

# From Fighting the Drug War to Protecting the Right to Use Drugs

## Recognizing a Forgotten Liberty

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### Introduction

The battle to control the definition of freedom has long permeated philosophical discourse and political campaigns. Common are arguments over negative and positive liberty, as well as discussions of liberty versus license. Should individuals be “free” to do wrong and should a community be “free” to act collectively? The definition of freedom can determine the policy outcome.

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So it is with drug use. Drugs are merely one kind of product which people ingest, and there are many different drugs with many different effects.<sup>1</sup> Indeed, the word “drugs” is routinely used in three ways: 1) substances having a notable physical or mental effect, ranging from caffeine to cocaine; 2) substances having ill effects which are banned, such as cocaine; and 3) substances officially sanctioned for use in medical treatment, such as penicillin. Today there are three different drug markets involving legal, prescription, and illegal products (Szasz, 1992: 18).

The presumption of this paper is that individual liberty is the paramount political value. There is more to life than the freedom to act without political constraint, but that liberty underlies the rest of human action, including the pursuit of the transcendent. Steven Wisotsky, a law professor at Nova Southeastern in Florida, argued that “the fundamental moral premise of our political, economic, and legal systems” is “that the individual is competent to order his life to vote, to manage his own affairs and be responsible for whatever results he produces in life” (1986: 201).

Some argue that the majority of people are not capable of self-governance, that only a minority of people make rational decisions (see, e.g., Bakalar and Grinspoon, 1984: 28). This argument proves too much, however, for why should such people be allowed to choose political leaders and why should officials so chosen be allowed to make decisions for others? One might not trust the decisions made by individuals with dubious reasoning ability, but one should not casually assume that collectives including the same people would make better decisions.

Of course, there always will be some legal limits on human conduct. After all, laws against murder, theft, and fraud impair “freedom” in one sense, yet are required to protect liberty, properly understood. Nevertheless, human beings, as the basic moral agents in any society, should be generally free to act so long as they accept the consequences of their actions.

One of the freedoms that should be treated as a legal right is drug use. Making this argument is not to encourage drug use. Rather, it is to hold that government may not properly criminalize drug use. The basic moral case was famously articulated by John Stuart Mill (Bakalar and Grinspoon, 1984: 1).<sup>2</sup> Adults are entitled to ingest substances even if a majority views that decision as foolish.

Drug use can have negative social consequences, but that does not set it apart from other products and activities. After all, most any human action—smoking cigarettes, driving cars, climbing mountains—may

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1 For a discussion of the definition of “drugs,” see Husak, 2002: 27-43; and Husak, 1992: 20-37.

2 Mill’s arguments and qualifications have attracted the attention of other participants in this intellectual battle. See, e.g., Zimring and Hawkins, 1991: 3-13.

have some negative impact on someone. To justify government regulation, harms must be serious and direct. Moreover, any restrictions must be crafted to minimize the violation of liberty. In criminalizing substance use, wrote dissident psychiatrist Thomas Szasz, then “Like medieval searchers for the Holy Grail, these modern seekers look for the correct answer to an absurd question, namely: How can we reduce or eliminate the risks and undesirable consequences of liberty, while retaining its rewards and benefits?” (Szasz, 1992: 12).

### **A right to ingest?**

The use of drugs should be seen as a freedom, just like most human actions. Choosing to go hang-gliding is a freedom (of recreation). Choosing to have surgery is a freedom (of medical treatment). Choosing to use drugs is a freedom, usually of recreation or medical treatment, depending on the substance and intention.

To label an action a freedom does not automatically determine its appropriate legal status. While autonomous individuals are presumed to be best judges of their own behavior, actions that cause harm are judged differently. Some are banned; others are restricted; many are left unconstrained.

Few personal acts more closely implicate the life and dignity of the human person than deciding what to put into one’s own body. Choices of food and medicine are largely left to individuals, not government. Similarly, most decisions to alter one’s mental and physical states are vested in individuals, not politicians, hence the almost universal use of caffeine and alcohol. Despite laws imposing some limits on the use of these substances, as well as tobacco, people still are widely believed to possess a basic moral right to consume what they want.

Illicit drugs are seen differently—today. Recreational drug use once was accepted, just as recreational alcohol use remains not just common, but pervasive. Now the same substances are treated as unusually dangerous, irresistibly addictive, and inevitably harmful. The criminal justice system even treats drug use as a disease, thereby obscuring “the morality of choice” (Wisotsky, 1986: 200). Perceptions dominate policy. Argued Richard E. Vatz of Towson University and Lee S. Weinberg of the University of Pittsburgh, “the dominance of scenic rhetoric, combined with a set of public fantasies and perceptions that fail to differentiate the impact of drugs from the impact of their illegality, makes it unlikely that the policy of prohibiting drug use will change in the near future” (1998: 69-70).

Unsurprisingly, the reality differs substantially from the rhetoric. As Douglas Husak of Rutgers wrote: “too much of our policy about illegal drug use is based on generalizations from worst-case scenarios that do not conform to the reality of typical drug use” (1992: 51).

### What about addiction?

One reason drugs are treated differently is because they are considered to be “addictive.” Some critics contend the entire concept is artificial, though common experience suggests that there is a physical and psychological dimension that makes some decisions seem less voluntary. Nevertheless, even intense physical and psychological attraction does not eliminate the ability to choose.<sup>3</sup>

Moreover, different people appear to be more or less susceptible to the attraction of variously destructive behaviors, such as alcohol and tobacco use, as well as gambling and sex. That some people abuse instead of just use is a dubious justification for a universal government ban.

Indeed, despite the fearsome reputations acquired by some illicit drugs, the addiction rate of different substances appears to be relatively constant, between 10 and 15 percent (Sweet and Harris, 1998: 448). The US government’s own data indicate that the vast majority of drug users consume intermittently, even rarely (see, e.g., Eldredge, 1998: 3).

Patricia Erickson of the Addiction Research Foundation and Bruce Anderson of Simon Fraser University concluded in one assessment of the literature regarding cocaine use: “the evidence reviewed here indicates that the likelihood that cocaine users will become addicted has been greatly overstated.” In fact, “most human cocaine users never use it immoderately” (Erickson and Alexander, 1998: 283; see also Erickson and Weber, 1998: 291-305). A study of cocaine users found that most consumed only “infrequently” (Erickson and Weber, 1998: 291; see also Mugford, 1991: 41). A survey of US soldiers who used heroin in Vietnam found that later they were no more likely than other soldiers to be heroin addicts (Winick, 1993: 151; Zinberg, 1987: 264-67). American society would not be economically productive if the tens of millions of people who have used drugs all were “addicted.”

### Harm to others

The classic justification for regulating individual behavior is that it violates the freedoms and especially the legal rights of others. (If an action is not legally protected, interference with that action is less likely to be penalized by government.) Prohibitionists routinely tie drugs to crime. However, no drug appears to be strongly criminogenic, that is, a trigger for criminal behavior, and especially violent criminal behavior, against others.

Drug use may impair judgment and reduce inhibition, making some people more likely to commit crimes. That certainly is the case with

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3 For detailed discussions of this issue, see Husak, 1992: 100-30; Bakalar and Grinspoon, 1984: 35-67.

alcohol. But since drugs vary greatly in their effects, at most this would justify selective prohibition, and no substance appears to generate crime in a high number of its users. In fact, the drug laws do far more than drugs to create crime, creating victims far and wide (see, e.g., Ostrowski, 1991: 304-05, 314-15).

Of course, drugs have other impacts on other people (see, e.g., Moore, 1993: 232-33; Taubman, 1991: 97-107; Hay, 1991: 200-25; Kleiman, 1992: 46-64). However, the criminal law normally applies to direct rather than indirect harm, that is, when individual rights (to be secure in one's person or property, for instance) are violated. The criminal must *cause* the harm to others, rather than engage in otherwise legal conduct which causes incidental loss.<sup>4</sup> Moreover, only some drug use some of the time hurts others. Observed Robert J. MacCoun of the University of California (Berkeley) and Peter Reuter of the University of Maryland, "it is likely that many if not most drug users never do wrongful harm to others as a result of their using careers" (2001: 61).

In any case, this argument for prohibition proves far too much. Most human activities create "externalities," that is, impose costs on others. The same surely can be said of alcohol abuse, heavy tobacco use, excessive gambling, extreme consumerism, and short-sighted careerism. In fact, there is little conduct that does not affect others. Ironically, since drugs act as imperfect substitutes for one another, drug prohibition may increase alcohol use, doing more to transform harm than to eliminate harm.

Despite reliance on this argument, the increasingly violent Drug War never has been driven by social problems.<sup>5</sup> Noted sociologist Jerry Mandel, "the war on drugs preceded any drug use problem except alcohol" (1998: 212). Indeed, the problems of opium and marijuana use at the time they were banned were far less serious than today.

It seems particularly odd to leave alcohol use legal if "social costs" is the chief criterion for a government ban. The failure to reinstitute Prohibition demonstrates that even those inclined towards prohibition believe the mere existence of social problems does not warrant a government ban. That famous enforcement effort failed to eliminate the problems from use while adding the problems created by turning drinking into a crime (see, e.g., Levine and Reinerman, 1998a: 264-70). In fact, noted Harry Levine of Queens College (City University of New York) and Craig Reinerman of the University of California (Santa Cruz), "prohibitionists were utopian moralists; they believed that eliminating the

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4 For a discussion of this issue, see Husak, 1992: 164-68.

5 Restrictions on drug use began more than a century ago, and advanced intermittently in succeeding years, though the greatest leap in intensity of enforcement dates to the Nixon administration. For the early years, see, e.g., Szasz, 1992: 37-57.

legal manufacture and sale of alcoholic drink would solve the major social and economic problems of American society” (1998a: 261). Alas, the utopians were sadly disappointed.

On almost any social measure, today’s ban on drug consumption appears to increase net adverse social impacts. Modern prohibition is particularly problematic if the objective is to maintain a society that can accurately be called free. As noted later in this paper, the more brutal the tactics in the War on Drugs, the more the government undermines the essentials of a free society.<sup>6</sup>

### **Response to externalities**

Although externalities—the various impacts (which in theory could be positive as well as negative) on others—do not justify banning drugs, users should be held accountable for the direct consequences of their actions. Even Thomas Szasz pointed to areas where government restrictions, such as driving while intoxicated, are entirely appropriate. So are employer restrictions on drug use which impair job performance (Szasz, 1992: 161-62). Moreover, people should be liable when they hurt others or fail to live up to their legal obligations, whatever the cause.

In contrast, individuals should not be punished for simply taking substances which might make some of them more likely to hurt others or fail to live up to their legal obligations. And some harms are too idiosyncratic or diffuse—such as emotional distress to family and friends of drug abusers, lost productivity of drug users—to warrant government regulation.

### **Harm to users**

Advocates of criminal enforcement also resort to paternalism, claiming that prohibition is necessary to protect users. Drug use obviously can be harmful, though advocates of government control, including public officials attempting to justify their activities and budgets, often have exaggerated the risks of illicit drugs, especially compared to the problems created by legal drugs (Husak, 2002: 93-108; Miller, 1991: 1-23).

In any case, government should not attempt to protect people from themselves. Drug users generally are aware of the real (as opposed to imagined) dangers (Bakalar and Grinspoon, 1984: 170). In this way, drug use reflects an informed choice—at least as informed as most choices made by most people.

The government should not override these decisions simply because it (or a popular voting majority) employs a different calculus of costs and benefits (see the discussion at Husak, 1992: 88-89). A free society allows people to make what most people believe to be mistakes. If nothing else,

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6 One brief but sobering survey is available in Sweet and Harris, 1998: 448-49.

jailing the alleged victims is a particularly odd way to “protect” people from themselves (see, e.g., Husak and Marneffe, 2005: 41-53).

Moreover, most users are not abusers. Contrary to popular assumptions, the vast majority of drug users enjoy productive, balanced lives. Noted Charles Winick of the City University of New York, “the conventional picture of uniformly negative consequences of regular drug use is not supported by the data” (1993: 136). The United Nations estimates that there are 250 million drug users worldwide, less than 10 percent of whom are considered to be “problem drug users” (Global Commission on Drug Policy, 2011: 13).

Rejecting paternalism requires erasing the line between medical and recreational drug use (see, e.g., Husak and de Marneffe, 2005: 17-24). Controversial though this might seem, recreation normally is seen as a positive good. People rarely make a pretense of using alcohol or tobacco for medical or other “serious” purposes. The difference between using Viagra to treat erectile “dysfunction” and to enhance an otherwise normal sexual experience is small.

Moreover, when it comes to non-drug forms of recreation, even potentially dangerous activities that participants sometimes describe as “addictive,” the government leaves people alone. Explained Steven Wisotsky, “Society simply defers to the freedom of the individual. It takes individual rights seriously insofar as it is willing to accept a high risk of injury or death as the natural or inevitable price of such freedom” (1986: 208-09).

Yet, observed Douglas Husak, “For reasons that are deep and mysterious, many persons become apologetic and defensive about arguing in favor of a right to engage in an activity simply because it is pleasurable. Apparently the pursuit of fun is perceived to be so shallow and trivial that many persons feel obliged to find some other basis to defend their choice” (1992: 46).

Of course, special measures are warranted to protect children. However, this does not justify treating the entire population like children. Moreover, prohibition for all makes it harder to concentrate enforcement on kids. “Leakage” to children also is more dangerous from an illegal black market than from a legal adult market.

### **Does morality trump liberty?**

Proponents of jailing drug users and sellers deploy morality as their trump card. Never mind the costs of prohibition—drug use is wrong, and, *ipso facto*, should be prohibited (see Husak and de Marneffe, 2005: 71).

Even granting that for some people to use some drugs for some purposes might be immoral, in a liberal society they should remain free to act, that is, they should have a legal right to engage in an immoral act where the immorality is directed at themselves, not others. In essence, “the *right* of the

individual to do as he pleases takes precedence over the *good* of the individual, where ‘good’ is measured by some standard external to the agent’s own wishes” (Hill, 1992: 104). Most people at one time or another have grave doubts about the behavior of family and friends. Nevertheless, rarely does anyone call forth the power of the state to limit the other person’s choices.

Peter de Marneffe of Arizona State University curiously denied “that someone’s moral rights are violated whenever the government burdens the many for the benefit of the few” (Husak and de Marneffe, 2005: 163). However, government cannot rightly sacrifice basic liberties just to advantage some people. If it is moral for individuals to seek pleasure through drug use, then prohibition violates their freedom without due cause. Their moral right should be treated as a legal right as well. One might argue that the violation nevertheless is justified to promote a larger good. But responsible individuals are being prevented from engaging in non-coercive activities which harm no one else—and in most cases not even themselves. A utilitarian justification for prohibition should not supersede the moral calculus. An individual freedom is still being circumscribed. Given the importance of protecting individual liberties, those freedoms should not be abrogated except for a very significant benefit.

The assertion that use of all drugs by everyone in every circumstance is immoral is rarely supported by argument (Husak, 1992: 65-68). Advocates of criminalization prefer to assume rather than demonstrate the moral case for their policy (see, e.g., Husak, 1992: 61-63). Douglas Husak contended: “I am not insisting that no good reason *can* be given for concluding that the recreational use of illicit drugs is immoral. Again, a negative is notoriously hard to prove. I am only saying that no good reason *has* been given in support of this moral conclusion” (2002: 117).

The problem is not that government cannot legislate morality. Most laws, at least most criminal laws, do so. The critical question is: what kind of morality? Inter-personal morality, that is, the conduct toward others, offers a clear basis for legislation. Murder, theft, assault, rape, and fraud are all prohibited because they violate the freedoms as well as legal rights of others—the impact on others is *what makes them wrong*. Prohibiting such conduct is the very purpose of government.

As noted earlier, use of drugs does not fall into this category. If morality is involved, it is of a different kind: intra-personal morality, or soul-molding. To the extent that harm occurs, the criminal and victim are one.

By this standard, is drug use immoral? There is nothing inherent to the act of using drugs that is wrong.<sup>7</sup> Even the Bible, the fount of morality in the Western world, treats alcohol use as normal and inveighed only against intoxication. There is no criticism of the simple desire to gain pleasure.

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7 For one argument on this issue, see Husak and de Marneffe, 2005: 73-82.

Sociologist James Q. Wilson declared: “drug use is wrong because it is immoral and it is immoral because it enslaves the mind and destroys the soul” (quoted in Husak and de Marneffe, 2005: 71).<sup>8</sup> A behavior that “enslaves the mind and destroys the soul” would seem to be wrong, an affront to the value and dignity of the human person. But even if so, such behavior is not the proper province of government and especially the criminal law.

Criminalizing violations of inner morality would invite government regulation of most aspects of human life. After all, Christian theology indicates that sin grieves God, damages the soul, and risks damnation. And there is much sin in the world. Yet Peter de Marneffe would go even further, worrying about “the risk to some individuals of losing important opportunities, the loss of which would significantly dim their life prospects” (Husak and de Marneffe, 2005: 133). Government is not well-equipped to judge sin, assessing which behaviors are most likely to enslave the mind and destroy the soul, let alone decide on economic potential.

Moreover, does drug use enslave the mind and destroy the soul? Maybe it does for a few people. Some drug abusers—like alcoholics and gamblers—lose themselves to the perceived pleasures of their activities. But for most people, like most alcohol users and gamblers, the answer obviously is no.<sup>9</sup>

Researchers have hunted in vain for evidence that moderate drug use causes individual or social ills. Most drug users appear to suffer little if any serious harm. Indeed, despite claims of debased and destroyed lives, studies have found little damage from moderate drug use (Husak, 1992: 97). The findings of one study of cocaine use called “into question many of the prevailing assumptions about cocaine’s inevitably destructive power over lives, careers, and health, and provide empirical evidence about a different reality” (Erickson and Weber, 1998: 291).

Still, undoubtedly there are drug users who harm themselves. They have wasted their money and risked their health. They have not fulfilled their life’s potential. They may ultimately look back on their drug use with regret. But they still did not enslave their minds and destroy their souls, or do anything else to warrant the attentions of the criminal law.

And why would the consequences Wilson fears be worse than the ill consequences of other activities? He considered cocaine to be worse than nicotine because the former “debases” life while the latter merely

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8 Former “drug czar” William Bennett has made similarly extravagant yet unsupported claims. See, e.g., Husak, *Drugs and Rights*, p. 71.

9 Even Peter de Marneffe, who advocates heroin prohibition, acknowledges that “it is arguable that a majority of heroin users now use heroin responsibly as a way to relax and enjoy, even though its use is illegal” (Husak and de Marneffe, 2005: 156).

“shortens” it (quoted in Husak and de Marneffe, 2005: 80). Yet is the occasional cocaine sniffer really more debased than the chain smoker dying from lung cancer?

What of “abusers,” those who “get into patterns of heavy chronic use, which they did not anticipate and would prefer not to continue” (Kleiman, 1992: 28)? UCLA Professor Mark Kleiman argued that “all of the widely used drugs—including heroin and cocaine, even smoked cocaine—can be used safely if they are used in small and infrequent doses and at times and places where an intoxicated person is unlikely to do or suffer injury” (1992: 27-28). However, too often, in his view, this is not the case (causing “failures of self-command”) (Kleiman, 1992: 30-41).

Even for drug users with severe problems, substance abuse may be more a consequence than a cause. Wrote James Bakalar and Lester Grinspoon: “Most differences between drug users and nonusers apparently precede the drug use” (1984: 132). Researchers studying heroin addiction have observed: “People who use heroin are highly disposed to having serious social problems even before they touch heroin” (Robins, 1988: 264).

Unfortunately, people are capable of damaging their lives without drugs. Indeed, individuals have found an infinite number of methods of harming themselves, sometimes irrevocably. The Global Commission on Drug Policy stated: “The factors that influence an individual’s decision to start using drugs have more to do with fashion, peer influence, and social and economic context, than with the drug’s legal status, risk of detection, or government prevention messages” (2011: 13). Indeed, if the government only reduces the availability of drugs, alcohol will remain available as a potentially destructive alternative.

Attempting to nevertheless aid the immoral few still would not justify a “war” on drug use by all. Improving opportunities for and decision-making by a small minority would make far more sense than threatening to imprison a much larger number of people (and a majority of drug users). Even those who worry about drugs recognize the difference. Kleiman, for one, wrote of being “somewhat more paternalistic when it comes to choices about drug use” (1992: 45). That is a long way from militarized criminal law enforcement in what purports to be a free society.

### **Respecting a moral right to use drugs**

Individuals should have a legal as well as moral “right,” grounded in their status as free, consenting adults, to use drugs recreationally. Treating drug use as a morally legitimate freedom, or a moral right, is more than an abstract philosophical exercise. Attorney John Lawrence Hill argued simply: “If the state may not rightfully use the coercive sanction of the criminal law to prohibit the ingestion of any of a variety of psychoactive substances, then these other [practical] considerations are rendered moot” (1992: 102).

This means that people have a moral right vis-à-vis the government to use drugs, even if their particular decision to use drugs is immoral in terms of their lives. Treating drug use as a morally legitimate freedom is important because doing so would shift the burden of proof in the legal debate.<sup>10</sup> If it is moral for individuals to use substances recreationally, then the state must deploy a compelling justification to regulate their behavior. In short, “the best reason to *decriminalize* drug use is that the reasons to *criminalize* drug use are not good enough” (Husak and de Marneffe, 2005: 38).

Normally people are viewed as the best judges of their own circumstances and interests. In any particular case, people may make a mistake, but that is not inherent to drugs. Noted Bakalar and Grinspoon: “The ‘force’ of the argument against state interference with sexual acts between consenting adults is said to be enormously powerful because sex comes within the proper ‘range’ of the principle; but outside that range, in the territory of drug use or consumer protection, the principle may have no force at all. This is a statement of preference, not an argument” (1984: 14).

There is no reason to treat drugs as different from most everything else. One can speak of “the value of drug use” even if most people do not believe that the benefits justify the costs (Husak and de Marneffe, 2005: 84-91). Individuals best assess costs and benefits for themselves, while collective decisions inevitably disregard unique personal characteristics and emphasize majority prejudices.

Argued Thomas Szasz: “Why do we want drugs? Basically, for the same reasons we want other goods. We want drugs to relieve our pains, cure our diseases, enhance our endurance, change our moods, put us to sleep, or simply make us feel better—just as we want bicycles and cars, trucks and tractors, ladders and chainsaws, skis and hang gliders, to make our lives more productive and more pleasant” (1992: xv).

Some drug users cite relaxation and alertness as reasons for moderate drug use (Miller, 1991: 152-54). Moreover, the desire to alter mental and physical states is ancient and has existed in every culture. Wrote James Bakalar and Lester Grinspoon: “altering consciousness does not have to be conceived as something abrupt, unusual, and mysterious” (1984: 145). Even many avid drug prohibitionists cheerfully drink alcohol, smoke tobacco, and seek adrenalin highs through sports or gambling. Far from being uncontrolled, drug users usually appear to choose their drugs with care, seeking to achieve a certain kind of physical or mental change (Husak and de Marneffe, 2005: 91). The majority of people may view engaging in these activities to be foolish, even reckless, but that alone is irrelevant.

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10 Today advocates of criminalization embrace the status quo, pushing advocates of reform to bear the burden of proof. See, e.g., Husak and de Marneffe, 2005: 25-40.

Anyway, changing one's physical and mental state is among the most personal of decisions. Some legal analysts contend that drug use should be viewed as part of the "zone of privacy" or "personal autonomy" that most Americans have come to expect (Hill, 1992: 103-05). Four years ago the Argentine supreme court ruled unconstitutional the prosecution of people for possessing drugs for personal use. Explained the judges: "adults should be free to make lifestyle decisions without the intervention of the state" (quoted in Jenkins, September 3, 2009). Szasz put it another way: "How can a person lose the right to his body? By being deprived of the freedom to care for it and to control it as he sees fit" (Szasz, 1992: 6).<sup>11</sup>

The same argument applies to the use of substances which are provisionally legal, that is, legal with a prescription. The issues often are related: prohibition sometimes influences prescription access, such as to pain medication, and interferes with use of marijuana for medical purposes. But more broadly, people should have the same legal right to use drugs for self-medication as for recreation (see, e.g., Szasz, 1992: 125-43). The limited prohibition for medicine has had its own perverse and counter-productive consequences, including limiting access to life-saving products and slowing the spread of needed medications to market (see, e.g., Trebach and Zeese, 1992: 25-33; Howley, 2005). (Of course, there may be an argument for some limited controls, such as over the distribution of antibiotics to reduce the rise of drug-resistant strains of bacteria.<sup>12</sup>)

### Legalization versus decriminalization

Just as people have a moral right to make other lifestyle choices, despite the potential negative impacts, they have a moral right to consume drugs, despite potentially harmful effects.<sup>13</sup> For this reason, drugs should be legalized, not just decriminalized.<sup>14</sup> Even some advocates of prohibition prefer to direct criminal penalties at producers and sellers rather than users (see,

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- 11 Szasz grounds the right to use drugs in property rights (Szasz, 1992: 13-14). However, the right to own property is merely one of many specific rights that any free individual possesses.
  - 12 Moreover, Douglas Husak of Rutgers argues that there may be a greater argument for government paternalism in the latter because the likelihood of mistake, as in misjudging the efficacy of treatment, may be higher. That is, most illicit drug users know such substances can cause harm (Husak, 1992: 137).
  - 13 Positing a moral right does not necessarily yield a constitutional right, as some contend. See, e.g., Sweet and Harris, 1998: 451-60.
  - 14 These terms sometimes are confused. Decriminalization, as implemented by a dozen American states, is a vast improvement over prohibition. See, e.g., Husak and de Marneffe, 2005: 3-14. Nevertheless, decriminalization presumes some *government-imposed* legal and economic sanction on use per se, in contrast to even the most restrictive state regimes governing alcohol use, which merely restrict access to alcohol in time and form. Legalization would not, however, prevent legal punishment of drug use with direct consequences on

e.g., Husak and de Marneffe, 2005: 129). However, if consumption does not warrant jail, why should those who make it possible for people to consume face jail? And the standards for imposing criminal penalties always should be high, much higher than for imposing civil penalties.<sup>15</sup>

Legalization would not mean viewing drug use as a positive good. Rather, seeking pleasure through drug use should be treated as a legitimate activity, one involving the often complex trade-offs evident with other aspects of human life.

Still, legal drug use would have both bad and good consequences, just like other activities. To view drug use as a moral right does not mean there would be no proper collective response, irrespective of circumstances.<sup>16</sup> To the contrary, most societies have adapted to drug use by creating social controls, whatever the substance or product.

Consider alcohol. Argue James B. Bakalar and Lester Grinspoon of the Harvard Medical School: “We all know that alcohol abuse produces disease, accidents, crime, family conflict, and social chaos” (1984: 79). Yet countries such as Great Britain tamed what once was a great social scourge. Alcohol abuse has waxed and waned in the US. Ironically, Prohibition created a more relaxed, less controlled atmosphere for alcohol consumption. Argued psychiatrist Norman Zinberg: “Although repeal provided relief from excessive and unpopular legal control, the society was left floundering without an inherited set of social sanctions and rituals to control use” (1987: 250).

Modern prohibition is one reason the US today lacks adequate social controls over drug use. Socialization is a complex process involving family, peers, culture, and more (Zinberg, 1987: 260-61). It is less likely to occur, and occur effectively, if the activity is underground: “The furtiveness, the suspicion, the fears of legal reprisal, as well as the myths and misconceptions that surround illicit drug use, all make the exchange of information that leads to the development of constraining social sanctions and rituals more difficult” (Zinberg, 1987: 266; see also Wisotsky, 1986: 213). Noted Szasz, “after generations of living under medical tutelage that provides us with protection (albeit illusory) against dangerous drugs, we have failed to cultivate the self-reliance and self-discipline we must possess as competent adults surrounded by the fruits of our pharmacological-technological age” (1992: xvi).

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others (e.g., driving while under the influence) as well as private restrictions on drug use (e.g., airlines banning use by pilots).

15 For a detailed discussion of this issue, see Husak, 1992: 170-95.

16 Douglas Husak criticizes libertarians who believe that “the best moral and political theory disables the state from coping with social problems that are truly horrendous” (Husak, 1992: 87).

Nevertheless, the problems likely to result from legal drug use appear manageable. Wrote Bakalar and Grinspoon: “In the United States today, despite easy availability of cheap alcohol, a third of the adult population does not drink at all, and another third drinks three times a week or less. Most people do not find it hard to exercise self-restraint in using drugs. Attitudes towards tranquilizers, for example, are very conservative in all racial, social, and economic groups, but are especially among the poorest and least educated ... Most people disapprove of using drugs to enhance normal functioning; by association, they tend to be suspicious of antidepressants and drugs for energy or alertness [source omitted]. Volunteers allowed to regulate their own intake of amphetamines for weight loss used less than the amounts usually prescribed. The picture of drug abuse as a potentially uncontrollable epidemic is vastly overdrawn” (Bakalar and Grinspoon, 1984: 144).

### **Utilitarian arguments**

The issue of illicit drug use most often is fought on utilitarian, consequentialist grounds. Are the benefits of prohibition worth the cost? The issue is important, and would be decisive if the issue of drug use was one of moral indifference.

Assume that drug prohibition could be justified morally. Even so, it still must pass the test of practicality. Nobel Laureate Milton Friedman criticized the moral basis of the War on Drugs, but went on to argue: “I readily grant that the ethical issue is difficult and that men of good will may well disagree. Fortunately, we need not resolve the ethical issue to agree on policy. Prohibition is an attempted cure that makes matters worse for both the addict and the rest of us. Hence, even if you regard present policy toward drugs as ethically justified, considerations of expediency make that policy most unwise” (May 1, 1972).

### **War on Americans**

As Prof. Douglas Husak of Rutgers has pointed out: “The war, after all, cannot really be a war on drugs, since drugs cannot be arrested, prosecuted, or punished. The war is against persons who use drugs. As such, the war is a civil war, fought against the 28 million Americans who use illegal drugs annually. And unlike previous battles in this apparently endless war, current campaigns target casual users as well as drug abusers” (1992: 2).

Robert J. MacCoun and Peter Reuter suggested that one can imagine prohibition differently implemented that would cause less damage. However, with today’s American model “it is reasonable to conclude that tough enforcement is responsible for much of the observed damage. The extraordinary prices of cocaine and heroin, the massive involvement of young minority males in center cities, foreign corruption, and

the violence of the drug trades are all plausibly much increased by the nation's decision to be highly punitive toward these drugs" (MacCoun and Reuter, 2001: 127).

### **The costs of drug prohibition**

Banning drugs raises their price, creates enormous profits for criminal entrepreneurs, thrusts users into an illegal marketplace, encourages users to commit property crimes to acquire higher-priced drugs, leaves violence the only means to settle disputes within the drug trade, forces government to spend lavishly to curtail drug sales and use, and results in widespread corruption of public officials and institutions. All of these effects are evident today in the US, with its huge appetite for illicit substances and a harsh enforcement regime. Today's experience is reminiscent of Prohibition (of alcohol) in the early 20<sup>th</sup> century (Thornton, 1991; Levine and Reinerman, 1998b: 43-61).

Perhaps the most obvious cost of enforcing the drug laws is financial. Government must hire police, court, and prison personnel; prosecute and jail millions of drug offenders; and underwrite a variety of other anti-drug efforts, including foreign aid to foreign governments and military action abroad. At the same time, government must forgo any tax revenue from a licit drug market.

According to Harvard lecturer Jeffrey A. Miron and New York University doctoral candidate Katherine Waldo, in the US alone "legalizing drugs would save roughly \$41.3 billion per year in government expenditure on enforcement of prohibition" and "drug legalization would yield tax revenue of \$46.7 billion annually" (2010: i). Although an extra \$90 billion a year wouldn't end America's financial crisis, it is foolish for Washington to toss away so much money.

The drug war also has corrupted private and public institutions wherever it has reached. Pay-offs commonly go to employees in private companies able to help transport drugs, such as the airlines. Worse are bribes to police, border control officials, Drug Enforcement Agency agents, and even military personnel when involved in interdiction efforts. The taint also reaches prosecutors, judges, and politicians.

The problem is serious enough in the US, where it began decades ago during the early years of the War on Drugs (see, e.g., Wisotsky, 1986: 141-50; Eldredge, 1998: 53-59). The issue is a crisis overseas, where militarized enforcement, relentlessly pushed by Washington, has helped corrupt entire nations, such as Colombia, Afghanistan, and Mexico. Indeed, drug production has become a tool of Communist guerrillas in Peru and Columbia, left-wing governments in Venezuela and North Korea, and both insurgents and government in Afghanistan (see, e.g., Naim, 2011).

Prohibition is advanced as a means to protect users from themselves. And there are excellent reasons for people, especially adolescents who are still developing physically and mentally, to eschew consumption of most drugs, including some which are legal today.<sup>17</sup> (Indeed, risk assessments have held alcohol and tobacco to be more dangerous than many prohibited substances, such as cannabis (Global Commission on Drug Policy, 2011: 12).)

However, the illegal marketplace makes drug use more dangerous. Noted economists Daniel K. Benjamin and Roger Leroy Miller, “Many of the most visible adverse effects attributed to drug use ... are due not to drug use per se, but to our current public policy toward drugs” (1991: 131). Products are adulterated; users have no means of guaranteeing quality. Given the threat of discovery, dealers prefer to transport and market more potent (and thus both more concealable and valuable) drugs (Cussen and Block, 2005: 103-104; Benjamin and Miller, 1991: 113-31; Morgan, 1991: 405-23). As a result, the vast majority of “drug-related” deaths are “drug law-related” deaths (Husak, 2002: 137; Glasser, 1991: 271-74).

Moreover, AIDS is spread through the sharing of needles by intravenous drug users, who are more likely to engage in the dangerous practice in an underground world created by prohibition (Eldredge, 1998: 126-36; Glasser, 1991: 276; Global Commission on Drug Policy, 2011: 6). John Morgan of the City University of New York Medical School said simply that the increasing incidence of AIDS and HIV “is a direct result of prohibition” (1991: 409). In the same way, the War on Drugs has helped spread hepatitis and other blood-borne diseases (Miron, March 24, 2009).

Not only does the War on Drugs make people sick, it interferes with the treatment of the sick and dying. A number of people suffering from a variety of maladies believe that cannabis and other drugs offer helpful treatments. There is substantial disagreement among medical researchers and professionals, but additional research would help determine if and how marijuana use might have value (Grinspoon, 1991: 379-89; Grinspoon and Bakalar, 1987: 183-219). However, America’s national government remains steadfastly opposed to providing a compassionate option for anyone (see, e.g., Annas, 1988: 120-29). The result may be to leave vulnerable people in great pain, even agony.

The drug laws also threaten the basic liberties of all Americans, whether or not they use drugs. The erosion of basic constitutional liberties in America is years, even decades, in the making (Benjamin and Miller, 1991: 122-49). As a classic “self-victim” crime, drug prohibition requires draconian enforcement techniques: informants, surveillance,

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17 For one discussion of the dangers of different substances, see Goldstein and Kalant, 1993: 78-86.

wiretaps, and raids. Television commentator John Stossel noted that the drug war is being used to “justify the militarization of the police, the violent disregard for our civil liberties, and the overpopulation of our prisons” (Stossel, June 17, 2010).

In the United States, police work has taken on military attributes, with 100-plus SWAT raids every day. Those guilty of even minor, nonviolent offences have suffered disproportionately, while innocent people routinely have been harmed or killed in misdirected drug arrests and raids (Husak, 2002: 4-5; Balko, March 23, 2010; Balko, April 6, 2006).

Lawyers openly speak of the “drug exception” to the Fourth Amendment, which is supposed to limit government searches. Jack Cole, a former New Jersey policeman who co-founded Law Enforcement Against Prohibition (LEAP), talked of “a war on constitutional rights.” He explained: “We would illegally search people all the time, because we felt like ‘we’re fighting a war, we’re the good guys, and no matter how we get these guys, it’s worthwhile because we’re taking them off the streets and that’s our job.’ So that’s why so many get involved in not telling the truth on the stand when they’re testifying about drug cases. And you almost never find that in other cases. All these violations come from drug cases” (Cole, 2006: 45).

Drug prohibition also skews law enforcement priorities. Property forfeitures have turned into big business. Police departments routinely seize property without criminal convictions (Eldredge, 1998: 77-82; Fraser, July 4, 2010). Indeed, in many cases the government doesn’t bother to file criminal charges. The lure of “free” cash has distorted police decisions. Noted an *amicus* brief filed in one Supreme Court case by the Cato Institute, Goldwater Institute, and Reason Foundation: forfeiture “provides powerful, dangerous, and unconstitutional financial incentives for law enforcement agencies and prosecutors’ offices to overreach.”<sup>18</sup> In effect, there is a direct financial benefit for the government to violate people’s liberties.

Even more extreme authoritarian practices, including executions and maimings, used abroad have been endorsed by some US officials (Husak, 1992: 13). Moreover, the so-called Rockefeller drug laws in New York State (implemented by an alleged liberal) as well as federal mandatory minimum sentences have imposed draconian penalties on even low level drug operatives.

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18 Brief for the Cato Institute, Goldwater Institute Scharf-Norton Center for Constitutional Litigation, and Reason Foundation as Amici Curiae Supporting Respondents, in the Supreme Court of the United States, *Anita Alvarez, Cook County State’s Attorney v. Chermane Smith, et al.*, No. 08-351, August 2009, p. 6. <<http://www.cato.org/pubs/legal-briefs/alvarez-v-smith.pdf>>, as of May 3, 2012.

The explosion of the drug trade, combined with promiscuous jail time, has increasingly turned America into a prison state. There were 13.7 million arrests in 2009, more than 10 percent of which (1.7 million), were for drug offenses. Nearly half of the latter for were marijuana. In comparison, just 590,000 people were arrested for violent crimes. Overall, 80 percent of the drug arrests are for possession. More than half of federal prisoners are serving time for drug offenses. About 20 percent of state prisoners are incarcerated for drug crimes.

According to Bryan Stevenson of the Equal Justice Initiative, “in the United States, the prison population has increased from 300,000 in 1972 to 2.3 million people today. One in 31 adults in the United States is in jail, prison, on probation or parole” (Stevenson, 2011: 2; see also [www.drugwarfacs.org/cms/Crime](http://www.drugwarfacs.org/cms/Crime)). Lisa Trei at Stanford University makes a broader analysis: “In 1980, about 2 million people in the United States were under some kind of criminal justice supervision, said [Professor Lawrence] Bobo, the director of Stanford’s Center for Comparative Studies in Race and Ethnicity. By 2000, the figure had jumped to about 6 million—and the United States had become the country that incarcerated its citizens more frequently than any other major western industrialized nation. The jump is largely attributed to the government’s ongoing war on drugs” (Trei, May 25, 2005).

Although the US is by far the worst offender internationally, increased enforcement efforts have increased prison populations elsewhere. A total of 10 million people currently are in jail around the world for drug offenses (Stevenson, 2011: 2).

The irony is tragic. The self-proclaimed “land of the free” is most likely to throw more of its citizens into jail for an act of self-harm. Over the last two decades more people have gone to jail for drug offenses than for violent crimes. Arrests and imprisonment disproportionately affect African-Americans, who make up only about 13 percent of the population but account for 34 percent of drug arrests and 45 percent of state prisoners convicted of drug offences (Law Enforcement Against Prohibition, n.d). This exacerbates problems in a community where families are less often intact and job opportunities are less available. American cities have suffered as a result (Staley, 1991: 63-74).

Finally, the negative social impact of the drug laws includes creating crime. Drugs obviously are related to crime, but rarely are “crimogenic” themselves. That is, many illicit substances, such as marijuana and heroin, encourage passivity. (There is a much better argument that alcohol makes crime more likely, loosening inhibitions of would-be perpetrators and victims alike.)

Some addicts steal to fund their habits, but that often reflects high prices resulting from prohibition. Most of the crimes attributed to cocaine and even crack result from turning drugs over to an illegal market.

As Prohibition spurred the growth of the traditional mob, drug prohibition has spurred the growth of newer forms of organized crime, many competing gangs and organizations (Benjamin and Miller, 1991: 8-112). Wrote David Boaz and Timothy Lynch of the Cato Institute: “Addicts commit crimes to pay for a habit that would be easily affordable if it were legal. Police sources have estimated that as much as half the property crime in some major cities is committed by drug users” (Boaz and Lynch, 2006: 11).

More dramatically, because drugs are illegal, participants in the drug trade cannot go to court to settle disputes, whether between buyer and seller or rival sellers. Explain Boaz and Lynch, “When black-market contracts are breached, the result is often some form of violent sanction, which usually leads to retaliation and then open warfare in the streets” (Boaz and Lynch, 2006: 11). Benjamin and Miller wrote: “If you want to establish an unmistakable, unbreakable link between drugs and crime, the surest way to do it is to make drugs illegal” (1991: 112).

Rutgers Professor Douglas Husak estimated that such “systemic” crimes account for three-quarters of “drug-related” crime (2006: 32). Even prohibition advocate James Q. Wilson acknowledged that “It is not clear that enforcing the laws against drug use would reduce crime. On the contrary, crime may be caused by such enforcement” (quoted in Husak, 2006: 32). The Global Commission on Drug Policy reached the same conclusion: “increased arrests and law enforcement pressures on drug markets were strongly associated with increased homicide rates and other violent crimes” (2011: 15). Thus, more crime is primarily the price of drug prohibition, not drug use (Cleveland, 1998: 179-80). Even more so the veritable wars that have broken out in foreign nations, such as Mexico (Chapman, March 29, 2010).

### **Failure to end drug use**

Despite all this effort, drug prohibition seems to have accomplished little. Obviously, the law is only one factor affecting drug use. Noted Mary M. Cleveland: “Most people choose not to use illicit drugs even when they have cheap and easy access to them. Enforcement can have some effect on light users; regular and problem users will get their drugs even in prison. Drug treatment and changes in social norms have far more influence on drug use than enforcement because they affect individuals’ attitudes” (Cleveland, 1998: 182).

Government drug seizures rise and fall, with records constantly broken. Street prices rise and fall. Yet people continue to use drugs, their consumption more affected by social and cultural factors than enforcement campaigns. For years drug use rose even among teens, the vast majority of whom told government researchers that it was easy to find and purchase drugs. Government figures indicate that 118 million Americans above

the age of 12, or 47 percent, have used illegal drugs (Law Enforcement Against Prohibition, n.d.). A similar percentage of high school students have tried illegal drugs before graduation (Law Enforcement Against Prohibition, n.d.).

Mike Trace, Chairman of the International Drug Policy Consortium, has concluded that despite receiving “unequivocal political support and massive financial investment,” the campaign to suppress drugs “has not achieved the desired control and constriction of wholesale markets.” Moreover, “efforts to stifle the flow of drugs from points of production to retail markets (generally described as interdiction), have also met with fundamental problems” (Trace, n.d.: 4). Demand reduction efforts have been no more successful. Indeed, “Various mixtures of these strategies and tactics have been implemented around the world over the last 50 years, but there is no evidence that any national government has been able to achieve anything like the objective of a controlled and diminished drug market, let alone a drug free world” (Trace, n.d.: 6).

In fact, enforcement often appears to correlate with *increased* use. Attorney and author Glenn Greenwald noted that, “the prevalence rate for cocaine usage in the United States was so much higher than the other countries surveyed that the researchers formally characterized it as an ‘outlier’” (Greenwald, 2009: 24). Other countries with an emphasis on enforcement, such as Australia and Canada, also exhibit higher than average drug use. The *Economist* magazine stated simply that, “There is no correlation between the harshness of drug laws and the incidence of drug-taking: citizens living under tough regimes (notably America but also Britain) take more drugs, not fewer” (Will, October 29, 2009).

The costs of the War on Drugs are felt throughout the world, starting with America’s closest neighbors. The terrible price has sparked growing interest in Latin America in decriminalization/legalization. Leading politicians, including former Mexican presidents Vicente Fox and Ernesto Zedillo, Brazilian president Fernando Henrique Cardoso, and Colombian president Cesar Gaviria, have begun pressing for Drug Peace.

In a paper prepared for the Global Commission on Drug Policy, Martin Jelsma of the Transnational Institute observed: “Some of the consequences resulting from the escalation of the last two decades were a nearly worldwide rapid increase in the prison population; human rights violations; restricted access to essential medicines; criminalization of users creating obstacles for health care, including strategies for HIV/AIDS prevention” (Jelsma, 2011: 8). In its June report the commission concluded: “The global war on drugs has failed, with devastating consequences for individuals and societies around the world.” Yet despite global enforcement efforts, consumption of cocaine, marijuana, and opiates increased by 27 percent, 8.5 percent, and 34.5 percent, respectively,

from 1998 to 2008 (Global Commission on Drug Policy, 2011: 4). The commission stated that “fundamental reforms in national and global drug control policies are urgently needed” (2011: 2).

### What kind of reform?

Legalization could take different forms. One could imagine anything from open commercial sales, with only age-related restrictions (the traditional cigarette model) to sales through restricted, perhaps even government stores backed by limits on marketing and advertising (the traditional alcohol model) (Bandow, January 1, 1992; Evans and Neustadter, 1998: 129-48; Fish, 1998: 163-71; Duke and Gross, 1998: 201-21; MacCoun and Reuter, 2001: 310-17; Benjamin and Miller, 1991: 166-204; Frazell, 1992: 293-96; Branch, 1992: 297-308; Trebach, 1992: 308-19; Eldredge, 1998: 160-79; Ethan A. Nadelmann, 1991: 241-50; Husak, 1992: 209-51). Individual drugs could be treated differently, depending on assessments of harm and other factors (see, e.g., Kleiman, 1992: 203-382).

Obviously, the strongest individual rights position would indicate no restrictions on adult drug use. Indeed, Thomas Szasz contended: “the drug legalizers’ opposition to the drug prohibitionists is so unprincipled that it makes the differences between the two parties illusory. Both groups accept that drugs denominated as dangerous *are* dangerous, and that ‘drug use’ *is* ‘bad’” (1992: 103). Szasz overstates the case, but any restrictions should not turn into prohibition *sub rosa* and should be carefully tailored to ameliorate the impact of drug abuse on others.

Of course, advocates of both decriminalization and legalization would maintain restrictions on drug use by children. Total prohibition does not protect them (Husak, 2002: 67-83). In fact, today’s enforcement efforts push youthful experimentation into criminal black markets rather than into less harmful gray markets, actually endangering children. In contrast, legalization for adults would allow greater emphasis on reducing leakage to kids.

Overall drug use likely would increase, but perhaps not as much as commonly assumed. Given the porous nature of drug prohibition, at least Western-style prohibition where users and sellers are not executed, the most likely abusers already have access to drugs. In their careful and detailed book, Robert MacCoun and Peter Reuter conclude that “Reductions in criminal sanctioning have little or no effect on the prevalence of drug use (i.e., the number of users)” and that “if relaxed drug laws increase the prevalence of use... the additional users will, on average, use less heavily and less harmfully than those who would have also used drugs under prohibition” (2001: 326, 327).

In fact, MacCoun and Reuter noted, America itself had “a smaller drug problem when cocaine and heroin were legal,” though the results

still were “unattractive” (2001: 204). The challenges then look minor compared to today, and much media-driven misinformation spurred the campaign to outlaw drugs a century ago (Miller, 1991: 85-99). Moreover, consumption of both alcohol and especially tobacco has fallen without a “war,” and even before politicians began dramatically hiking tobacco taxes (Husak, 2002: 160).

Indeed, legalization would not be a step into the unknown. Great Britain, the Netherlands, and Switzerland all allow some use of some drugs without criminal prosecution (see, e.g., MacCoun and Reuter, 2001: 205-99; MacCoun and Reuter, September 20, 1999: 28-30. See also Levine and Reinerman, 1998b: 68-71; McVay, 1998: 13-16; MacCoun and Reuter, 2005: 121-241; Oppenheimer, 1993: 194-225; Miller, 1991: 125-31; Turner, 1991: 175-90; Global Commission on Drug Policy, 2011: 7). (The approach of some nations often seems contradictory: Britain, for instance, was famed for permitting regulated heroin use, but limited that option in recent years and is harsh in other ways.) Many nations, as well as a dozen US states, have effectively decriminalized marijuana use.

Such systems are not without problems because drug use is not without problems. In particular, a small country liberalizing its laws is likely to draw in users from other nations, creating difficulties unrelated to drug liberalization per se. Nevertheless, countries that have liberalized and states that have decriminalized their drug laws have suffered no great increase in consumption (Global Commission on Drug Policy, 2011: 410-11).

A particularly important example is Portugal, which decriminalized use of all drugs, including cocaine and heroin, a decade ago. The measure was advanced, wrote Glenn Greenwald, “as the most effective government policy for reducing addiction and its accompanying harms” by encouraging users to seek treatment and has proved to be politically popular (2009: 10).

Adult use has increased only modestly while consumption by minors actually has fallen: “None of the parade of horrors that decriminalization opponents in Portugal predicted, and that decriminalization opponents around the world typically invoke, has come to pass” (Greenwald, 2009: 11). More people are in treatment as users no longer fear criminal sanction. Drug-related HIV infections and mortality rates are down. Drug use in Portugal remains low compared to the rest of the European Union (Greenwald, 2009: 22).

## Conclusion

Liberty—protecting individual freedom of action—is important because of its practical value, dramatized by the collapse of collectivism in its many forms in the 20<sup>th</sup> century. But liberty is even more important because it reflects the essence of the human person. Individuals are moral actors,

responsible for themselves, their families, their communities, and their nations. Only liberty allows them to act on that responsibility, while holding them accountable for their actions.

Drug use may not be wise—indeed, some drugs inevitably will be abused by some people. However, free individuals must be allowed to make mistakes. To have meaning, liberty must protect the freedom to act in ways which may offend individuals and even majorities. So it is with “drugs” currently banned by the US and other governments.

The issue is most often fought on practical grounds. And, despite the brutal determination of avid supporters of prohibition, the policy seems doomed for practical reasons. Explained Mike Trace: “What is now common knowledge—that prohibition and harsh enforcement cannot control the basic human impulse to use psychoactive substances, and the immutable rules of commodity markets—was hypothesized by a small number of voices through the 20<sup>th</sup> century, and has been repeatedly indicated by all respectable academic and policy analysis conducted in recent years” (Trace, n.d.: 13).

Equally important, the War on Drugs has turned into a broad assault on a free society. Argued law professor Steven Wisotsky: “the War on Drugs actually is a war on the American people—their values, needs and choices, freely expressed in the marketplace of consumer goods” (1986: 198). To an astonishing degree, drug enforcement has targeted the very liberties which to most people are inherent in a free society.

Thus, any analysis of liberty should include protection of the freedom to take drugs. Such a freedom need not be treated as absolute, given the negative impact of drug abuse. However, a free society should affirm and protect individuals who choose to ingest substances which alter their mental and physical states. Contrary to conventional wisdom, drug use should be treated as a protected liberty.

## References

- Annas, George J. (1988). Reefer Madness—the Federal Response to California’s Medical-Marijuana Law. In Jeffrey A. Schaler (ed.), *Drugs: Should We Legalize, Decriminalize or Deregulate?* (Prometheus Books): 120-29.
- Bakalar, James B., and Lester Grinspoon (1984). *Drug Control in a Free Society*. Cambridge University Press.
- Balko, Radley (2006, April 6). No SWAT. *Slate*. <[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2006/04/no\\_swat.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2006/04/no_swat.html)>, as of February 24, 2012.
- Balko, Radley (2010, March 23). Another Senseless Drug War Death. Reason online. <<http://reason.com/archives/2010/03/23/another-senseless-drug-war-dea>>, as of February 24, 2012.
- Bandow, Doug (1992, January 1). Dealing with Legalization. *American Prospect*. <[http://prospect.org/cs/articles?article=dealing\\_with\\_legalization](http://prospect.org/cs/articles?article=dealing_with_legalization)>, as of February 24, 2012.
- Benjamin, Daniel K., and Roger Leroy Miller (1991). *Undoing Drugs: Beyond Legalization*. Basic Books.
- Boaz, David, and Timothy Lynch (2006). Federal drug prohibition should be repealed. In Stuart A. Kallen (ed.), *Legalizing Drugs* (Thomson Gale).
- Branch, Taylor (1992). Let Koop Do It: A Prescription for the Drug War. In Rod L. Evans and Irwin M. Berent (eds.), *Drug Legalization: For and Against* (Open Court): 297-308.
- Chapman, Steve (2010, March 29). In the Drug War, Drugs Are Winning. *Reason online*. <<http://reason.com/archives/2010/03/29/in-the-drug-war-drugs-are-winn>>, as of February 24, 2012.
- Cleveland, Mary M. (1998). Economics of Illegal Drug Markets: What Happens If We Downsize the Drug War? In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.).
- Cole, Jack (2006). The War on Drugs is Destroying Lives. In Stuart A. Kallen (ed.), *Legalizing Drugs* (Thomson Gale).
- Cussen, Meaghan, and Walter Block (2005). Drugs Should be Legalized. In Karen F. Balkin (ed.), *Drug Legalization* (Greenhaven Press).
- Duke, Steven B., and Albert C. Gross (1998). Issues in Legalization. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 201-21.
- Eldredge, Dirk Chase (1998). *Ending the War on Drugs: A Solution for America*. Bridge Works Publishing Co.
- Erickson, Patricia G., and Bruce K. Alexander (1998a). Cocaine and Addictive Liability. In Jeffrey A. Schaler (ed.), *Drugs: Should We Legalize, Decriminalize or Deregulate?* (Prometheus Books).

- Erickson, Patricia G., and Timothy R. Weber (1998b). Cocaine Careers, Control and Consequences: Results from a Canadian Study. In Jeffrey A. Schaler (ed.), *Drugs: Should We Legalize, Decriminalize or Deregulate?* (Prometheus Books): 291-305.
- Evans, Richard M. and Stanley Neustadter (1998). Legalization: An Introduction. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 129-48.
- Fish, Jefferson M. (1998). Proposals for De-Escalating the War on Drugs. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 163-71.
- Fraser, Ronald (2010, July 4). Property Seizures Are Getting Out of Hand. *Winona Daily News*.
- Frazell, Daryl (1992). Should Drugs be Legalized? The Perils at the Extremes. In Rod L. Evans and Irwin M. Berent (eds.), *Drug Legalization: For and Against* (Open Court).
- Friedman, Milton (1972, May 1). Prohibition and Drugs. *Newsweek*, <[http://www.druglibrary.org/special/friedman/prohibition\\_and\\_drugs.htm](http://www.druglibrary.org/special/friedman/prohibition_and_drugs.htm)>, as of February 24, 2012.
- Glasser, Ira (1991). Drug Prohibition: An Engine for Crime. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 271-74.
- Global Commission on Drug Policy (2011). *War on Drugs: Report of the Global Commission on Drug Policy* (June). Global Commission on Drug Policy. <[www.globalcommissionondrugs.org](http://www.globalcommissionondrugs.org)>, as of February 24, 2012.
- Goldstein, Avram, and Harold Kalant (1993). Drug Policy: Striking the Right Balance. In Ronald Bayer and Gerald M. Oppenheimer (eds.), *Confronting Drug Policy: Illicit Drugs in a Free Society* (Cambridge University Press).
- Greenwald, Glenn (2009). *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*. Cato Institute.
- Grinspoon, Lester (1991). Marijuana in a Time of Psychopharmacological McCarthyism. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 379-89.
- Grinspoon, Lester, and James B. Bakalar (1987). Medical Uses of Illicit Drugs. In Ronald Hamowy (ed.), *Dealing with Drugs: Consequences of Government Control* (Lexington Books): 183-219.
- Hay, Joel W. (1991). The Harm They Do to Others: A Primer on the External Costs of Drug Abuse. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 200-25.
- Hill, John Lawrence (1992). The Zone of Privacy and the Right to Use Drugs: A Jurisprudential Critique. In Rod L. Evans and Irwin M. Berent (eds.), *Drug Legalization: For and Against* (Open Court).

- Howley, Kerry (2005). Locking Up Life-Saving Drugs: Prescription Laws Make Us Sicker and Poorer. *Reason Magazine* (August/September).
- Husak, Douglas N. (1992). *Drugs and Rights*. Cambridge University Press.
- Husak, Douglas N. (2002). *Legalize This! The Case for Criminalizing Drugs*. Verso.
- Husak, Douglas N. (2006). Legalizing Drugs Would Reduce Crime. In Stuart A. Kallen (ed.), *Legalizing Drugs* (Thomson Gale).
- Husak, Douglas, and Peter de Marneffe (2005). *The Legalization of Drugs*. Cambridge University Press.
- Jelsma, Martin (2011). The Development of International Drug Control: Lessons Learned and Strategic Challenges for the Future. Global Commission on Drug Policy working paper. Prepared for January 24-25, 2011 meeting.
- Jenkins, Simon (2009, September 3). The War on Drugs is Immoral Idiocy. We need the Courage of Argentina. *Guardian*.
- Kleiman, Mark A.R. (1992). *Against Excess: Drug Policy for Results*. Basic Books.
- Law Enforcement Against Prohibition [LEAP] (n.d.). *The War on Drugs at a Glance*. Web page. LEAP. <[www.leap.cc/for-the-media/the-war-on-drugs-at-a-glance](http://www.leap.cc/for-the-media/the-war-on-drugs-at-a-glance)>, as of February 24, 2012.
- Levine, Harry G., and Craig Reinerman (1998a). The Transition from Prohibition to Regulation: Lessons from Alcohol Policy for Drug Policy. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 264-70.
- Levine, Harry G., and Craig Reinerman (1998b). Alcohol Prohibition and Drug Prohibition: Lessons from Alcohol Policy for Drug Policy. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 43-61.
- MacCoun, Robert J., and Peter Reuter (1999, September 20). Does Europe Do It Better? Lessons from Holland, Britain, and Switzerland. *The Nation*: 28-30.
- MacCoun, Robert J., and Peter Reuter (2001). *Drug War Heresies: Learning from Other Vices, Times, and Places*. Cambridge University Press.
- MacCoun, Robert J., and Peter Reuter (2005). Drug Policies Should Focus on Harm Reduction. In Karen F. Balkin (ed.), *Drug Legalization* (Greenhaven Press): 121-24.
- Mandel, Jerry (1998). The Opening Shots of the War on Drugs. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.).
- McVay, Douglas A. (1998). Appendix 1a: The United States and the Netherlands. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.): 13-16.
- Miller, Richard Lawrence (1991). *The Case for Legalizing Drugs*. Praeger.
- Miron, Jeffrey A. (2009, March 24). Legalize Drugs to Stop Violence. *CNN*.

- Miron, Jeffrey A., and Katherine Waldock (2010). *The Budgetary Impact of Ending Drug Prohibition*. Cato Institute.
- Moore, Mark H. (1993). Drugs, the Criminal Law, and the Administration of Justice. In Ronald Bayer and Gerald M. Oppenheimer (eds.), *Confronting Drug Policy: Illicit Drugs in a Free Society* (Cambridge University Press).
- Morgan, John P. (1991). Prohibition Is Perverse Policy: What Was True in 1933 Is True Now. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 405-23.
- Mugford, Stephen (1991). Drug Legalization and the “Goldilocks” Problem: Thinking About Costs and Control of Drugs. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press).
- Nadelmann, Ethan A. (1991). Beyond Drug Prohibition: Evaluating the Alternatives. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 241-50.
- Naim, Moises (2011). *The Drug Trade: The Politicization of Criminals and the Criminalization of Politicians*. Global Commission on Drug Policy working paper. Prepared for January 24-25, 2011 meeting.
- Oppenheimer, Gerald M. (1993). To Build a Bridge: The Use of Foreign Models by Domestic Critics of US Drug Policy. In Ronald Bayer and Gerald M. Oppenheimer (eds.), *Confronting Drug Policy: Illicit Drugs in a Free Society* (Cambridge University Press): 194-225.
- Ostrowski, James (1991). Answering the Critics of Drug Legalization. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 304-15.
- Robins, Lee N., et al. (1988). Vietnam Veterans Three Years after Vietnam: How Our Study Changed Our View of Heroin. In Jeffrey A. Schaler (ed.), *Drugs: Should We Legalize, Decriminalize or Deregulate?* (Prometheus Books).
- Staley, Sam (1992). *Drug Policy and the Decline of American Cities*. Transaction Publishers.
- Stevenson, Bryan (2011). *Drug Policy, Criminal Justice, and Mass Imprisonment*. Global Commission on Drug Policy working paper. Prepared for January 24-25, 2011 meeting. <[http://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Com\\_Bryan\\_Stevenson.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.pdf)>, as of May 3, 2012.
- Stossel, John (2010, June 17). End the Drug War: Government Goes Astray When it Tries to Protect us From Ourselves. *Reason online*. <<http://reason.com/archives/2010/06/17/end-the-drug-war>>, as of February 24, 2012.
- Szasz, Thomas (1992). *Our Right to Drugs: The Case for a Free Market*. Praeger.

- Sweet, Robert W., and Edward A. Harris (1998). Moral and Constitutional Considerations in Support of the Decriminalization of Drugs. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.).
- Taubman, Paul (1991). Externalities and Decriminalization of Drugs. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 97-107.
- Thornton, Mark (1991). *The Economics of Prohibition*. University of Utah Press.
- Trace, Mike (n.d.). *Drug Policy—Lessons Learnt, and Options for the Future*. Global Commission on Drug Policies.
- Trebach, Arnold S. (1992). Tough Choices: The Practical Politics of Drug Policy Reform. In Rod L. Evans and Irwin M. Berent (eds.), *Drug Legalization: For and Against* (Open Court): 308-19.
- Trebach, Arnold S., and Kevin B. Zeese, eds. (1992). *Friedman and Szasz on Liberty and Drugs: Essays on the Free Market and Prohibition*. The Drug Policy Foundation Press.
- Trei, Lisa (2005, May 25). Higher Incarceration Rates Harm Social Stability, Scholars Claim. *Stanford University News*. <<http://news.Stanford.edu/news/2005/may25/inequality-052505.html>>, as of February 24, 2012.
- Turner, David (1991). Pragmatic Incoherence: The Changing Face of British Drug Policy. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 175-90.
- Vatz, Richard E., and Lee S. Weinberg (1998). Rhetorical Dimensions of Decriminalization. In Jefferson M. Fish (ed.), *How to Legalize Drugs* (Jason Aronson, Inc.).
- Will, George F. (2009, October 29). Gil Kerlikowske's Reality Check in the Drug War. *Washington Post*.
- Winick, Charles (1993). Social Behavior, Public Policy, and Nonharmful Drug Use. In Ronald Bayer and Gerald M. Oppenheimer (eds.), *Confronting Drug Policy: Illicit Drugs in a Free Society* (Cambridge University Press).
- Wisotsky, Steven (1986). *Breaking the Impasse in the War on Drugs*. Greenwood Press.
- Zimring, Franklin E., and Gordon Hawkins (1991). The Wrong Question: Critical Notes on the Decriminalization Debate. In Melvyn B. Krauss and Edward P. Lazear (eds.), *Searching for Alternatives: Drug-Control Policy in the United States* (Hoover Institution Press): 3-13.
- Zinberg, Norman E. (1987). The Use and Misuse of Intoxicants: Factors in the Development of Controlled Use. In Ronald Hamowy (ed.), *Dealing with Drugs: Consequences of Government Control* (Lexington Books).



