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The case against drug prohibition*

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Abstract

The case against drug prohibition

The case against drug prohibition is overwhelming. This law is to drugs what alcohol prohibition was to those substances: a disaster. Drug use, by and among consenting adults, is a victimless crime: it preys on the poor, lifts our inmate population into the stratosphere, has negative racial connotations and leads to needless deaths.

1. Introduction

Purpose: We attempt to make the case in favor of the legalization of drugs; **design:** We elucidate, and reject, the arguments put forth in favor of drug prohibition; **findings:** We conclude that the case for drug legalization is overwhelming; **originality:** This essay is original in the sense that we approach this often-discussed challenge with our own viewpoint. It is not at all original in the sense that many arguments are on the record, both pro and con legalization of drugs.

We write at a time when many states have already legalized medicinal marijuana, and a few have done so for recreational uses of this drug. Based on political opinion polls, more such instances may well be in the offing. The present paper applauds these initiatives, and makes the case for the legalization of *all* drugs, for any purpose. In section 2 we discuss the disastrous history of U.S. prohibition. Section 3 is given over to our analysis of the repercussions of the U.S. drug war. The purpose of section 4 is to address, and regret, the racist foundation of the U.S. drug war. The violence of the U.S. Drug War is our focus in section 5 and our responses to defenders of the Drug War is that of section 6. We study the positive effects of legalization in section 7 and conclude in section 8.

2. The disastrous history of U.S. prohibition

Prohibition is no stranger to U.S. politics. In the early twentieth century, one of the greatest legislative failures was the War Prohibition Act, which passed in January of 1920 and illegalized alcoholic beverages (Thornton 1991a, b). Advocates argued that the great majority of social ailments, including mental illness, unemployment, poverty, and crimes, found their roots in alcohol consumption and therefore its prohibition would alleviate these challenges. Alcohol prohibition from the onset served as a scapegoat for the social unrest following World War I in many communities during the 1920s. In the words of Reverend Billy Sunday,

The reign of tears is over. The slums will soon be a memory. We will turn our prisons into factories and our jails into storehouses and corncribs. Men will walk upright now, women will smile, and the children will laugh. Hell will be forever for rent. (Jones 2008)

Prohibition, fundamentally, was less of a public health campaign than it was an attempt to achieve an idealistic society, devoid of all social maladies. An often implied goal of prohibition was to lower deaths from cirrhosis of the liver, and other alcohol-infused admissions to state hospitals (Blocker 2006).

However, the actual result was quite different from what people such as Reverend Sunday expected. Crime spiked (Jones 2008). Organized crime flourished. Hard liquors were smuggled throughout the United States. Corruption among public officials ran rampant and the inmate populations of state-run jails exploded. The burden levied on taxpayers skyrocketed.

New, potent, hard liquors became prominent on the black market, rather than drinks with low alcohol content, such as beer, just as law-breakers today prefer smuggling lucrative, more potent substances such as cocaine and heroin over bales of marijuana. This is referred to as the “potency effect.” Both on the supply and the demand side of prohibition, stakeholders favor more intoxicating substances. Suppliers would rather smuggle substances that are worth more and take up less space since they are selling drugs and risking steep penalties. Buyers have a tendency to gravitate toward potent substances because they are risking fines or jail time. As has been frequently observed, prohibition pushes out the weaker and milder forms of drugs in order to increase the availability and use of stronger and more dangerous drugs (Levine & Reinarman 2004). In terms of street value, it pays more to provide a kilo of heroin or cocaine than marijuana.

As can be expected, given these disastrous results, the War Prohibition Act was repealed in 1933. But the so-called War on Drugs continues, with equally calamitous and ongoing consequences.

3. The repercussions of the U.S. drug war

In political/economic theory, there are only two possible ways for a government to prevent the widespread use of illicit drugs among its citizenry:

— It can either try to reduce the demand for the drugs by investing in drug use prevention and treatment, or

— It can focus on reducing the supply of drugs by identifying and eliminating distribution networks of all sizes as well as arresting individual users on a local level.

Clearly, the United States has taken the latter approach (Nunn 2002).

First of all, when the supply for a product is artificially reduced in any market (as through government intervention), chances are that demand will stay at the same rate regardless of the changes in supply. Since a sizeable portion of the population will always want access to drugs, all prohibition is effectively doing is raising the price, which makes users poorer. After all, these substances are still extremely easy to find for those who want them, thanks to the “balloon effect,”

which dictates that when a major distributor is taken out by law enforcement, a new one will pop up elsewhere. Therefore, it is a basic fact that the ideological goal of the drug war (which is to permanently end the supply of drugs to the U.S. populace and thus eradicate drug usage) is both unrealistic and inherently unachievable.

No one goes into the school yards of the nation offering youngsters free chocolate, in an attempt to hook them. Why not? Because the supplier will not later be able to markedly increase the price; the children can obtain this sweet in any number of dozens or scores of places. But if chocolate were illegal, and could only be acquired from a few competitors, each one attempting to brutalize the other out of its territory, matters would then take on more of the economic reality of the drug trade. In contrast, teenagers can be hooked on addictive drugs, not candy. Paradoxically, it may well be that fewer children have access to these products under legalization than prohibition. At least it is an empirical question.

4. The racist foundation of the U.S. drug war

If the War on Drugs is ideologically bankrupt, what actual effect is it having on society? According to data from 2013 and 2014, roughly 0.7% of the adult U.S. population (just over 2,000,000 people)¹ is now under the control of the U.S. correctional system on drug-related convictions. Most of these people are also subject to harsh “mandatory minimum” sentencing laws, which condemn even first-time drug dealers to serve long minimum sentences dependent upon what substance was being dealt and a variety of other factors. In effect, U.S. society is wasting the productivity of one out of every 150 of its citizens, most of whom are non-violent offenders.

All the evidence available shows that most of the U.S.’s imprisoned drug offenders are racial minorities, despite white people having a much higher incidence of drug use. According to the NAACP, “5 times as many Whites are using drugs as African Americans, yet blacks are sent to prison for drug offenses at 10 times the rate of Whites” (NAACP 2018). This makes sense — anti-drug laws have a long history of using racial resentment to gain popularity. For example:

— The country’s first opium laws were written in California in the 1870’s amid a wave of growing anti-Chinese sentiment caused by a severe economic depression.

— Hamilton Wright, one of the chief authors of the Harrison Narcotics Act of 1915 (which made it illegal for most people to utilize cocaine) once wrote that

¹ “Prisons, Jails, and People Arrested for Drugs | Drug War Facts.” This claims that, of drug offenders in the U.S. correctional system, 95,800 are in federal prison; 704,800 are in state prison; 977,662 are on probation; and 273,029 are on parole. These numbers were added to get 2,051,291 total drug offenders under the control of the U.S. correctional system.

“the use of cocaine by the negroes of the South is one of the most elusive and troublesome questions which confront the enforcement of the law in most of the Southern states” despite historical evidence pointing to the contrary.

— The Federal Marijuana Tax Act of 1937 was enacted due to increasing pressure from Western/Southwestern governments to legalize marijuana for the purposes of being able to arrest and deport Mexican people, who were its primary users (Helmer & Vietorisz 2012).

So the fact that the rate of black people being arrested for drug charges on a disproportionately high basis is nothing new, as racism has always manifested itself in drug laws.²

5. The violence of the U.S. drug war

Besides high rates of imprisonment, the War on Drugs has also hurt minority communities by creating the need for large-scale criminal organizations to traffic these chemicals. Consequentially, this has led to a meteoric rise in drug-related violence, as cartels throughout Latin America (Mexico and South America particularly) regularly engage in acts of horrific brutality in their never-ending campaigns against both rivals and the authorities. In fact, between 2007 and 2014, more than 164,000 people were victims of homicide in Mexico, most of whom can be directly attributed to huge spikes in violence due to the War on Drugs. That is more than the number of people killed in Afghanistan over the same stretch of time (Breslow 2015).

This war creates vast power for the foreign drug cartels that control the black market. The most common word associated with them is “violence.” The current drug monopoly is held by those who utilize fear and brutality to gain power and limit supply:

[The] Mexican government released new data showing that between 2007 and 2014, a period that accounts for some of the bloodiest years of the nation’s war against the drug cartels, more than 164,000 people were victims of homicide. Nearly 20,000 died last year alone, a substantial number, but still a decrease from the 27,000 killed at the peak of fighting in 2011. (Breslow 2015)

Individuals and their families are brutally murdered in these foreign drug markets to ensure the high flow of revenue to a very small number of specific suppliers.

Don Winslow, a veteran researcher and writer of the war on drugs elaborates on the effects legalization of marijuana has had on the cartels:

² Under alcohol prohibition, it was mainly young Italian men who were active in this industry in the early part of the twentieth century, not African-Americans. Why it was this way for that product, and the other way around for drugs, is an interesting question that would take us beyond the scope of the present paper.

Seizures of marijuana at the border are down almost 40% since several states in the U.S. have legalized it, *The Washington Post* reported. Mexican marijuana traffickers will tell you that it's not worth it anymore — they can't compete with the domestic American price and quality. The wholesale price of Mexican marijuana has dropped from \$100 a kilogram to \$25. Growers in Durango and Sinaloa have stopped planting the crop. So we're winning the war on marijuana along the border — costing the violent sociopaths of the cartels millions of dollars — by legalizing it. (Winslow 2015)

Creating a legal market for drugs would not automatically bankrupt these cartels, but it would go a long way in this direction. Ending this system would allow for competition, product quality, ease of access, and decreased prices to designate where consumers will purchase a good or service. Drug suppliers only create power from their ability to maintain scarcity of the products they provide. Once artificial, legally-induced limited supply gives way to competition, there is no remaining competitive advantage for drug cartels to maintain their murderous monopoly.

The Black Lives Matter movement is quite properly concerned with the threat to their population. How can this challenge be addressed in a wholesale manner? This can be accomplished by eliminating laws that prohibit not only marijuana, but also their stronger counterparts. Why? Because many African-American lives are tragically shortened via intra-group violence. The authors of the present paper all hail from New Orleans. Virtually every week there are deaths in this community which emanate from violence over territory, from drug deals gone bad. Legalize this industry, as was done with alcohol, and in almost one fell swoop these deaths will greatly diminish, if not fall to zero. Who kills anyone, anymore, over booze? Virtually no one, that is who.

6. Responses to defenders of the drug war

Those who defend the prohibition of drugs discuss the ethical, legal, and economic implications of legalization, yet few are able to find empirical evidence for their claims:

While it's true that we may not ever win the war against drugs... we're not ever going to win the war against murder, robbery and rape either. But our moral code rejects each of them, so none, including drugs, can be legalized if we still adhere to that code. (Hawkins 2007)

The important distinction between murder, robbery, rape, on the one hand, and drug use on the other, is that the first three are coercive and violate another individual's rights; this does not at all apply to the latter. The "moral code" difference between an act of coercion and victimless crimes is simply that; murder, robbery, and rape are violent and destructive crimes that result in loss to, or rights violations of, another individual's life or property. Drug use is voluntary on each side of an exchange. However, critics do acknowledge the negative effects of drugs:

If we legalized drugs, we'd be able to tax them and bring in more revenue for the state. But, how is that working out with alcohol and cigarettes? In 2004 and 2005, 39% of all traffic-related deaths was related to alcohol consumption and 36% of convicted offenders 'had been drinking alcohol when they committed their conviction offense.' When it comes to cigarettes, adult smokers 'die 14 years earlier than nonsmokers.' But, will we ever get rid of tobacco or alcohol? No, both products are too societally accepted for that and perhaps more importantly the government makes enormous amounts of revenue from their sale. (Hawkins 2007)

There are numerous holes in this argument. First, to defend the legality of the prohibition of drugs and alcohol on the basis of being "socially acceptable," one would also have to extend this moral judgment to once again prohibit gay marriage and re-legalize slavery. Gay marriage was, until fairly recently, seen as socially unacceptable and until June 26, 2015, illegal (ProCon.org 2016). Slavery was socially acceptable and legal until 1865. Yet social norms continuously evolve, and even influence legal status.

Hawkins also states that alcohol would never be prohibited due to the enormous amount of revenue the government receives for the existing market. This is possibly the weakest justification for legalizing one good and prohibiting another. The author justifies the continued legality of alcohol and cigarettes, and the deaths resulting from both, simply because the government receives hefty tax revenues. The state would never prohibit a good on which it benefits so greatly from taxation. The only consistent response to this belief would be either to legalize drugs (since the tax benefits clearly outweigh the social stigma and tax revenue) or re-illegalize alcohol (in order to match the current justifications for drug prohibition).³ But these are patent absurdities. Not even the most interventionist elements of society wish to return to alcohol prohibition. The very different responses to these two different sets of products is difficult to rationalize. Both are, after all, very harmful to health, the presumed reason for outlawry.

Edmund Harnett, Deputy Chief and Executive Officer of the NYPD also expressed his concerns and possible consequences that would result in drug legalization:

Legalization of drugs would increase use, lead to more experimentation by youth, and exacerbate the existing deleterious effects that drugs have on society... They also feel that legalization would help to create a large black market for drugs. Anti-legalization proponents also point out that drug dealers and hardcore addicts would not suddenly become productive, law-abiding members of society... legalization of drugs would lead to increases, not reductions, in crime because there would be more addicts and because of the aforementioned black market. (Harnett 2016)

The most notable aspect about Harnett's claims is that he cites no empirical data for these possible negative consequences; this is because there is none. How-

³ Libertarianism seeks to reduce government involvement in the economy and society to the greatest degree possible (Rothbard 1982). From a libertarian perspective, it would be an improvement to legalize drugs *in spite of the fact* that the government would inevitably tax them, and garner great revenues for its coffers. On this see Illescas 2016.

ever, there is clear evidence that the exact opposite effects occur, as in the case of alcohol. Mark Thornton, writes on the prohibition of this product,

Although consumption of alcohol fell at the beginning of Prohibition, it subsequently increased. Alcohol became more dangerous to consume; crime increased and became 'organized'; the court and prison systems were stretched to breaking point; and corruption of public officials was rampant. No measurable gains were made in productivity or reduced absenteeism. (Thornton 1991b)

Prohibition is directly correlated with an increase in usage. Individuals are extremely intrigued by things which are illegal, as human nature has often shown.

An even better example is underage drinking. For youths under the age of 21, alcohol is illegal; however, a majority of young adults engage in this practice: "By age 18, more than 70% of teens have had at least one drink" (surgeongeneral.gov). The number of individuals who did not choose to participate under the age of 21 did not suddenly skyrocket once drinking became legal. Most of these individuals maintained their preferences of light to no alcohol use; legality did not affect their appeal to whiskey, wine, and beer.

7. The positive effects of legalization

What would it look like if the U.S. government were to end the War on Drugs? To start, society would need to make rules about where and when people would purchase and consume these newly-legal drugs and under what conditions they would be allowed to do so in public. For instance, it would likely be decided that all the newly-legalized drugs would only be purchased by anyone 21 or older, like alcohol. Undoubtedly these drugs would only be dispensed by certified professionals at dispensaries and heavily taxed by both the state and the federal government. If they were taxed at a similar rate to alcohol and cigarettes, it's estimated that the government would be able to bring in \$47 billion in tax revenue every year (Breslow 2015).⁴

Legalization would also decrease criminal activity, especially in inner cities. There are two major types of violence stemming from drug prohibition. Antidrug legislation promotes the formation of organized crime, increasing the prevalence of gang activity and the dangers associated with it. This legislation also puts a substantial premium on illicit drug prices, baiting more individuals into crime in order to obtain enough cash to purchase these substances. In the United States, the FBI reported almost 15,000 murders in 2007 that occurred specifically during a narcotics felony, such as drug trafficking or manufacturing, which are considered

⁴ The pure libertarian position would make no distinction whatsoever between these drugs, on the one hand, and items such as bubblegum, shoes and turnips on the other; with the exception of children, of course. It would still be a crime to sell these items to them, as it now is with regard to booze.

drug related (FBI 2014). These numbers would fall drastically as the black market for importing and selling drugs would be eliminated.

Some impoverished individuals addicted to drugs resort to crime in order to pay for these illicit substances. Through the lack of education received and becoming dependent on the said drugs, they have no job and turn to crime in order to raise money to purchase more drugs. Currently, drugs carry a heavy premium to account for the high risk associated with their production and distribution. Following their legalization, these illicit substances will be notably cheaper and more accessible. A survey of state inmates reported that the purpose of 17% of all offenses was to get money to buy drugs. Of these offenses, 48% were property and drug offenses, 12% were violent (“Drug-related crime” 1994). There may be an association arising from a shared common cause but no direct causal link between offending and drug use.

Taxpayers are bearing much of the burden of this Drug War. In 2014, Of the 1,561,231 arrests for drug law violations in 2014, 83.1% (1,297,384) were for possession of a controlled substance. Only 16.9% (263,848) were for the sale or manufacturing of a drug (FBI 2014). These are people thrown into jail and living on tax dollars for victimless crimes. Currently, billions of dollars are being spent needlessly on agencies such as the Drug Enforcement Agency, Customs, and the Armed Forces, and drugs such as heroin and cocaine are more readily available, and at a lower cost, than they have been since the 1970s.

Let us consider two last benefits of legalization: there would be less damage from impure drugs. Under alcohol prohibition, there was “bathtub gin.” This referred to whiskey manufactured under unsafe conditions, which led to poisonings. Nowadays, under free enterprise, there is no such difficulty.⁵ Lenny Bruce, a libertarian hero, died not from an overdose of heroin, but rather from poisoned drugs. Without this unwarranted war, such deaths could be avoided. Similarly, this “war” impinges upon yet another health issue, AIDS and shared needles. Under legalization the incidence of contagion from this source would come to an abrupt end.⁶

8. Conclusion

Acknowledging the failure of the drug war, legalizing illicit drugs, and focusing attention onto the underlying issues of addiction would better serve society. Individuals in despair who feel as though they have no way out of their situations

⁵ Nor is this safety due to organizations such as the Food and Drug Agency. For critiques of the FDA see: Becker 2002; Goodman 2011; Gottlieb 2010; Henninger 1990; Higgs 1994; Hoppe 1993; Kaitlin et al., 1987; Kazman 1990; Klein and Tabarrok (undated); Peltzman 1973, 1974, 1987a, b, 2005; Sardi 2007; Steinreich 2005.

⁶ For more on the disadvantages of prohibiting drugs, see: Stacy, Nguyen, & Block 2014; Cachanoski, Zelaya, & Block 2013; Block, Wingfield, & Whitehead 2003; Cussen & Block 2000; Block 1993, 1994, 1996; Friedman 1992; Hanke & Walters 2016; Szasz 1985, 1992; Thornton 1991a, b.

often turn to addictive drugs as an escape. Race is a huge issue looming in the drug war. We should all advocate for the legalization of illicit drugs. History shows the unsavory source of this legislation. If individuals were provided with a clear and unbiased education about the illicit drugs they wished to consume and still decide to use, government should allow them to do so in a free manner. Consequently, the United States would realize the multiple positive externalities of the free market trade of illicit drugs, such as lower rates of hard drug usage through education, greater production of cleaner products, safer inner city communities, and saving taxpayer dollars.

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