

CRIMINAL THRILL AND LEGISLATIVE JUSTIFICATION

by

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Submitted in partial fulfillment of the
requirements for Departmental Honors in
the Department of Philosophy
Texas Christian University
Fort Worth, Texas

December 10, 2012

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INTRODUCTION

One experience I think we all have in common is the feeling of driving down a road, going the speed limit and wishing we could go just a little bit faster. Perhaps it is because we are running late, and we need to get just a bit more speed so we can get to our destination on time. Perhaps it is because we are tired, and just want to get home and get the day over with. Or perhaps it is because we simply feel like we are crawling along, and going faster would feel more satisfying. No matter the reason, going the speed limit never seems to be enough for us. Speeding – even a little bit – feels satisfying in the same way that taking a cookie from the jar without being caught did. In this essay I will argue that humans demand and need risk in their lives, a need that represents serious problems for the status quo in legislation. I will also present an alternative to the current legislative model and argue that it improves over the old in achieving both the general goal of legislation and the specific goals of each individual law passed by the government.

DEVIANCE PLEASURE AND CRIMINAL THRILL

The existence of a criminal thrill originates in the pleasurable feeling one receives from taking risks – acting in such a way as to deliberately engage in illegal behavior. Kruger's article *Socio-demographic factors intensifying male mating competition exacerbate male mortality rates* argues that the desire to take risks and the pleasure we get from them is hard-wired into our brains through thousands of years of risk-taking to compete, often violently, for mates and a chance to reproduce (195). He also notes, importantly, that not all people take risks in every part of their lives, overturning past conceptions of risk-taking that separates people into those who generally take risks in all aspects of their lives and those who generally do not take risks in any aspect of their

lives. This can begin to manifest as early as childhood, when as children we begin to associate the disobeying of our parent's rules with a pleasurable result. As adults, we continue to find pleasure in disobeying the new rule-setter: society. Of course, when it comes to legislation there is no interest, nor should there be, in attempting to control whether or not a child should be trying to sneak a cookie before dinner. The only actions that the government is and should be interested in are actions deemed beneficial or harmful to society, to be encouraged or discouraged as appropriate¹. Therefore it is prudent to limit the scope of our inquiry to a specific *kind* of this psychological pleasure, what I will call the Criminal Thrill.

This Criminal Thrill is a psychological pleasure achieved by defying legal norms, or moving past what is allowed by law. The farther past the line one goes, the greater the thrill associated with it². Of course, not every member of society moves far past the line of criminality. If that were true, there would certainly be quite a few more bank robberies per day. The realm of extreme thrill seekers is still a niche, in both the legal (motorcycle) and illegal (bank robbery) worlds. But just because we do not all seek the *ultimate* thrill does not mean we do not for the most part seek a small amount of thrill in our lives. I think it likely, and demonstrably sound, to say that the majority of society will actively move past the line of illegality until they approach the line of probable punishment. Most people will actively speed roughly 10 miles over the speed limit on highways, knowing that it is rather unlikely a police officer will work up the effort to pull them over. Many

¹ In assuming this point I am very intentionally setting aside more complicated conceptions of the role of government to focus on what might be considered a general model that any legislative justification must fit to proceed. This assumption, and the permissions it allows in the legislative process, will be questioned later in the essay.

² This is in much the same way that gambling \$20 in a friendly game of poker gives less thrill than gambling one's life savings away in a Vegas casino. The higher the possibility of loss, the higher the thrill associated with an action.

people actively download music and movies off of the internet, knowing that it is rather unlikely that they will be caught and punished for such a transgression. However, in both cases, people consciously stop before going TOO far over the line. While there are outliers in both cases – the motorists roaring down the highway at 95 mph or the college student downloading 5 terabytes³ of illegal data – the majority of transgressors act in such a way as to elude the law and gain a criminal thrill without unduly exposing themselves to punishment, and they do this in regard to almost any law they have any inclination to disobey. There is a minority who transgress well beyond the line and a minority who do not transgress regularly at all, but they are a small group, even combined. Thus the citizens of a country can be put on a scale according to their psychological needs.



The majority of people will fall in the center, with their fear of punishment in balance with their psychological need for criminal thrill. The outliers will fall to either side, either overwhelmed by the fear of punishment so much so that they commit no crimes or so overwhelmed by their need for criminal thrill that they escalate beyond any rational limitations.

How can we prove the existence of criminal thrill? There is no established study measuring the relative levels of dopamine release in the brain. However, there is reasonable justification for the existence of risk-related dopamine release, showing

³ 5 terabytes is equivalent to 5000 gigabytes, or roughly twenty times the hard drive space of your average home computer.

conclusively that engaging in risky behavior is pleasurable for the actor. Moreover, there is also recurring proof that extended time spent worried about being caught and punished (especially when the punishment is serious) causes paranoia, depression, and dissatisfaction with life. It makes sense that the majority of people, absent external factors like economic need, would prefer to exist in a perfect middle ground; getting the pleasure from risk-taking and avoiding the fear that comes from knowing punishment is any more likely than it has to be would be an ideal psychological state. Thankfully for our purposes we can look at several historical events that show a clear pattern that fits perfectly with this idea. Consider the common trend of activities becoming far more popular among underage teenagers after they are made illegal. The DEA notes two specific cases that will help show the validity of this theory. During the Prohibition Era in the United States when the 18th Amendment banned the consumption of alcohol, the onset age of alcohol consumption decreased significantly (TheDEA.org). Unfortunately, there is no reasonable way to calculate average consumption of alcohol prior to and after Prohibition as opposed to during, as any official numbers will be tainted by the fact that it was an illegal act and so arrests will be inflated and numbers of production and consumption were likely to be hidden or forged. Nevertheless, a noticeable drop among the average age of initial alcohol consumption implies that more people began to consume alcohol during Prohibition – in other words, after it gained illegal status and associated punishments – than before it was illegal. Similarly, the DEA notes that teenagers purchase and smoke marijuana at much younger ages in the United States than they do in the Netherlands, where marijuana is legal (TheDEA.org). One might argue, of course, that in this case it is simply that we know of the smokers at a younger age in the

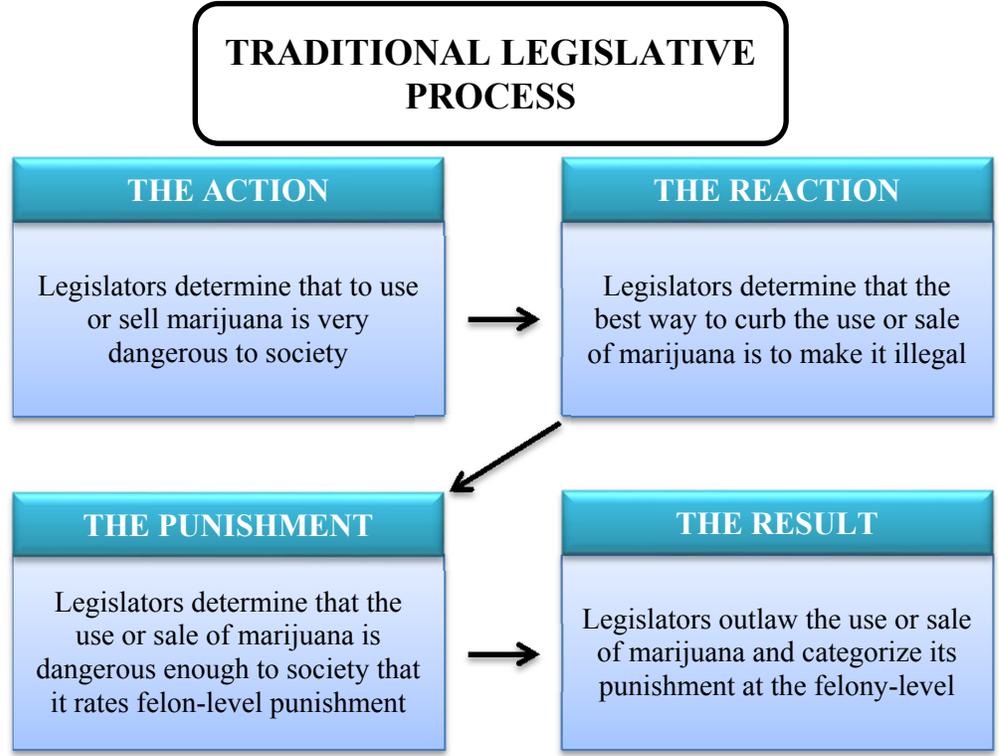
US because, due to its illegal status, we are on the lookout for smokers and arrest them, whereas in the Netherlands no one bothers keeping records. Such an objection would, however, ignore the fact that teenagers in the Netherlands reason to lie about their use of a legal substance when asked by a researcher. Of course, there are external factors in each situation, but with enough examples the proof begins to shine through. The mere fact that an action is made illegal makes it more desirable to be performed; whether or not the desire for the thrill exceeds the risk of punishment is unique to any individual situation. What factor other than Criminal Thrill could account for this increase in desirability?

TRADITIONAL LEGISLATIVE JUSTIFICATION

If this is the case, then, we must take a serious look at the justification for laws in this country and decide whether or not it is optimal in terms of accomplishing the general and specific goals of legislation. What are these goals? It is safe to say that in the eyes of the public, the reason behind any piece of legislation that bars an action is that such an action is considered harmful to society. In a democratic society built on the idea of freedom, making an act illegal is a serious declaration. Such an action may harm the citizens, the government, or tear apart the moral and social fabric that ties citizens together. Legal scholars differ wildly on this subject, however, so we will proceed only with the most accepted, general account with which most would agree: that legislation intentionally covers a specific action, outlawing it and occasionally giving mandatory minimum punishment guidelines for courts to create specific for transgressors. This is the general goal of legislation with which we will proceed: legislation is intended to discourage or prevent citizens from performing specific actions (in other words, violating legal statutes). Thus the specific goals of legislation are the intended result each

individual piece of legislation aims for, whether to encourage, discourage, or otherwise alter the actions of the citizens. Returning to the methods noted above, this can take several forms: from ascribing punishments to rewarding alternative actions with economic benefits. However, if it is indeed true that the majority of citizens transgress laws regularly can we say that our legislative system is as efficient as possible? To decide, let us walk through the usual method of legislation. First, an action or focus for the legislation is decided upon. Next the legislature determines to what degree it is worth infringing on citizen's right to freedom to affect the act's regularity within society. Finally, if they decide it is worth it, legislators write a law that makes that act, and only that act, illegal.

Figure 2



The purpose of this paper is not to quibble with steps 1 or 3, as those are subjective. Moreover, the question at hand is how to best accomplish the desired goal of eliminating the action under consideration, not whether the action deserves to be legislated or how seriously the legislature rates the problem. The above diagram, however, ignores the principle of Criminal Thrill and in doing so ensures that their answer to Step 2 will be flawed. If in fact the majority of citizens will choose to step their toes into the waters of criminality given the chance, then simply making marijuana illegal does not adequately address the concern at hand – in fact, it makes the problem worse, for two reasons. By making marijuana illegal, the legislature is providing the Criminal Thrill to those who smoke it. The traditional method has learned to cope with this phenomenon by simply adjusting the punishment to such an extreme level that no amount of thrill will be worth the risk. The problem with that is there is no stepping-stone into criminality for citizens to receive their psychological need for criminal thrill without also being exposed to felony-level punishments; in other words, it divides citizens into polar extremes of either complete innocence or complete criminality with no room for testing the waters on both sides. Looking back at Figure 1, this will force citizens to either end of the continuum with chance of experiencing that perfect middle ground where one receives the thrill but is not exposed to undue stress as a result. If this traditional method is not getting the job done, we have an obligation to find one that will.

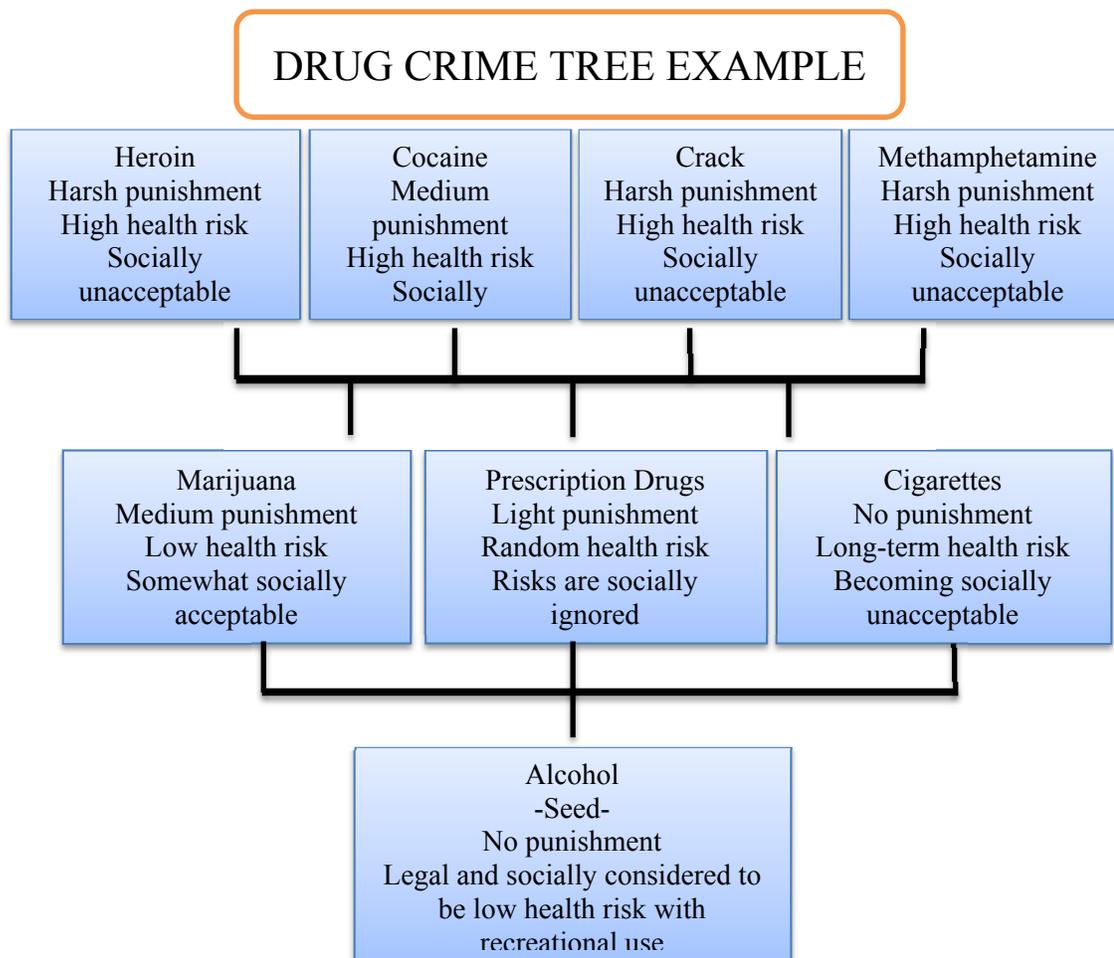
A NEW METHOD

There are many ways Criminal Thrill comes into play in the analysis of crimes; to be useful, however, we must be able to predict its effects on the average citizen. To best explain how it works, I will present a general method followed by some thought

experiments. To begin, legislators must identify the action in question whose occurrences they wish to reduce. Second, legislators identify the crime tree it resides in. What do I mean by crime tree? Some actions are considered “gateway crimes” that can escalate into more extreme situations, with new criminals often starting off by dipping their proverbial toes in the water of smaller, less risky crimes before escalating if not caught. While the concept of a gateway crime that automatically leads to so-called harder crimes is itself a flawed concept, the idea is grounded in the respectable truth that some crimes have lesser risk than others and are more attractive for those who are trying to reach the middle of the criminal continuum. Those who escalate past experimentation comprise the niche mentioned above of those for whom the initial criminal thrill is no longer enough⁴. For the majority of people the initial foray into criminal activity is where they stay. A crime tree is the branching path of crimes that erupts from the seed of the initial action, legal or illegal.

⁴ There is a valid concern in this case that due to the concept of Diminishing Returns, almost everyone will eventually proceed past the initial thrill-giving action, as each performance will return less and less thrill. I do not believe this to be a problem due to the wide variety of criminal-thrill giving actions available to an individual, all of which may function as the initial seed of a crime tree. A criminal experimenter will be fully able to switch between vices, allowing time to recover from the effect of Diminishing Returns on the initial vice.

Figure 3



The third step involves finding this action and identifying how best to utilize it in preventing one or more of the actions it precedes. Fourth, and finally, make the action from the third step illegal or increase the punishment (mildly – we do not want to reach felony status on the seed crime) if it already is. In practice, actions society believes acceptable will become the seed, the initial foray into crime that allows citizens their desired thrill whilst not harming the society at all. Meanwhile, the crime that society desires to be eliminated as much as possible will remain only for those who escalate –

again, a niche group whose actions would escalate under either method anyway. A few examples of this idea in play:

Allen, a lawyer in 1913, was a recreational user of opium. While not addicted, Allen still regularly used the drug and enjoyed the rush he got from his risk-taking even though he knew that his chances of getting caught are low, and chance of serious punishment even lower. He also regularly drank alcohol with friends in social settings after work. In 1914, Congress passes the Harrison Narcotics Act, which severely restricts the sales of opiates by leveling a large tax and cracking down hard on distributors and users. While Allen continued to use opium occasionally and enjoyed the increased adrenaline rush he received from breaking a more serious law, he began to feel nervous and exposed. After the 18th Amendment was passed and the Prohibition era began, however, alcohol became illegal, though still widely available and socially acceptable. The punishment and risk of using alcohol, therefore, was less than that of using opium, and the social stigma associated with it was lower as well. As time went on, Allen began to participate more in drinking and less in opium, enjoying the lifestyle of the back-door prohibition-era speakeasies and the thrill accompanying it, enjoying also not feeling the lingering dread of using opium. The introduction of alcohol as a lesser crime in the drug crime-tree made Allen move backwards down the ladder, abandoning the more serious drug of opium. While it was not the intent, the illegalization

of alcohol did serve to noticeably reduce the amount of harder drugs like opium and cocaine being used by non-addicts.

While the above example is of the accidental application of Criminal Thrill, the principle is the same if deliberately applied.

As the 112th United States Congress convened, Congresswoman Bornice received a comprehensive, long-term study that convinces her that reducing the maximum speed at which drivers travel on United States highways to 70 miles per hour would save 3,000 lives a year from traffic accidents. Her colleagues suggest creating a comprehensive bill lowering the National Speed Limit to 70 mph. With her comprehensive knowledge of the Theory of Criminal Thrill, however, Bornice knows that to pass a law moving the limit to 70 would mean that, most likely, drivers on the road would be travelling approximately 77 miles per hour – a speed her study shows would cost Americans 3,000 lives a year. Passing the law in such a way would fail to achieve the initial goal of getting motorists to travel at around 70 miles per hour. How does she calculate that setting the limit at 70 would lead to an upward travel speed of 77 mph? Congresswoman Bornice looks at police procedure for stopping speeding motorists, and finds that the first speeding bracket is 0-10% over the speed limit. Travelling within this bracket gives motorists the thrill of speeding, but not the fear or paranoia of being likely to be stopped by highway police. She knows that in general motorists will willingly travel within that bracket – most likely to the higher end of it in order to reach their

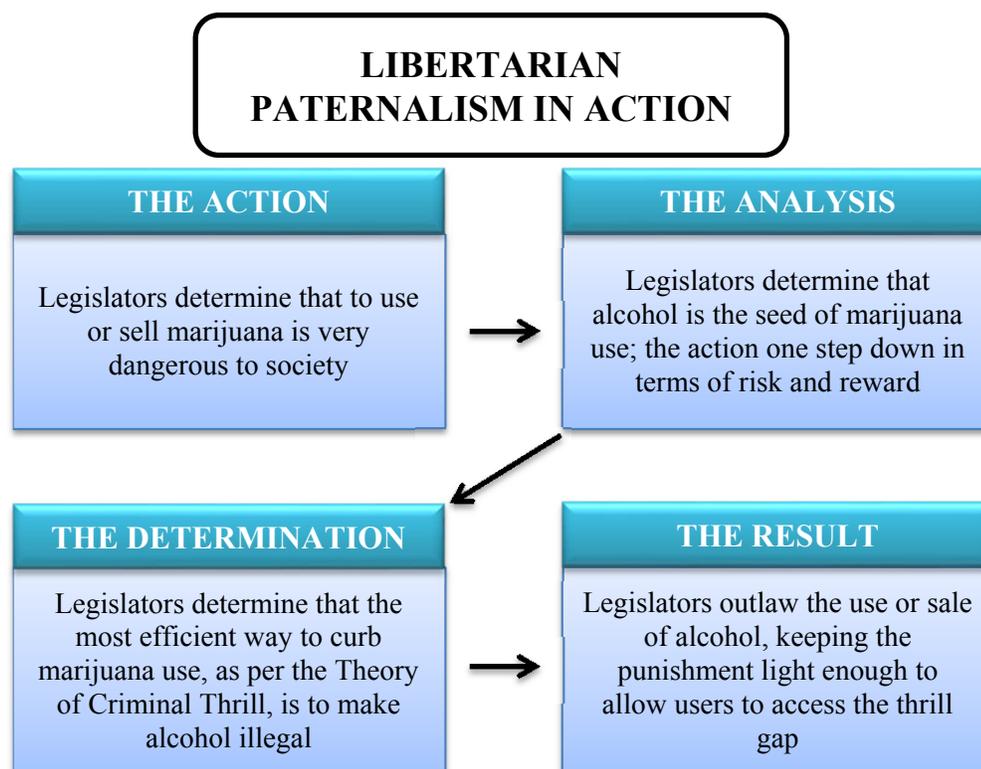
destinations faster. Therefore, Congresswoman Bornice decides the best way to keep motorists travelling at around 70 miles per hour is to pass a law that would limit the National Speed Limit to 65 miles per hour, knowing that as a result drivers will travel at around 71 miles per hour, achieving the initial goal of the bill.

As the second example shows, traditional methods of legislation – simply taking the problem at hand and legislating against it directly – proves to be largely ineffective at achieving the specific goals of legislation. Utilizing the Theory of Criminal Thrill, however, improves the efficiency of the legislation and enables the legislature to achieve their goals without more traditional and troublesome approaches like heavy-handed and/or expensive crackdowns on minor speeding infractions, which will also better achieve the general goal of legislation. Allowing the citizens of a country to live as much as possible in the center of the criminal continuum is ideal to the general welfare. Why is this so? A life lived without the criminal thrill and completely within the bounds dictated by law and society is not evolutionarily fulfilling. At the same time, a life lived with excessive thrill, yet prone to the fear, paranoia, and severe punishment that comes with excessive law-breaking is not fulfilling either. A life lived in perfect balance⁵ of both, therefore, is ideal for the general welfare⁶. So opposed to the Tradition Method above, I propose a new method:

⁵ This is not far afield of an Aristotelian conception of proper living through perfect moderation between the ‘vice of deficiency’ and the ‘vice of excess’

⁶ Alternately said, a life lived in perfect balance of both maximizes pleasure and minimizes pain. Therefore, the Theory of Criminal Thrill serves to maximize utility much more efficiently than the Traditional Method of legislative justification.

Figure 4



LIBERTARIAN PATERNALISM

A term set forth in Thaler and Sunstein's book *Nudge*, libertarian paternalism is a general system intended to guide citizen actions towards a more desired result while not limiting their choices in any way. The classic example set forth in their book is that of an elementary school cafeteria. Parents and administrators want to encourage the kids in their care to eat better. At the same time, for a myriad of reasons both economical and ethical, they don't want to limit the choices of the children. The method proposed in *Nudge* is to use psychology to lead children towards the healthier choices and encourage them to avoid the unhealthy choices. One way to do this, they note, is by placing healthy items like carrots at eye level while putting the chocolate cake lower or higher. Healthy choices are listed first on the menu so that children see them first. There are many ways

to go about it, but it is *essential* to libertarian paternalism that freedom of choice not be obstructed. In the same spirit, I propose utilizing the Theory of Criminal Thrill to create legislation that will make illegal the seed of an action that is undesirable to society. Importantly, however, we must not over-criminalize that seed: the illegal status is their *solely* to provide the criminal risk that is craved by citizens and give them a small wave pool through which to experience the Criminal Thrill without throwing themselves in. Stephen Lyng, during a study of risk-takers and the adventure industry, discusses how white-water rafting companies very carefully manage the ride for amateur boaters so that they feel the risk of participating in dangerous behavior while never truly being in danger at all (Lyng 184). Their consumers get to have their cake and eat it too. I believe that utilizing Criminal Thrill in legislative justification falls under the umbrella of this idea: using psychology to nudge citizens towards more desirable courses of action, allowing them to feel the risk of criminal behavior without a high likelihood of punishment. One might argue, of course, that psychological nudges based on threat of punishment and/or being labeled as a social deviant is in fact a choice-limiter. However, in a culture where all citizens are guilty of some misdemeanor offenses (if not felony offenses) and people are already used to the idea of small amounts of law-breaking as a norm, I do not believe any choices need to be limited. In other words, I do not believe that applying misdemeanor-level punishments to an action rates any higher than simply moving the cake away from eye level.

VALIDITY OF CRIMINAL THRILL IN APPLICATION

An important question to answer when looking at utilizing the Theory of Criminal Thrill in legislative proceedings is whether or not it will be easily applied. The theoretical

approach described above shows the potential of the idea, that it can work when applied to help maximize the efficiency of legislation while minimizing the harshness of the punishments applied. Nevertheless, there are several other factors to consider here – will such an approach be considered acceptable by a legislative body? At least in the United States, would the Constitution allow for a legislative body to outlaw acts they know are not harmful for the express purpose of reducing acts they know to be harmful? Would laws created through libertarian paternalism be considered as valid laws by leading legal philosophers? We will tackle these questions one by one.

Acceptability by the Members of the Legislature

This is the easiest to answer of the three main questions at hand. The legislators of any representative democratic society have an obligation to the citizens they are expected to protect; and so any legislator that accepts the validity of the Theory of Criminal Thrill must also accept that utilizing it when writing laws will improve the aggregate life quality of the citizens in their country by allowing as many as possible to access the center of the criminal continuum. Such an outcome is in addition to helping them realize the specific goals of the legislations involved while minimizing public backlash from the alternatives of harsher punishment or more invasive law enforcement capabilities. I do not expect individual legislators to have any issue adopting this system once properly understood.

Acceptability by the United States Constitution

It is necessary to show that utilizing the Theory of Criminal Thrill in the United States is even legal under Federal law, for both States and the Federal Government. In truth, it is the Constitutions of the States that matter more in this regard, as they legislate the majority of criminal law. In this case, however, both the Constitution of the United

States and the Constitution of Texas will serve as my examples, as they are both representative of the Constitutions of the rest of the nation.

Article 1 Section 8 of the United States Constitution provides that “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” Moreover, Article 1 Section 8 contains the Necessary and Proper clause, stating that Congress shall have the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” In other words, Congress holds the explicit right to pass laws they decide would benefit the general welfare of the citizens of the country – something we have shown that application of Criminal Thrill would do. And while many years and Supreme Court proceedings have passed since the initial writing of the Constitution, the power of the Necessary and Proper clause has only ever been expanded – indeed, the landmark 1819 case *McCulloch v. Maryland* ruled that the reason for the law need not even be absolutely necessary to be justified by the Necessary and Proper clause, so long as the law furthers the purpose of Congress’ goals. And certainly no ruling has come down stating that Congress shall not have either the goal or the responsibility of improving the general welfare of the nation and its people.

Acceptability by the Texas Constitution

The Texas Constitution is more concerned with explaining what the State Legislature cannot do than with what it can – which works just as well in attempting to

find whether or not this theory may be applied. Article 3 section 5 line (b) details the order of business for the Congress, which is to meet every two years in order to introduce, discuss, and pass or drop any bills or resolutions. That tells us what they can do. Article 3 section 56 line (28) notes that Congress may not pass any local or specific laws for limitation of civil or criminal action. While not explicitly stated, this implies that the Texas Congress *does* have the power to pass *general* laws, a type of law explicitly stated in fifteen of the sixty-seven sections of Article 3, including section 56. There are no other restrictions for the passage of criminal laws. In other words, the Congress may pass any law regulating the limitation of civil or criminal action so long as it is a general law, one that affects the entirety of the state and citizens within and not just one part of it⁷. This ability fits perfectly with the application of Criminal Thrill, as there is no restriction stating that laws must be passed using the traditional method – it is up to the legislators themselves how to best improve the welfare of their charges. And as shown above, legislators should have little problem with adopting this method.

Acceptability by Legal Philosophers

There are three top legal philosophers who have attempted to answer the question of what constitutes a valid law: John Austin, H. L. A. Hart, and John Stuart Mill. While there are many other offered theories, the ideas of these three legal scholars serve as a representative sample of the wider study of legal validity. If laws created with the Theory of Criminal Thrill is found to be valid under each of their definitions of what should constitute a law, it will be shown to merit further discussion in terms of proper application. In short, it will not be able to be ignored.

⁷ This is the case so long as State laws are not flagrantly in violation of Federal statutes, which as shown above, already allow for the application of the Theory of Criminal Thrill

John Austin's conception of law is tripartite: valid law is constituted by commands given by a sovereign, backed by the threat of punishment, who the citizens are accustomed to obeying as habit. Hart argues that in addition to what he calls Austin's primary rules of conduct, we must also have secondary rules that govern the applications of the primary ones. Most important among these is the Rule of Recognition: that to be valid, laws must generally cohere together and represent a valid approach to legislating. If a single law is ineffective, it can still be considered valid if it adheres to the cohesive whole of the legal system. Alternately, even if a law is extremely effective, it is not valid unless it falls in line with other laws and socially accepted methods of behavior. More problematic is Mill's concept of the Harm Principle, which among other things argues that utility is maximized by forbidding laws that prevent actions for any other reason than that they cause harm to people other than the actor. The Theory of Criminal Thrill is in *direct* violation to the Harm Principle, as well as one of Mill's other arguments in *On Liberty* where he warns against exactly this sort of action, that one should only legislate against specific actions and not so-called 'gateway' actions that theoretically lead to other actions.

Any given legislature may serve as a sovereign, as U.S. citizens are in the habit of obeying the rules set forth by the legislature which oversees their residence. And the threat of punishment is not simply a byproduct of the Criminal Thrill, it is essential to it. So we pass Austin's test. Hart's requirements too are easily cleared, as laws made with Criminal Thrill in mind do not represent a significant enough departure from traditional law-making to throw the system out of balance – there will be no contradictions, and thus no invalid laws. Mill's case is not so easily solved. In fact, the two methods seem to be in

direct violation of each other. At closer inspection, however, we will see that libertarian paternalism simply represents a more complicated, but still valid, application of the Harm Principle. It has been shown above that *not* abandoning the Traditional Method of legislative justification for libertarian paternalism will harm the general welfare of society. For this reason I believe that the Harm Principle does in fact justify utilizing libertarian paternalism in legislative justification. Further, Mill's philosophy, rooted in rule utilitarianism, seeks to maximize pleasure and minimize pain whenever possible. It is from this moral justification that the Harm Principle draws its validity. If the Harm Principle could not justify libertarian paternalism – a method that increases aggregate pleasure and reduces aggregate pain – then it itself would not be valid. Therefore if the Harm Principle cannot accommodate the application of the Theory of Criminal Thrill it is no longer valid as a moral rule. Following from these proofs, we can see that libertarian paternalism passes all of the validity tests set forth by Austin, Hart, and Mill, as well as those set down by representative Constitutions of the United States⁸.

LIBERTARIAN PATERNALISM VS. THE TRADITIONAL METHOD

So far, we have seen that applying libertarian paternalism works in preventing actions that would harm society. Moreover it has been shown to, in theory, work better than the traditional method of legislating. Lastly, it has been shown that using criminal thrill in the construction of laws lies safely within the bounds of both the Federal and a representative State Constitutions, as well as passing several validity tests set forth by famed legal scholars. However, all of those discussions simply show that the system will

⁸ It should be admitted that this is a brief discussion at best and that each of these scholars will undoubtedly have much more to say on the subject. In this paper I have sought to reach the *core* of their arguments with the hope that, passing their central ideas on validity, libertarian paternalism as a method of legislative justification might escape instant dismissal. Much more deserves to be said on the subject.

work if applied, and laws created with it are considered valid both procedurally and theoretically. It says nothing about whether or not the system would be superior to the one we have currently; for if it is not, this discussion should end here. I believe it to be far superior because libertarian paternalism can be shown to enhance the general welfare of the citizens represented by the legislatures in question. Under the current system the method of general deterrence is to increase the punishments of offenders. This leads to a system where possessing four ounces of marijuana is treated as a felony, with offenders subject to anywhere from 180 days to 2 years in prison and/or a fine of up to ten thousand dollars. Consider the studies above that show humans have an evolutionary need to experience risk in their lives. With the current system, there is no safe entry into criminality. As a result, citizens attempting to fulfill their evolutionary need for risk end up ruining their lives; those who don't fulfill their need are left feeling mundane, like their lives have no excitement. Moreover, the lengths police are asked to go to in order to prevent marijuana use invade the privacy of citizens both criminal and non-criminal. Lastly, there is ample evidence – provided by the DEA itself, as noted above – that making marijuana illegal (without making the seed illegal as well) serves only to *increase* the amount it is used, especially among the part of the population whose use the laws are intended to prevent. The various legislative bodies of the United States exist for one purpose: to improve the general welfare of the citizens they represent⁹. Under the traditional method, citizens are worse off as they receive stricter punishments for performing actions that, as it turns out, are desirable in part simply because they are illegal, and the only way to access the adrenaline rush they desire is to jump off a cliff

⁹ Once again I am discounting here other conceptions of the role of government as defenders of specific natural rights, such as Locke's view. While Locke might provide a reasonable argument against my view as presented here, I do not believe it to be a serious contention.

from legality to felony as opposed to being able to go down a floor and stay there. Their only options are to avoid crossing the legal boundaries at all – living a life without the benefit of the pleasure associated with the Criminal Thrill – or jump off that cliff and be forced to accept the pleasure of the Criminal Thrill along with the fear and paranoia of knowing that not only are the police placing enormous resources into finding and punishing you, but if you get caught you will not be allowed to vote, will not be able to find gainful employment, and will be spending years in state or federal prison. With libertarian paternalism, the government enables its citizens to live in the ideal space between complete innocence and hardened criminal – by accepting that all people desire criminal activity to an extent, we can rig the system to allow citizens to feel the pleasure of the Criminal Thrill while avoiding the enormous downside to participating in criminal activity taken very seriously by both law enforcement and the judiciary. Living in that state, with their desire for the adrenaline rush fulfilled while avoiding the major downsides it is normally accompanied by under the traditional system, is far better for the general welfare of society than the traditional view. So this new method works better and is better for the citizens.

OBJECTIONS

On explaining this idea to one of my professors I was asked if I was depending on a rather idealistic view of human nature: namely, that I was expecting too much of their ability to distinguish what is good for them. I have no fear in that regard, as there is ample empirical evidence to show that in fact if there is anything we can be certain people will discover, it will be that which brings their lives pleasure and that which

brings their lives pain¹⁰. This is true even in young children, who most assuredly will let adults know what kinds of food they do and do not find enjoyable. In fact, quite contrary to worrying that a problem to this view is an idealistic view of humanity, I have feared that with this paper I am recommending a system that depends on the ignorance of the populace. Can citizens receive the thrill of criminal activity if they know the action they are performing is only criminalized to prevent them from entering into worse behavior? I think they can, for two reasons. The theoretical approach involves asking just how many Americans actively pay attention to the laws, how they're constructed, and their average chances of being caught. I think it is far more likely that the majority of citizens will remain as ignorant as they are currently as to the justifications of the laws that affect their daily lives. In addition, remember that the possibility of criminal punishment is not the only aspect to the theory – also important, and contributing to the Criminal Thrill, is the fact that to risk punishment also risks being labeled as a social deviant. The risk of being labeled a social deviant is almost equal to the risk of being lightly punished for a minor crime, if only because to be labeled in such a way is usually by those closest to the deviant. Even if the citizen has convinced him or herself that there is no chance of being caught by the law or has mastered the system of libertarian paternalism and no longer receives pleasure from the risk of possible punishment, they will not be able to rule out the chance of being labeled a social deviant. This is not to say I am recommending a system *intentionally kept from the view of its citizens* because that is how it would best work. It is probable that the less citizens know about it, the more effective libertarian paternalism will be. But even with partial knowledge and the occasional substitution of

¹⁰ Pleasure being that which, if maximized and pain minimized, will increase the general welfare of the population. I make no moral claims here, despite my utilitarian desire to do so. Rather I simply make the claim that improving the general welfare of the population is the general goal of legislation.

social punishments over legal ones, the method remains useful; further, the risks to the general welfare of a government where the reasons behind each piece of legislation are being kept intentionally secret far outweigh the marginally increased benefits.

On a personal note, I feel that it is worth noting that I have full knowledge that the police rarely, if ever, bother to pull motorists over when speeding less than 10% over the listed speed limit. I know this both because I regularly speed exactly 9% over the speed limit and do not get pulled over, as well as because when I *did* get pulled over while going 61 mph in a 40 mph zone and received a ticket, the informational sheet provided by the court did not even bother to list punishments below 10% over the limit. In practice, this is because while the police reserve the right to pull you over for speeding even 5% over the limit, they do so only because they suspect something more serious – drinking, drug possession, connection to a separate crime. Even though I know all of this and am writing a paper on it, I still receive an adrenaline rush while driving 76 mph in a 70 mph zone, or 65 in a 60. I feel that it is quite likely that if a Criminal Justice student presenting a thesis on the existence of a criminal thrill still *receives* the criminal thrill, it is likely to hold for the majority of citizens.

ALTERNATIVES

We have seen that libertarian paternalism is superior to the standard system of legislative justification. However, what makes it better than any of the alternative methods of quelling harmful activities? There are three general in which a government may affect its citizenry: Economic Manipulations, Punitive Manipulations, and Epistemic Manipulations. Economic Manipulations are legal policies that utilize monetary incentives as a way to influence good behavior by guiding personal economic interests

towards acting in a way desired by the government. An important distinction here is that Economic Manipulations do not involve the criminal justice system in any way – citizens are free to act against the intended goal of the sanctions without retribution. Punitive Manipulations are legal policies that utilize the threat of imprisonment or fines to move citizens toward courses of actions. Epistemic Manipulations are policies concerning the disbursement and/or manipulation of information by the federal government. Most implementations of these methods end up being a combination effort, if only to ensure that as much is being done as possible to encourage/inhibit the actions at hand. For example, the government attempts to curb cigarette use by through both Economic Manipulation (increasing taxes on cigarettes) and Epistemic Manipulation (putting warning labels on packages, spreading information about the harmfulness of smoking). The implementation of Criminal Thrill using libertarian paternalism is a Punitive Manipulation: using the criminal justice system to bring about the desired result. What about Economic and Epistemic methods? Are there any superior ideas to be found within to reduce an undesirable action more efficiently and with less cost than Criminal Thrill?

Economic Methods

The general approach to reducing undesirable activity using economic manipulation is to actively fund mutually exclusive actions in order to draw on the egoist tendencies of humanity and move their self-interests in favor of not performing the action than performing it. Manufacturing plants, for example, receive federal funding if they implement proper safety standards for their employees to help reduce their desire to save money by forcing their workers to toil in dangerous and unsafe conditions. Meanwhile, the government reduces cigarette use by levying increasingly massive taxes on cartons of

cigarettes to encourage consumers to put their money elsewhere. These are excellent methods and work quite well when properly applied. There are negatives when having to essentially bribe citizens to act in a desired way, such as paying the manufacturing plants to not actively harm their employees, but such benefits are often paired with massive fines should protocol be breached. However, economic and punitive manipulations are not mutually exclusive. In fact, it would seem quite likely that the best approach would be a combination of the two. There is no 'better' alternative to be found here, just other approaches that will help reach the intended goals.

Epistemic Methods

There are two simple extremes to choose from when using epistemic methods to guide actions: manipulation through truth and manipulation through lies. While occasionally blatant versions of these two can be seen, for the most part epistemic methods involve utilizing a mix of both to reach the desired end. On cigarette packages, truth is the name of the game: the government ensures that you know you are consuming a carcinogenic item. Far too often information given in schools regarding vices skews too far the other way, substituting truth for blatant lies and scare tactics. Children are told that one try with drugs will make them lifelong addicts, that abstinence is the only effective way of preventing pregnancy and STD's. In the short-term, tending towards the lying part of the scale is quite effective. But in the long-term, what any self-respecting legal system should aim for, lying to citizens only causes them to distrust anything the government says. This dilutes the effectiveness of any and all epistemic methods, and is not a result to be desired. Truthful epistemic manipulations, however, are much like economic methods in that they can serve alongside Criminal Thrill well without compromising the

effectiveness of either – all under the wider umbrella of libertarian paternalism. If there is a lesson here, it is that problems are best approached from multiple angles.

CONCLUSION

The existence of a pleasurable adrenaline rush from criminal activity is an enormously important finding that allows the existence of a system simultaneously more effective at reducing the performance of socially-damaging actions and improving the general welfare of the citizens the legislature represents than the current system in place. In application, it does not appear to fall prey to any crippling ethical roadblocks, such as necessitating the misleading of the population. The Theory of Criminal Thrill creates a new system for legislation and rewrites the playbook on how legislators justify their bills regulating personal activity. If they want to be maximally effective, they must use the libertarian paternalism, and no legislator wants anything less than to achieve whatever they put themselves to.

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ABSTRACT

Based on the psychological need of humans to experience risk, this paper posits the existence of a pleasurable Criminal Thrill and explores the implications this has for the criminal justice system. If there is a psychological need pushing citizens towards breaking laws in part to experience the Criminal Thrill, the traditional method of legislative justification fails to utilize and manage such a need. This paper establishes an alternative method of legislative justification under the umbrella of libertarian paternalism which attempts to utilize the Criminal Thrill to better accomplish the goals of specific laws as well as the general goal of legislation itself. This alternative paradigm of legislative justification is held up to several possible tests of validity in an attempt to show that it can be used under current law as well as compared critically with the traditional method to discover which of the two is preferable to be used by the legislature. The new method is then compared with possible other methods to determine if there are better choices, and having passed these tests is recommended for further study and analysis.