

CRIME AND PUBLIC POLICY

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Controlling Criminogenic Commodities: Drugs, Guns, and Alcohol

Crime control policies ultimately contend with human nature. Since human nature resists "social engineering," and since American society hesitates to manipulate character even where it might succeed, this simple fact dampens hope for any easy solution to the crime problem. But optimism is endemic to the American culture. So is confidence in cleverly designed technical interventions. At various times, then, the idea of controlling crime by regulating "criminogenic commodities" (such as heroin, guns, or alcohol) has attracted public interest.¹

The basic logic of such proposals is clear. Drugs, guns, and alcohol (and people who use them) all figure disproportionately in criminal attacks. Plausible hypotheses giving these commodities a *causal* role in generating crime are supported by intuition,

analytic reflection, and empirical observation. An apparent implication is that if these commodities could be prohibited (or at least tightly regulated), crime could be reduced.

The appeal of such policies is also apparent. To the extent that the commodities are criminogenic, government crime control policies could focus on a narrow slice of commerce and escape the frustrations of the principal alternatives—restructuring society on the one hand, incapacitating or rehabilitating individual offenders on the other.²

The purpose of this essay is to probe the practical potential of policies regulating criminogenic commodities for reducing violent street crime. This involves a brief examination of the evidence linking these commodities to criminal offenses, and a somewhat closer look at plausibly effective reforms of existing policies towards drugs, guns, and alcohol.

Relationships between Criminogenic Commodities and Crime

The important empirical observations establishing a link between drugs, guns, alcohol, and criminal attacks can be easily summarized. With respect to drugs:

- Drug users are disproportionately represented among people arrested and incarcerated for street crimes such as robbery, assault, and burglary.³
- Levels of criminal activity (measured by arrests and self-reported crimes) are much higher for daily heroin users than for those who use heroin less frequently, or for those who use no drugs.⁴
- Levels of criminal activity among heroin users increase during periods of daily use and decrease in periods of abstinence.⁵
- Drug users commit violent offenses (assault and sex crimes) at about the same rate as other offenders and commit property crimes (robbery, burglary, and larceny) much more frequently (2–10 times as often) than non-drug-using criminal offenders.⁶

With respect to guns:

- Large fractions of violent criminal attacks are committed by people using guns—primarily handguns.⁷

- The presence of guns in assault situations increases the likelihood that a homicide will occur.⁸
- The presence of guns in robbery situations also increases the likelihood that a homicide will occur, and shifts the distribution of victimization away from weaker targets such as the elderly toward more lucrative, better-defended targets such as bars, stores, and young men.⁹

With respect to alcohol:

- Large fractions (more than half) of those arrested for felonies report that they were drinking prior to the crime, and have high levels of alcohol in their blood.¹⁰
- In more than half the criminal homicides, the offender, the victim, or (most commonly) both were drinking at the time of the crime.¹¹
- A large fraction of the aggravated assaults that occur among strangers in public locations occur in and around places where alcohol is served.¹²

These facts, combined with the perception that drugs, guns, and alcohol undermine sobriety and civility while contributing little redeeming social value, explain the shady social reputation of these commodities. However, they fall short of guaranteeing that tighter control of such commodities could substantially reduce crime. The reason is that the facts do not necessarily establish a causal link running from these commodities to criminal offending. It could be, for example, that the sorts of people who commit crimes also happen to drink, take drugs, or collect guns. Alternatively, people who intend to commit crimes may prepare themselves by drinking, taking drugs, or acquiring a gun. Since the determination to commit offenses could exist independently of the commodities, and since substitute equipment may be available, restricting their availability need not have any appreciable effect on crime.

Such cautions are appropriate and helpful in gauging the crime reduction potential of controlling criminogenic commodities: they suggest that the benefits will be both smaller and less certain than a naive interpretation of the available facts would indicate. But the evidence linking the commodities to criminal offenses is suffi-

ciently compelling to require explanation. Moreover, the most persuasive explanations *do* suggest that these commodities have criminogenic effects. The causal relationships turn out not to be the simple ones we imagine, however.

Drugs and crime. When we consider the criminogenic effects of drugs such as heroin, marijuana, cocaine, barbiturates, amphetamines, LSD, and so on, we sometimes imagine a direct physiological link: the drugs transform ordinary people into vicious offenders. Despite the public vitality of this conception, supporting evidence has been sparse. Bits of evidence establish a link between "aggression" and the use of stimulants (such as amphetamines, methamphetamines, and cocaine).¹³ But even if this link exists as a physiological phenomenon, it is not epidemiologically significant in that these drugs rarely appear among people arrested for violent crimes.¹⁴ Ironically, the drugs that seem to be the focus of the most intense public concern—heroin and marijuana—operate physiologically to make people passive, not aggressive.¹⁵ And barbiturates work like alcohol—they make people clumsy and inattentive.¹⁶

The main reason we tend to link physiological characteristics of drugs to criminal attacks is the image of "dope fiends" willing to do anything to get their next "fix."¹⁷ But this image applies only to heroin. The machinery that links heroin addicts to high rates of offending is an intricate combination of three conditions: 1) that a person is addicted to heroin; 2) that heroin is expensive; and 3) that the addicts' best sources of income are criminal offenses.¹⁸ As a logical matter, if any of these conditions were absent, then the link between addiction and crime would weaken. If "junkies" are not highly addicted, they can make discretionary decisions about committing crimes. If heroin is not expensive, addicts may satisfy their habits by panhandling, as public drunks now do.¹⁹ If heroin addicts can hold high-paying jobs with discretionary hours (as do musicians and physicians), then they need not turn to crime to finance their habits. The implication is that the current link between heroin use and crime is established partly by the fact that we make heroin use illegal (therefore both expensive and irregularly available), and partly by the fact that it (for a variety of reasons) is concentrated among those least able to afford it.²⁰ So

heroin use probably does cause crime, but only when it occurs among certain groups confronting certain social policies.

Alcohol and crime. The link between drinking and crime is also somewhat circuitous. The theory of a simple relationship—that drinking itself causes people to become aggressive—is probably not correct. The physiological evidence suggests that alcohol makes people distractable and clumsy, but not necessarily aggressive.²¹ The sociological evidence indicates great variability in “drunken comportment”: while drunkenness is associated with belligerence and aggressiveness in the U.S., it is linked with sleepiness and giddiness in other cultures.²² The most important connections between alcohol and crime are probably twofold.

First, drinking may produce criminal offenses by “disinhibiting” potential offenders, granting them a personal or social license for their offense, or making them clumsy and negligent. It has been hypothesized, for example, that bullying husbands get drunk so that they can excuse assaults on their wives.²³ It must also be true that the potential for “accidental” offenses increases as people get reckless and clumsy. Cars can hit people, fires from neglected cigarettes can destroy buildings, guns can actually go off, a heavy glass ashtray can crash against a head rather than a wall, and so on.

Second, drinking can create victims and provocative situations as well as offenders. Public drunks are notoriously vulnerable to criminal attack. Moreover, anyone who has been in a drunken quarrel or has read police files describing domestic homicides, assaults, rapes, and child abuse must realize that offenses can be created by *situations* as well as by the intentions of offenders.²⁴ Therefore, reducing instances of drunkenness could conceivably have an effect not only on drunk driving, but also on a variety of criminal offenses ranging from homicide, through robbery, to minor assaults.

Guns and crime. The simple idea linking guns to crime is that for any given potential offender, guns bring a larger (and more varied) set of targets within reach, and therefore increase the likelihood that offenses will occur.²⁵ Armed juveniles can attack gas stations, convenience stores, and even bars as well as elderly

people and women. A frightened wife, equipped with a gun, can stand up to a bullying husband. Because more attacks are possible, more attacks occur.

The empirical evidence on the effects of gun availability on levels of criminal attack is now fairly clear and opposes this simple conception: the ready availability of guns seems to increase the *seriousness* of criminal attacks, but not the overall *levels*.²⁶ Because more assaults and robberies become homicides in areas where guns are readily available, guns seem to influence levels of homicide.²⁷ But apart from converting more assaults and robberies into homicides, ready gun availability seems to exert little influence on the frequency of these attacks. What does happen is that guns alter the distribution of victimization. Where guns are available, commercial targets are robbed more than individual citizens, and young men more frequently than elderly women.²⁸ Similarly, in domestic assaults husbands are more frequently the victims. Thus the most important effects of guns on crime are that they increase the seriousness of criminal attacks and affect the distribution of victimization; they do not seem to markedly increase overall levels of criminal attack.

Controlling Criminogenic Commodities: General Considerations

Given commodities with plausible criminogenic effects, it sometimes seems but a short logical step to conclude that the commodities should be tightly controlled in the interest of reducing crime. This apparently small step is in fact, however, a heroic leap across crucially important questions of fact, value, and institutional feasibility.

The crucial factual question is how much crime can be reduced, or lessened in severity, by controlling criminogenic commodities. To a degree, this is answered by understanding the *current* relationship between the criminogenic commodity and crime. And it is the current relationship that inspires those who would control the commodities. But this relationship need not remain constant. When policies tighten control over the commodities, their relationship to crime may change. As noted above, the link between heroin use and crime is primarily the result of tight controls over

the availability of heroin, which concentrates its use among people who must respond to the high cost by committing crimes. If controls over heroin were weakened, an important relationship between heroin use and crime would still exist but it would resemble the one that now exists between alcohol and crime: the crime would emerge from periods of psychological disinhibition rather than from economic need.²⁹ Similarly, if controls on alcohol and guns were tightened, it is possible that they would become much more closely associated with crime than they now are. This might occur because their use would be increasingly concentrated among people who commit criminal offenses, or because the identification of the commodities with violent crime actually would increase the likelihood that people would use them in the commission of violent offenses. In effect, if these commodities were perceived as criminogenic, and controlled as though they were criminogenic, they not only would become more closely linked to criminal activity, but they also might increase the criminal activity among those who continued to possess and use them.³⁰

Such concerns may seem exotic, but they stem from a basic uncertainty about the exact nature of the causal mechanisms that link the commodities to crime. These uncertainties cannot be banished. The implication is that crime may decrease less than simple extrapolations from reduced use of the commodity would suggest.

In fact, in some areas, tight controls of criminogenic commodities will increase rather than reduce crime. To the extent that "tighter controls" over criminogenic commodities includes criminal sanctions against distribution, possession, and use, "crime" will, of course, increase: acts that were previously perfectly legal will have become criminal. But prohibiting distribution, possession, and use will probably create some real criminal violence as well. Tight restrictions generally create "black markets," and illicit markets depend on violence to enforce contracts, to prevent employees, customers, and others from informing on the illegal activities to enforcement agencies, and to seek monopolistic advantages in the illegal markets. Thus the existence of these markets will lead to new assaults and homicides.³¹ Much of this violence will be "internal" to the illegal markets, and may therefore seem less important than comparable violence

directed at less culpable citizens. But such violence may occasionally spill over the boundaries of the illegal markets, and, at any rate, the number of assaults and homicides will be increased.³²

It is not clear, then, that restricting criminogenic commodities will produce a large net decrease in criminal violence. Crime will be reduced as use of the commodity declines in the general population, and fewer people and circumstances are subject to the various criminogenic effects. But among those who continue to use the commodities, the criminogenic effects may be strengthened. In addition, the act of restricting the commodity may create black markets that will spawn criminal violence. It seems very unlikely that the initial crime reduction benefits of restricting availability would be entirely offset by the mechanisms generating increases; but these offsetting mechanisms will operate to reduce the practical benefits of controlling criminogenic commodities.

The crucial question of value overlooked in the leap from criminogenic effects to a policy of tight control is how much weight should be given to protecting safe and legitimate uses of the commodities. Of course, some deny that guns and alcohol have any legitimate uses, at least none that compares in significance with the social interest in controlling crime. Many others, however, accord great value to these commodities and insist on their right to convenient access. Recreational shooters, gun collectors, and frightened home owners rally to protect the legitimate uses of guns. Recreational drinkers defend low prices and convenient access to alcohol. Even heroin has defenders, many of whom urge that it be made available to terminal cancer patients. Since restrictions on criminogenic commodities almost necessarily sacrifice some portion of legitimate use, society must decide whether and how to regulate them so as to balance its interest in protecting such use against possible reductions in criminal violence.

Current institutional arrangements are also a critical consideration in gauging the practical potential for controlling crime through tighter regulation of criminogenic commodities. To the extent that more restrictive policies are politically unworkable, there is little practical reason to consider them. Moreover, to the extent that such policies depend on bureaucratic, regulatory, and

enforcement capabilities that do not now exist and cannot be easily created, the restrictive policies are also of little or no practical interest. Finally, even if the policies are politically and bureaucratically feasible, they will involve costs, and adequate resources must be committed to enforce their provisions.

Thus in moving responsibly from a *factual* determination that some commodities have criminogenic effects to a *policy* determination about whether and how best to control their availability, at least three additional considerations must be taken into account: the possibility that apparent crime reduction benefits associated with tighter regulations may be partially offset by increased crime associated with black markets; the certainty that legitimate uses of the commodities will be sacrificed by tighter regulations; and the institutional feasibility and cost of more restrictive regulatory regimes. Because these considerations bear differentially on practical proposals to control drugs, guns, and alcohol, it is necessary to explore each area separately.

Controlling Heroin and Other Drugs

For the last decade, federal policy applied across many drugs has been "balanced" between "supply reduction" efforts designed to restrict availability, and "demand reduction" efforts designed to discourage people from beginning drug use and to treat those who have become intensive users.³³ A parallel structure exists at state and local levels.

To a great degree, this elaborate and expensive apparatus is justified as a crime reduction policy. The implicit assumption is that drug users are very likely to commit crimes, and that the number of drug users can be minimized by supply reduction and demand reduction policies. Moreover, the image of drug policy as oriented toward crime control is reinforced by heavy involvement of the criminal justice system. After all, supply reduction policies depend on drug agents' battling criminal conspiracies, and demand reduction policies depend on both the generalized pressure of the criminal justice system and specific referrals from courts to motivate drug users to seek treatment. If the criminal justice system is so heavily involved in drug policy, it must be that the aim of that policy is to reduce crime.

This account of drug control policy as crime control policy has a certain coherence. It also has widespread appeal. It may even be an accurate account of what we think we are trying to accomplish with drug control policy. But as a logical and empirical proposition, it fails. Two anomalies are particularly striking.

First, if our drug control policy were really focused on violent street crime, it would presumably concentrate on those drugs that are most closely linked to such crime. This means heroin. It is true that both supply reduction and drug treatment policies currently do emphasize heroin. But the *degree* of emphasis is far short of heroin's relative importance in producing violent street crime. Cocaine, marijuana, and other hallucinogens all compete effectively for enforcement, prevention, and treatment resources even though they currently have no close connection with violent crime. In short, if our drug policy were narrowly designed to control violent street crime, it would be much more sharply focused on heroin, and would neglect cocaine and marijuana.³⁴

Second, it is at least arguable that our current drug control policies *increase* rather than reduce crime.³⁵ All the mechanisms through which tight controls of a criminogenic commodity might increase crime operate with a vengeance for heroin. Because heroin is addictive and users earn money largely through criminal activity, the high prices for heroin created by stringent control policies may increase the violent crime committed by users. Because current policies outlaw the manufacture, distribution, possession, and use of various drugs, they create criminal offenses where none previously existed. And because a black market in heroin has arisen, some violence has been created by our control policies. In effect, we could reduce crime by *decreasing* rather than *increasing* the stringency of controls over heroin.

Current drug policy is much easier to understand if we resist thinking of it as a short-term crime reduction policy, and see it more as a policy designed to promote social welfare by minimizing the number of people who emerge as chronic, intensive users of drugs. This goal may have some long-run impact on criminal activity, because such users frequently engage in criminal conduct. But it is important to keep in mind that their behavior is partly shaped by current policies. If drugs were less stringently regulated, we might end up with a larger but less frequently criminal

population of chronic, intensive drug users. Since it is probably valuable to discourage very heavy drug use even if it is *not* linked to violent crime, and since our policies probably do reduce the number of heavy users in the society (even though they make the behavior of those that do exist more criminal), it is easier to understand our drug policy if we think of it in broader terms than anti-crime policy.

If we want to turn drug policy more toward the objective of controlling violent crime without sacrificing the other social objectives tied to drug policy, probably the most effective approach would be to step up efforts to arrest, control, and treat frequent heroin users who commit offenses. There is ample evidence that some heroin users are unusually active criminal offenders.³⁶ Moreover, there is also evidence that their level of criminal activity can be noticeably reduced by relatively inexpensive forms of supervision and treatment such as methadone maintenance—at least as long as the addicts remain in the program. Current evidence indicates that if heroin addicts can be induced to reduce or eliminate their heroin use for any period of time, their criminal activity—including violent crime such as robberies as well as larcenies and drug offenses—will also decrease, but not disappear.³⁷ This may sound like a minor benefit, and certainly falls far short of being a “solution” to the “drug problem,” but compared with many other ways of controlling crime, it is an attractive and not yet systematically exploited opportunity.

This idea differs from current conceptions about how to use drug policy to control violent crime. It is not a stepped-up attack on drug dealers (the usual “supply-side” approach). Nor is it a proposal to expand treatment to all drug users who want it (the usual “demand-side” proposal). Instead, it proposes to focus supervisory and treatment resources on a limited segment of the drug-using population: heroin addicts who commit street crimes at very high rates.

It is also important to notice that some institutional machinery exists for implementing this reform. For at least a decade, the Law Enforcement Assistance Administration supported a program called Treatment Alternatives to Street Crime designed to divert drug addicts from jail to treatment.³⁸ At the time it was created, the project was justified primarily in terms of rehabilitation. Yet

whatever its success in rehabilitating drug offenders, the program was probably even more effective as an inexpensive, well-targeted form of "incapacitation." If I am right, this program should be reinvigorated and expanded.³⁹

Gun Control

The basic thrust of current federal gun control policy is to keep guns out of the hands of criminal offenders through regulation of gun commerce. The Gun Control Act of 1968 requires people who "engage in the business" of selling guns to acquire a federal license, and prohibits these dealers from knowingly selling guns to certain proscribed categories of people (e.g., convicted felons, fugitives with outstanding warrants, drug addicts, mental defectives, minors, and out-of-state residents).⁴⁰ The law is enforced primarily by the Bureau of Alcohol, Tobacco, and Firearms in the U.S. Department of the Treasury (hereafter called ATF).⁴¹

In addition to the federal legislation, a large body of local laws regulates not only the buying, selling, and transferring of guns, but also their use—for example, whether they can be carried, how they must be stored, and so on.⁴² These laws are enforced primarily by local police departments—though there are remarkable disparities in enforcement depending on the political and bureaucratic conditions in local departments.⁴³

At various times, proposals have been made to effect deep cuts in the national inventory of guns, particularly of handguns. Sometimes these proposals are directed at withdrawing the existing stock (estimated at 25–50 million handguns) through "buy-back" programs or "bans" on gun ownership with limited grace periods when guns can be voluntarily surrendered. Occasionally a small jurisdiction experiments with one of these approaches and finds it most difficult to defend its program against the flow of inter- and intrastate commerce.⁴⁴ At the national level, however, there has been little interest in such radical ideas.⁴⁵ The proposals most likely to be effective are designed to limit the *supply* of guns (rather than their distribution and use) and have been directed at the *flow* of new gun production rather than at established inventories. The most radical of these call for a ban on all new production or importation. Narrower proposals attack special *kinds* of guns—

those that seem well-suited to crime and less well-designed for legitimate purposes, or those that lack a powerful domestic constituency.⁴⁶ In fact, the only guns that have been recently prohibited in the U.S. combined these traits: the Gun Control Act of 1968 banned foreign guns that could not meet a "sporting arms" test.⁴⁷ Thus, while one can still imagine that attacks on the supply of guns or handguns could be an effective way of controlling violent crime, such measures seem politically hopeless: decades of political struggle have created little more than a bitter impasse between gun owners and gun controllers.

An alternative approach would be to focus less on federal legislation to restrict the production of guns or shrink the existing national inventory, and turn instead to stronger enforcement of existing statutes designed to keep guns out of the hands of criminal offenders and off congested city streets. While current federal and local statutes leave some important loopholes, they also provide scope for stepped-up enforcement against illegal transfer, carrying, and possession.

The Gun Control Act of 1968 implicitly establishes a national licensing system. The system is "permissive" in the sense that the presumption is in favor of gun ownership: a person has to show clear evidence of dangerousness or irresponsibility before he is denied the right to acquire and own a gun. However, in denying the right to acquire guns to convicted felons, fugitives, addicts, and minors, the act clearly seeks to keep guns away from people who seem unusually likely to use them in criminal offenses.

Unfortunately, the regulatory system established to implement the act has limited powers. On the bright side, everyone "engaged in the business" of dealing in firearms is required to obtain a federal license. As federal licensees the dealers are required to keep records and are prohibited from knowingly selling to proscribed persons. This prohibition is enforced by requiring the customer to sign an affidavit attesting to his lack of disqualifying characteristics. In addition, regulations spell out what kind of identification can be accepted by the dealer; but they do *not* require the dealer to verify any of the customer's statements.

Three obvious loopholes create problems for the system. One is its incompleteness: not everyone who sells or transfers a firearm is required to obtain a federal license—only those who are

“engaged in the business.” This leaves an unregulated “private transfer” sector: people who transfer only a few handguns a year have no federal responsibility to avoid proscribed persons. A second problem is the vulnerability of the legitimate system to fraud and collusion. Proscribed customers, with or without the collusion of the dealer, may lie in filling out the necessary affidavit. This makes them guilty of a crime but absolves the dealer. The third loophole involves thefts from manufacturers, licensed dealers, collectors, and private owners. The thefts may be directly routed to proscribed persons, or they may be mediated by the appearance of more or less elaborate black market institutions. Thus, proscribed persons can acquire guns from the legitimate sector through a variety of means.⁴⁸

Efforts to close these loopholes take many forms. The attack on private transfers and diversion of guns to proscribed persons would require a broadened and intensified regulatory program, since the obligation to acquire a license would have to be widened to include more private owners. And the licensees would have to face closer scrutiny—perhaps even undercover approaches to see if they were willing to ignore clear evidence of disqualifying responsibility.

The attack on thefts and black markets *could* be the responsibility of ATF, but might more effectively be delegated to local police departments. Local police have the resources and the mandate to attack thefts of all kinds—including handguns. They may seem less well suited to attacking sophisticated black markets or interstate gun smuggling operations. But it seems likely that the illegal market in guns would be composed of many small transient businesses or generalized fencing operations rather than of a few large, stable firms.⁴⁹ This theoretical conclusion is supported by a small amount of research on the characteristics of illegal businesses encountered by ATF.⁵⁰ If the illegal firms turned out to be indeed small and transient, there is no reason that the local police could not deal with them. Thus the major approaches for attacking important loopholes in firearms control are federal regulatory efforts directed at licensed dealers and local criminal enforcement targeted on thefts and black markets.

Which of these alternative thrusts should be most emphasized depends on which supply sources are currently most important for

criminal offenders, and which can be most easily closed. Again, a small amount of research indicates that the offenders who commit robberies with guns are most likely to be supplied by thefts and black markets. Those who commit assault are most likely to be supplied by the legitimate sector.⁵¹ Indeed, many of the assaulters are licensed to own weapons. This suggests that if violent street crimes like robbery were our main priority, the most important loophole to close would be thefts and black markets. This depends primarily on local police.

Keeping guns out of the hands of criminal offenders is one part of the recommended approach. The other part involves keeping guns off congested city streets. The basic logic of this idea is that some uses of guns are more dangerous (and more "offensive") than others, so we should regulate the dangerous uses more stringently than the less dangerous ones. Carrying a gun in the city is arguably more likely to be an offensive act than possessing a gun in one's home or place of business; the inherent danger of guns in crowded areas was recognized in the frontier tradition of checking guns when one came into town or entered a saloon. More recently, this danger has been recognized in the elaborate system created to deter airline hijacking. And most importantly, it is reflected in the tighter restrictions governing licenses for carrying (as opposed to owning) a gun in many metropolitan areas. In effect, tight regulations effectively enforced against carrying guns in cities might prevent street muggings and assaults among strangers while leaving a citizen's capacity to protect business and home unaffected.

If the goal of keeping handguns off city streets were adopted as an important part of gun control policy, then the natural organizations to assume responsibility for this task would be local police departments. The method would probably involve stepped-up pedestrian and auto checks in which the police ask people if they are carrying weapons. It might even involve technologies such as hand-held magnetometers like those used at airports, to reduce the intrusiveness and increase the specificity of searches for hidden dangerous weapons. Whether local police could be successful in deterring the carrying of illegal weapons without harming important constitutional rights is presently unclear and the question is a suitable subject for experimentation.⁵² In advance of the

needed experiments, however, one should note that enforcement against illegal carrying of guns should be easier and less intrusive than enforcement against marijuana and other drugs. Despite this fact, the police make many more arrests for drugs than for weapons.⁵³ This suggests some unexploited enforcement potential.

Note that the argument being made here tends to shift the focus of the gun control debate: it moves the debate from calling for new federal legislation restricting the supply of guns to managing the ownership and use of guns through local enforcement agencies. This is neither the position of the gun controllers (who want federal legislation regulating the supply), nor the position of the gun advocates (who want only enhanced penalties for crimes committed with guns). It challenges the gun controllers to test the practicality of their ideas in a world where 25–50 million handguns are already in circulation and strong political currents run against tighter control. It challenges the good faith of the gun advocates, for it forces them to accept some burdens and responsibilities associated with goals they have always supported—namely, keeping guns out of the hands of dangerous people and minimizing their dangerous or irresponsible uses. Again, while it is not obvious that the approach recommended here would work, it is worth trying, and offers one way out of the current gun control impasse.

Drinking and Crime Prevention

It is ironic that while alcohol seems to occupy the most secure place as a “criminogenic commodity” (since it is involved in half to two-thirds of all homicides), it is the commodity that is now least frequently the focus of policy discussions. The explanation, no doubt, is that alcohol was once a major topic of public discussion, the result of which was Prohibition. Revisionist views of Prohibition are now being written that show the “Great Experiment” to have been both more successful in controlling alcohol consumption and less badly motivated than the earlier historians indicated.⁵⁴ Despite the revisionists, however, the conviction that Prohibition was a textbook case of how not to regulate a commodity remains almost universal. As a result, politicians and government officials run great risks when they renew discussion of more stringent alcohol control policies.

As a logical matter, however, strictly regulating alcohol could be justified and accomplished in ways similar to those proposed for drugs and guns. Even more interesting is the fact that a regulatory structure continues to govern alcohol and is available for use despite the abandonment of Prohibition. Alcohol is the only "criminogenic commodity" that is now taxed at federal, state, and local levels. There is evidence suggesting that increases in taxes can influence total consumption of alcohol and the corresponding incidence of cirrhosis and traffic accidents.⁵⁵ This may imply that taxes could also decrease the frequency of drunken episodes that lead to violent attacks at home and in bars. In addition, the commerce in alcohol is tightly regulated at the state level: liquor stores are sometimes state operated, and if not state operated, usually state licensed. Bars and drinking establishments are also licensed.⁵⁶ Finally, local statutes and ordinances regulate drinking conduct by prohibiting drunken driving, public drunkenness, drinking by minors, and drinking in public locations after certain hours.⁵⁷ In principle, this elaborate structure of regulation could be turned to the purpose of reducing crime by reducing the incidence of drunkenness leading to violent attacks. In practice, however, these regulations are made to serve a variety of other purposes such as generating tax revenues, limiting competition among liquor stores and bars, and so on.⁵⁸

The regulatory policy directed at alcohol that could most plausibly have an effect on violent crime would be reinvigorated enforcement of laws against public drunkenness. In recent years, a "decriminalization" movement has resulted in revisions of the statutes governing public drunkenness in a score of states. The aims of the movement were to provide treatment and avoid stigmatizing those arrested for public drunkenness, and to prevent unfair discrimination in police enforcement.⁵⁹ Yet the police were not wholly removed from the scene. Because they were often the only available agency, they continued to respond to incidents of drunkenness, and police intervention was sanctioned by provisions allowing limited periods of "protective custody." The decriminalization movement did, however, succeed in reducing police activity; and the police were happy to escape their responsibilities for managing public drunks.⁶⁰

It is wise, no doubt, to manage a nuisance offense without invok-

ing the full apparatus of a criminal enforcement response, and to provide treatment rather than custody. But several aspects of the decriminalization effort seem questionable. First, it is possible to see laws against public drunkenness not as efforts to enshrine idiosyncratic views of public decorum in the criminal law, but instead as attempts to prevent crimes that could occur when people are intoxicated, including drunken assaults *by* as well as robberies and thefts *from* intoxicated people. This makes the laws against public drunkenness similar to the laws against carrying guns, possessing burglary tools, or speeding. They are designed partly to protect the drunk from being victimized, and partly to prevent him from victimizing others. To the extent this view is accepted, one of the major ideological objections to these laws disappears: they do have a legitimate social purpose.

Second, I think it is an error to encourage (or allow) the police to reduce their efforts to regulate public drunkenness. It is all very well to say that public drunkenness is a health or social problem rather than a crime (a view I share), but until physicians and social workers begin roaming the streets at night, the police are going to be in the best position to see and manage the behavior. To the extent that they fail to respond because they no longer think of drunkenness as police business, some potential crime prevention benefits may be sacrificed—to say nothing of a good deal of therapeutic potential.

In sum, while the movement to decriminalize public drunkenness was well motivated and created greater flexibility in the official response, it had at least two slightly negative effects: it broke the link in people's minds between public drunkenness and criminal violence, and it discouraged the police from actively managing public drunkenness. Among the alternatives for regulating alcohol production, distribution, and use in order to reduce violent crime, I would pick renewing police interest in managing public drunkenness. One cannot be very optimistic that this would have a substantial crime reduction effect, since it is certainly true that only a few incidences of public drunkenness produce criminal violence. But short of inducing major changes in American drinking habits, it seems to be the most promising way to reduce crime through alcohol control policies.

Policies for Intractable Problems

Americans have often blamed social problems on the "evil" objects or substances associated with them. This is not only true when we think about public health threats associated with unsafe cars, impure foods, and toxic chemicals, but also even when we think about crime. It is testimony to the enduring appeal of this mode of thought that we have often looked for the solution to the crime problem in the more restrictive regulation of criminogenic commodities, specifically guns, drugs, and alcohol. Indeed, this interest has contributed to the development of laws and institutions regulating each of these commodities. A fresh look at such policies leads to new perspectives about their current impact, and to some specific proposals for increasing their effectiveness.

With respect to drugs, for example, it seems clear that our policy is designed less to reduce crime than to reduce the number of chronic, intensive drug users in society. This may have a long-run effect on crime, and it is almost certainly a desirable social policy. But the immediate effects of current drug regulations are to *increase* rather than decrease street crime. To the extent that we want to use policies in this area to control street crime, we should emphasize heroin over other drugs, and should focus existing capacity for supervising and treating drug users on heroin addicts who commit street crimes at very high rates.

With respect to guns, the great legislative struggles over policies aimed at the national inventory of handguns are distracting attention from a narrower but plausibly useful policy. Much statutory authority now exists to support a policy of keeping guns out of the hands of likely criminal offenders, and off city streets. Moreover, all one needs to do to make this statutory authority effective is to rouse large city police departments to take their responsibilities in this area more seriously. They are in a good position to prevent gun thefts, disrupt illegal gun markets, and discourage illegal carrying. One can reasonably doubt that such efforts will be markedly successful, but if local police cannot succeed at this task, it is hard to understand how more radical federal legislation would succeed, since any effort to shrink the existing national inventory of guns will ultimately depend on local enforcement capabilities. Given this fact, we might as well start by seeing what local enforcement agencies can do with their existing authority.

With respect to alcohol, opportunities to pursue crime reduction through tighter regulation of drinking practices have been neglected because of the shadow of Prohibition. There is reason to believe that higher taxes and other generally restrictive policies would reduce instances of public drunkenness and consequently some drunken violence. The price of such general approaches, however, is that a great deal of legitimate drinking is inconvenienced as well. A more surgical approach would be to renew police interest in public drunkenness laws, in order to prevent drunken people in public from being victimized, or from victimizing others.

Great hopes for effective crime control through broad regulation of criminogenic commodities are almost certainly unwarranted. They are dashed by continuing empirical uncertainties about the net effect of such policies on crime, a strong interest in protecting legitimate uses as well as discouraging harmful uses of the commodities, and limited institutional capacities for adopting and implementing more restrictive policies. To the extent that tighter control of criminogenic commodities does represent a possible approach to controlling crime, it is probably along the narrow paths described above. In all likelihood, while these measures hold only limited potential for crime control, they have one important virtue: they are probably feasible.

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