

HET UTOPIESME VAN DE DRUGSBESTRIJDING

Egbert Tellegen
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Introduction

The 100th anniversary of the ‘war against drugs’ was not met by any protest. Two years after the publication of his book *Het Utopisme van de Drugsbestrijding* (The Utopia of fighting Drugs), Egbert Tellegen noted that the 2009 jubilee of one of the most persistent utopias of our times – the utopia of a drug free world – had gone by in silence. The first law to prevent the use of a natural product, namely opium, stems from 1909. Since then, laws to prevent, prohibit or regulate the use, production, possession and sale of natural and chemical products labelled as drugs have spread internationally and increased exponentially.

Het Utopisme van de Drugsbestrijding (further referred to as ‘*Het Utopisme*’) starts off with a revision of the concepts of ‘drugs’ and ‘addiction’ and provides a geo-historical context and overview of drug use and drug laws. It shows the social context wherein different substances have been used and are being used today. It treats the consequences of prohibition: from criminalisation of users to the ‘iron law of replacement’, where the use of an illicit drug is abandoned for a new, still legal, one. Also, it shows the relation between social and cultural minorities and the prohibition of certain drugs. The book furthermore provides summaries of contemporary scientific research on the harmfulness of substances and comments on developments in international drug policies.

‘*Het Utopisme*’ explores the different socio-philosophical and political ideas underlying the debate on regulation, prohibition or liberalisation. It is Tellegen’s personal contribution to the call for change in the current drug (related) policies. ‘*Het Utopisme*’ is a mixture of compelling scientific argumentation, a firm historical description, and a provocative opinion and critique on drug policies – and policy makers – around the world. While Tellegen clearly spells out his personal view and preference for regulation of drugs, he provides the reader with thorough scientific research to separate fact from politics.

I. The Book is Mightier than Politics

“What she hates the most, are all those drug cases”.¹ It is the first sentence in the introduction, a quote from the husband of a Dutch judge. She complains about the high number of drug related cases and the consequential pressure on the legal system. Later, an inquiry showed that two third of the members of the Dutch judiciary were pro legalisation of ‘soft drugs’ and a third was in favour of legalising ‘hard drugs’.

After several political debates about *bolletjesslikkers*² had overshadowed the debate on the trafficking of fire arms from the same countries, Tellegen’s interest turned into political action by co-writing amendments, propositions for drug laws and advising political parties to take a regulating stand point. When his ideas did not find common ground within the political parties, he decided to write a book. “A book that did not just exist solely (out) of my own firm judgements but [which is] composed of information about the social, historical and geographical context of drug use.”³ An interview with the Dutch newspaper ‘*De Pers*’ revealed more of his personal motivation: “I’m very sensitive to the repression of personal experiences by those in power. The decision to reach a certain state of mind, is one that the individual should make”.⁴

II. ‘A Drug Free World...’

Tellegen considers a drug free world a utopia. But, what are these drugs? Loosely deconstructing this concept, Tellegen starts off with a social scientific approach. Drugs, especially in the Dutch language, clearly refer to mind and/or body altering substances. In contrary to the English word which can also refer to medicine. What is considered a drug is different for different times and places. Chocolate, sugar, tea and coffee fit the criteria of ‘strongly’ influencing one’s state of mind, body and behaviour. Yet, Tellegen has a more ‘common sense’ notion of what drugs are, leaving out medicine and the use of drugs to enhance achievements in sports and the liquids “coffee and tea which are used during the writing of this text but are treated very little in it”.⁵ He roughly distinguishes three categories: narcotics (heroin, morphine), stimulants (speed, cocaine) and mind-expanding substances (LSD, psilocin mushrooms) and notes that multiple drugs don’t fit just one category.

Tellegen proposes to stop thinking of drugs in terms of either ‘hard drugs’ or ‘soft drugs’. As he shows in his book, some people can easily control their use of ‘hard drugs’; limiting themselves to certain social occasions, setting

¹ E. Tellegen, *Het Utopisme van de Drugsbestrijding*, Amsterdam: Mets & Schilt Uitgevers 2007, p. 9.

² People who traffic drugs by ingesting a large number of drugs packed in small balls; ball swallows.

³ Tellegen 2007, *supra* note 1, p. 11.

⁴ *De Pers*, 21-01-2008, at: <http://www.depers.nl/binnenland/164078/Hulde-aan-de-coffeeshop.html>.

⁵ Tellegen 2007, *supra* note 1, pp. 15-18.

maximum amounts, restricting themselves to a time of the day and allowing only for certain ways of ingestion. With other people facing difficulties quitting or limiting their use of 'soft drugs' or socially approved drugs, it becomes clear that pharmacological distinctions do not account for these differences. Thus, he agrees with criminologist Decorte to distinct between 'hard use' and 'soft use' in which behaviour plays a central role, instead of the pharmacological make up of drug.

III. '... with no Addiction and Drug Related Problems...'

Following this line of thinking, Tellegen also reconsiders the concept of addiction. Here, he draws heavily from the ideas of Peter Cohen. Tellegen examines the development of the concept in 'dominant addiction models' (from a 'moral model' with imprisonment and re-education as treatment to a 'brain disease model' with medication and behavioural therapy as a solution) and also discusses a more sociological explanation.

The theory of 'drug, set and setting', presented by Norman E. Zinberg and Wayne M. Harding, focuses on the way users can control their own drug use. One of the main ideas of this theory is that controlled use of a drug, even when it has the potential to be either addictive or harmful to one's health, is possible without harming oneself. This 'controlled use' can be explained only partially by legal regulations and restrictions. Instead of formal sanctions, Zinberg and Harding focus on the informal system of social sanctioning. This second type of regulation is based upon internalisation of informal social rules. The term 'drug, set and setting' refers to the three dimensions which all play a role in the experience of a drug and the way it is being used. The term drug refers to the pharmacological substance as well as the dose, the way of ingestion and the biological make up of the user himself. However, whether a user becomes addicted and how he experiences the effects of the drug are also subject to his set: the psychological *habitus* with all the expectations, beliefs, prior experiences and personality. The last dimension is that of the social setting or the social context.⁶

Tellegen explains the way in which 'rituals' (the way of use) and 'social sanctions' (the circumstances under which the use takes place) can teach people how to behave in a proper way in relation to drugs. These rituals and social sanctions make up the 'setting'. According to this theory, these mechanisms enable users of a certain drug to control their use in such a way that is considered appropriate by their social environment. As drugs are embedded in a social context for a longer period of time, rituals will become stronger and standardised and will thus limit the number of people who encounter problems because of their drug use. But, if there are no rituals and sanctions to support users or if the social context of use widens itself

⁶ Tellegen 2007, *supra* note 1, pp. 34 -36; and E.N. Zinberg, *Drug, Set, and Setting*, Yale University 1984.

through popularisation, the influence of these informal rules will weaken with more problems or problematic use as a consequence.

The introduction of a new drug to a social group or individual, like opium in China in the 17th century, alcohol to the Native Americans or psychedelics or marihuana to first time users, can be problematic because of the absence of rituals and social sanctions or the presence of rituals still in the make.

It is assumed that informal rules, when imposed on members of a certain group, can reduce the harm done by drugs. The question is if this mechanism can also work the other way around, thereby – implicitly – stimulating harmful use.

Grund pays more attention to the difference between formal and informal rules. He argues that prohibition leads to sub-cultural socialisation, which allows for little possibility for identification models of controlled use to emerge. Yet it does leave space for the development of controlled and natural learning processes. The rituals and informal rules that are created focus on the hiding of one's drug use and the safety of drug transactions. Because of legal restrictions, explicit and rigid – idiosyncratic – group rituals are emphasized and depended on. Legalisation on the other hand, would result in a main current of cultural socialisation and the emergence of identification models of controlled use. However, natural learning processes would become obstructed. Rituals and informal rules would emphasise controlled use, thereby reducing drug related harm. There would be a less explicit ritualisation: rituals would become less important and eventually get replaced by commonly used rules.

The framework provided by Zinberg, Harding and Grund is further developed by Cohen and Decorte. Their research shows that the largest percentage of users is very well capable of controlling their use; in this experiment cocaine. Both Cohen and Decorte denounce repressive drug policies for several reasons. It would enhance criminalisation of both providers and users of cocaine, probably without reducing the actual usage. Another consequence is the possibility of the spread of cocaine of inferior quality because of police confiscation; with possible health risks as a result.

In Tellegen's conception of addiction, physical dependence as well as a pharmacological dimension play a role. However, whether a drug is being abused or used with as little health risks as possible, is not solely explainable by pharmacological factors. Addiction is not an inevitable consequence of drug use and does not limit itself to relations with substances.⁷ Citing former

⁷ According to this view people can engage in a strong bond with a substance, activity or type of behaviour. Here, Tellegen provides the examples of being addicted to running or eating a lot of sausages. Whether people coin a behaviour addiction is predominantly a moral question, and not so much a neurological one. See P. Cohen, *The Naked Empress*.

US President Jimmy Carter's 1977 Address to the Congress on the decriminalisation of marihuana, Tellegen agrees with the principle that the punishment for possession of a drug should never exceed the harm done by the use of the drug itself. The disturbance of the social life of a drug user might be more a problem of criminalisation than of the use of a drug itself.

IV. '... is a Utopia'

Defining 'utopia', Tellegen compares the Russian utopia of a communist society with the statement of the former United Nations Secretary General Kofi Annan on international drug policies. What is aimed at in both cases is an ideal end state of human society in which previous suffering has been overcome; whether it be capitalism or drugs (dealers, addicts, users?). Although the scope of changes was bigger and more radical with communism than with the ideal of a drug free society, historically the goal of a drug free society is more radical. As people lived in classless societies 12.000 years ago, they did use drugs. A drug free society has never existed.

The second chapter "Geography and History of Drugs" is an enumeration of where certain substances were first used, how they were used and how the specific drugs were treated culturally. By starting with opium, of which the first recordings date back to a Sumerian book written 6000 years ago, it becomes clear that the use of drugs have always had a prominent place within human societies all over the world. Tellegen explains that the term 'drug problem' is – historically – a recent one in contrast to the phenomenon of drug use, which has always been a human – and animal – trait.

The utopian character of the global fight against drugs can be found in the aspired end state. According to Tellegen, the fight against drugs does not solve the several practical problems caused by drug use. It neither influences the actual use of illegal substances, nor the number of casualties caused by drugs. Policymakers around the world are obsessed with the end goal and fail to learn and adjust their policies in the process.

V. The First Victim of War is the Truth

In his comparison to the Soviet state, Tellegen writes about Trofim Denisovitsj Lysenko (1898-1976) who proposed agricultural collectivisation by influencing environmental factors and manipulating genetic properties of plants – without any support by scientific experts – thereby destroying many harvests. Many of the famous genetic engineers of the Soviets were executed. Although drug experts do not get executed, Tellegen continues, policy makers are turning a blind eye to science.

A recent English study titled “Development of a rational scale to assess the harm of drugs of potential misuse”⁸ rated twenty drugs on basis of three harmful effects of drug use. These harmful effects are: physical damage (acute, chronic and intravenous damage), dependability (intensity of the pleasure, psychological dependence and physical dependence) and social harm (intoxication, social damage and high healthcare costs). On the basis of nine risk criteria based upon these three effects, the researchers assessed the twenty most common drugs and proposed a new tracheotomy: three classes of drugs based on the harm model. They rated alcohol, heroin and cocaine – among others – the highest category; the most harmful drugs. LSD and ecstasy are in the lowest category; the least harmful drugs. Tobacco should be in the middle category.

With regard to these findings, Tellegen asks why it is that drugs like ecstasy and LSD, with very little health risks, are forbidden while alcohol and tobacco are not. The risks of both alcohol and tobacco are considered to cause damage only when used intensively and/or for an extended period of time. On the short term, the tobacco smoker experiences no extraordinary effects. Alcohol dependence and drunkenness are both possible consequences of drinking but certainly not inevitable. It is because of the legal status and the social acceptance of these substances that tobacco and alcohol are considered drugs that allow for controlled use. Controlled use in this case means that one’s thinking is not altered – drastically – by the drinking of a few beers or wines or by smoking a cigarette. This is in contrast to hallucinogenic drugs, Tellegen continues, which are used for their mind altering properties. These drugs are forbidden not because of their harmful effects, but because of their effect on the mind.

One of the researchers, David Nutt, was later fired because he claimed that “ecstasy and LSD were less dangerous than [alcohol](#)”.⁹ “Nutt had criticised politicians for “distorting” and “devaluing” the research evidence in the debate over illicit drugs.”¹⁰

VI. The Global War

There are three factors that make the fight against drugs beneficial for governments. Tellegen quotes Harry G. Levine: “fighting drugs gives governments more political and military power; drugs are an ideal subject to attribute different social problems to and the war against drugs is one ‘everybody agrees with’, it can unite otherwise contradicting political standpoints”.

⁸ D. Nutt, L.A. King, W. Saulsbury and C. Blakemore, “Development of a rational scale to assess the harm of drugs of potential misuse”, *The Lancet* (369, 9566) 2007, p. 1047.

⁹ The Guardian, at: <http://www.guardian.co.uk/politics/2009/oct/30/drugs-adviser-david-nutt-sacked>, published at 30-10-2009.

¹⁰ *Ibid.*

In 1909 the first international anti-drug law was created. The opium conference in Shanghai didn't directly lead to a worldwide prohibition of opium. As Tellegen shows throughout his book, drug policies are always subject to – political, social and economical – contradictions. Generally, drugs are forbidden because of their addictive properties and health risks. However, in most cases there are political motivations that stand far from any health issues. Both the Dutch and English governments had a lot to lose with opium prohibitions and a lot to gain with state regulation of the opium trade. The eventual conclusion of the conference was that the use and trade of opium should be reduced as much as possible. The three following conferences in The Hague sparked the debate on the prohibition of opium, morphine and cocaine. Other substances were added to the treaty; the goal of this 'diversion' was to reduce the attention on opium, which was an economically profitable branch of trade for the British government. Italy failed in its attempt to add cannabis to the list of restrictions; on the other hand, Germany – at the time the most important cocaine manufacturer – did not succeed in keeping cocaine off this list.

Starting after the Second World War, the UN took up the international fight on drugs. The United States became the authoritative figure in the 'war on drugs'. All treaties eventually led up to the Singular Treaty of 1961, replacing all previous treaties. In this treaty, supported by 74 states, four categories of drugs are distinguished on the basis of the degree of fighting they require. The US influence on drug policies around the world became even stronger after that treaty. Under US pressure, repressive drug policies have spread throughout the world through bilateral agreements with individual states and through the drug policies of the UN and World Health Organisation (WHO). The Commission on Narcotic Drugs (CND), represented by Harry Anslinger, and the International Narcotic Control Board (INCB) were two of the most important political – UN – organisations dealing with drug cases. Often, the CND tried to prohibit drugs on basis of scientific research. However, policy makers were not interested in scientific research if it was not in favour of prohibition. As Anslinger notes: "I made a decision, don't try to confuse me with facts".

The American drug policies can be characterised by a couple of notions. One is that the US drug policies have developed like the movement of a wave. Tolerance and repression vary: the change is subject to political and ideological climate rather than to the measure of harm done by drugs. Another characteristic is that the American drug policies have a strong racial character. Tellegen presents the argument by showing the relation between the prohibition of a certain drug and the use of that drug by a social minority group. Chinese immigrants in the 17th century brought their opium use from China to the US. Among the opium users were both addicts and those who controlled their use and only enjoyed opium on special occasions.

After 1875, the concern about the spread of opium increased under the white population. Anti-Chinese sentiments prevented the spread of the, Chinese associated, use of opium under other segments of the population. Different laws obstructed the smoking of opium in ‘opium kits’. These laws were a reaction to the anti-Chinese sentiments and the fear of white women being seduced in Chinese opium kits. The main consequence of the measures was a move from using opium in kits to using opium at home or ‘out of sight’. Later, without clear arguments, the possession and import of opium became illegal. Similar processes can be observed in marihuana prohibition; a substance used mainly by the black population in the south and by the Mexican population in the southwest. Both minority groups were feared by segments of the white population. The same is true for the use of cocaine by black people throughout the States. The racial character of the fight against drugs changed in the 1960s, when drug use was perceived as a symbol of resistance against the white middle class culture.

In US drug policies there is a lack of distinction between recreational drug use and addictive drug abuse. In America, all people using drugs without prescription are considered a criminal and/or addict. There is also a complete lack of harm reduction policies. The idea is that one should not reduce the harmful effects of an illegal substance, which is not to be used in the first place.

VII. Arguments Against the Fighting of Drugs

Carter’s principle – harm done by fighting drugs may never exceed the harm done by the drugs itself – is not the common practice when it comes to fighting drugs. Most policies focus on reducing moral shame instead of reducing health risks. According to Tellegen, a designable society is an impossible ideal. Both human nature and society are filled with disorder and disorderly dynamics. The fear of drugs stems from the fear of irrationality and the loss of control.

Erik van Ree writes, in a Bahktinian manner, about the ‘chemical carnival’. On how the use of psychotropic substances can disturb the rational social order; undermining the Enlightenment ideal of the autonomous and ratio guided individual. Each thread to the disturbance of order is controlled as much as possible by different social institutions. Historically, drugs have always been considered subversive products by those in power. They have been frequently associated with minority populations and cultural patterns that should be fought. This way, fighting drugs (as a symbol of resistance) has become a symbol for the puritan protestant wish for a drug free (or disruption free?) society. However, according to Tellegen, repressive drug policies do more harm than the drugs used.

The whole fifth chapter is an enumeration of different arguments against the fighting of drugs: the undermining of the legal order, the violation of national

sovereignty, the degradation of the freedom of religion, economic irrationality, the harm to public health, the obstruction of self control, and social regulation, causing drug related nuisance and the stigmatisation of drug user and drugs.

Six arguments I found of major importance are firstly, the death and disease caused by the destruction of plants like red poppy and coca. The chemicals used are known to harm both humans and animals. The destruction of plants also leads to the loss of income of farmers. Secondly, Tellegen states the 'iron law' that an illegal substance that is abandoned will be replaced by a new, still legal one. The fight against drugs can thus – unintentionally – cause the use of stronger drugs or drugs of inferior quality. In the case of the Chinese immigrants, many of the opium users switched to the use of morphine and heroin. Those were still legal and cheaper. It also occurred with the drinking of strong liquors during the prohibition of alcohol in America; these were not legal but harder to find and confiscate. A more recent development is the search for still legal research chemicals; the engineering of drugs by manipulating on a molecular level. The problem with these new substances is the lack of knowledge about potential health risks. The fighting of drugs also leads to poor quality controls. Why allow the possibility to check the quality of a drug, if the drug itself is not legal? Thirdly, the fight against drugs leads to victimless crimes. These are the crimes where there are no victims who press charges. Although much of the current drug policies focus on the prosecution of production and trade of drugs, in some countries the actual use of drugs is forbidden. In American publications there is an emphasis on the violation of civil liberties. The prohibition of drugs also creates a tremendous pressure on the legal system; this can lead to the lowering of detention norms and the risk that other crimes receive less attention of the limited police force. Furthermore, there is the danger of obstruction of the preventive effect of individual and social learning processes in drug related behaviour. As Grund, Zinberg and Cohen showed, repressive drug policies forcing users, producers and sellers into illegality leads to a shift in natural learning processes. The use of drugs is not prevented, instead it moves out of – the police's – sight. Also, fighting drugs may enhance the production and trade of drugs by organised crime. Addicted users are forced by circumstantial factors to deal drugs or get money through illegal activity. Lastly, Marginalisation, criminalisation and stigmatisation of drug users and addicts obstructs the help of prevention and health workers. This limits the potential to stop the transmission of sexually transmitted diseases and to help addicts with their drug related problems.

Conclusion

"Het Utopisme" is a welcome view on and critique of drug policies around the world. Tellegen is very clear about his personal view and tends to provide a vast amount of scientific research to back up his claims. In the final chapter he proposes the outlines of a possible regulative policy.

No longer should we prohibit drugs with all the negative consequences, but neither should we legalise drugs without any restriction. According to Tellegen, the use of drugs in a relatively safe manner is possible, yet it does carry risks for both the user and the society. When we accept the risks of drug use in the same way we accept the risks of driving a car, we might end the stigmatisation of drugs and its users. With the regulation of drugs we should no longer judge a drug on basis of its immorality but on its risk potential. Scientific research should play a major role in establishing these risks factors but should only *advise* policy makers about possible laws and regulations.

The main point is that healthy adults should be free to take drugs, unless the harm done to the individual is unacceptable or when it could result in harm to others. A political, scientific council should create the criteria upon which the judgement of a drug can be based. If laws are needed to restrict, regulate or reduce the – harm and – use of a drug, Carter's concept of harm should be a leading principle.

Besides the drug policies, education and social learning processes should play a major role in the regulation of drugs. Stimulation of these social formal and informal processes can help (young) people to deal with drugs in a safe way.

However, some questions about the 'iron laws' of prohibition and the processes of social sanctioning still remain and should be subject to further elaboration. For example: what are the legal implications of the law of replacement? Is it a good argument not to prohibit if we know that people will use a different drug and knowing that illegal trade of illegal substances would flourish? And, if ritualised use with a main function of harm reduced usage is possible, should there be laws concerning the use of drugs in the first place? Tellegen provides the example of children learning to behave appropriately with alcohol because of the formal and informal sanctions placed upon the use of the drug in our society. Yet how does the theory of ritualised use account for the problematic relationship some have with a drug, like alcohol, even when the specific drug is socio-historically embedded in a society or sub cultural group?

"Het Utopisme" lacks a more fundamental discussion of these legal implications and assumes many problems would disappear or shrink significantly with the introduction of regulative policies. The focus on the enormous list of problems with prohibition and repressive policies leaves little room for a more balanced discussion of the prohibition, regulation or liberalisation debate. A little more attention to opponents and arguments for either prohibition or liberalisation would have been a welcome change. Still, *"Het Utopisme"* is a thorough exploration of drug use, scientific research and negative consequences of the current drug policies. It provides the reader with a lot of arguments and research to assume a position in the drug debate

at large. Tellegen's book is one compelling argument to change a culture of repression and its matching policies. Even when one is convinced of the need for prohibition, "*Het Utopisme*" shows the many problems we still face before reaching an ideal end state.

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