971).

A second factor contributing to the decline of LSD-25 was a report that appeared in 1967 which suggested that the drug may damage chromosomes (Irwin & Egozcue 1967). While this report was never

fully substantiated, some users did begin to question whether ingestion of the drug justified the possibility of incurring permanent genetic damage. It has been suggested that concern about chromosomal effects was more influential in leading to a decline of LSD-25 use than were the legal sanctions. It has been further suggested that research endeavors can contribute to influencing drug use patterns if their findings are presented straightforwardly and unemotionally (Hollister 1970). However, Zinberg and Robertson (1972) make the following observation:

Research on drug use departs from the tradition of objective study and embraces the moral position that nonmedical drug use is wrong. To many investigators it is no contradiction to attempt research on the basis that drug use is wrong. The idea has been to discover what proves nonmedical drug use wrong and to 'educate' the public to these findings so that drug users will cease and desist. It is a minor scientific scandal that the researchers who found that LSD causes chromosomal damage started out with the premise that LSD was obviously worse than people thought. They decided on this research in order to find out what made it so bad and to disseminate this to the public as soon as possible in order to stop more people from using LSD.

CONCLUSION

Society's reaction to recreational LSD-25 use can be interpreted as a form of social control. One reason this drug was made illegal expresses the conflict that exists between the nature of the psychedelic experience and the dominant values of contemporary American society. The federal government and the individual states attacked LSD-25 because the psychedelic phenomenon was believed by many lawmakers to threaten a value system extolling health, efficiency and effective role-performance (Watts 1971). From the perspective provided by the established values of "straight" society, the psychedelic phenomenon is considered to be dangerous and insane, an undoing of the stability, regularity and conformity which are supposed to characterize modern Americans. Leary (1964) notes:

With its emphasis on consciousness, on internal, invisible, indescribable phenomena, with its multiplication of realities, the psychedelic experience is dreadfully incomprehensible to one committed to a rational, Protestant, achievement-oriented, behaviorist, equilibrated, conformist philosophy.

The LSD-25 controversy involves asking whether persons have a right to use psychedelic drugs, the propriety of their aims and values in so doing, and the acceptability of the kinds of cognitive perceptions which accompany the psychedelic experience. A fundamental issue is whether a pluralistic, heterogeneous society should tolerate or even encourage the "drug movement's" challenge to the Judeo-Christian ethic. Questions relating to the degree of pharmacological harm and the amount of risk that the individual should be allowed to assume for him/herself are also involved in the LSD-25 controversy. As the Swedish social theorist Gunnar Myrdal has observed, Americans have always had difficulty reconciling individual rights with the public good and in determining whether laws are enacted to be enforced or merely as expressions of ideals intended to encourage discretion (Blum & Associates 1964).

The American system of controlling drugs considered by lawmakers to be pharmacologically harmful and/or threatening to society has essentially been one of applying criminal sanctions to users and then continually increasing the severity of those sanctions when the problem becomes worse. More drug control personnel are recruited as bureaus seek to aggrandize their power and justify their existence before legislative bodies. Greater selectivity and individualization of approach are needed if the drug problems that exist in the United States are to be successfully confronted. Moreover, the use of psychotropic drugs should be recognized as being primarily a sociological and public health matter, rather than a proper subject for the criminal law. Criminal sanctions as a control technique should be reserved for what is unmistakably anti-social behavior, such as violence and theft, which can occur in association with, or completely apart from, drug use (Fort 1968).

Only rarely does every use of a drug pose equal danger to everyone. Yet, under the present substance abuse laws, all uses of specified drugs are proscribed, notwithstanding the fact that the motives for use may vary. The fundamental flaw in a system that penalizes every act of use or possession without regard to harm is its conflict with a basic premise of Anglo-American jurisprudence that only the occurrence and not the potentiality of harm be punished. Most criminal statutes act *post facto* i.e., they penalize conduct only after it has caused injury. By contrast, substance abuse laws assume that all use of particular drugs is harmful in and of itself and that it can lead to even worse harm. Condemnation of all recreational drug use is unnecessary if the primary objective of lawmakers is to prevent injury to individuals or society; however, it is essential if the basic intention is to express moral reprobation

(Zinberg & Robertson 1972).

The availability decision with regard to LSD-25 does certainly involve a delicate balancing of interests. On the one hand, this drug has a low dependence liability and its ingestion, most authorities agree, does not involve a social cost as great as that associated with indiscriminate use of central nervous system stimulants or depressants. However, psychological risks can attend the psychedelic experience and more remains to be learned about the short and long-term effects of LSD-25 ingestion (Grof 1975). This drug should not be made available to everyone to use under any and all conditions. The psychedelic experience has to be respected and responsibly directed if it is to be meaningful; the same responsible direction should seek to eliminate the possibility of psychological damage while minimizing both the frequency and the intensity of emotionally-painful experiences that are always possible in drug-induced states (Masters & Houston 1966).

Finally, it should be noted that implementation of laws that prohibit all recreational psychedelic drug use may contribute to a sense of alienation among the most creative individuals in society. In a viable social structure the intellectually-gifted citizen has an important role to play in supporting authority arrangements; however, when such persons are defined by the law as being enemies of society for pursuing activities which they consider to be beneficial, it becomes easy for them to incorporate anti-social and anti-establishment elements into their personal identity.

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