

## The Cultural Policy Studies Project

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# WHY AMERICANS SHOULD RESIST THE LEGALIZATION OF DRUGS

## INTRODUCTION

Americans are again being asked to legalize drugs. Support for a review of drug legalization has come from a broad range of public figures, from U.S. Surgeon General Joycelyn Elders, the popular Baltimore mayor Kurt Schmoke, conservative pundits, academics, leading economists, experienced foreign officials, and individuals in the press.

The call for legalization has had a new lease on life because the Clinton Administration is signaling ambivalence on drug issues, but policy makers should pause and ponder the consequences of such a dramatic reversal in public policy. As social scientist Charles Murray indicates, there is a fundamental conflict between freedom and responsibility implicit in the issue of legalization.

I cannot bring myself to support a federal law legalizing drugs...as a single, isolated change in social policy. For though I am confident that legalization would work in a society where people are held responsible for the consequences of their actions, that's not the way contemporary America works....To legalize drugs in America as of 1990 is to give people the right to be responsible for themselves without also obliging them to do so.<sup>1</sup>

There are three basic reasons why the idea of legalization once again has begun to attract interest.

**First**, a small and influential group of opinion makers, especially those close to policy makers, have been able to advance a policy agenda that the majority may oppose.

1 Charles Murray, "How to Win the War on Drugs," *The New Republic*, May 21, 1990, pp. 19-25.

**Second**, some appointees in the Clinton Administration and other public officials now favor some form of legalization. Even though Joycelyn Elders, for example, represents a tiny minority, because her views are magnified by press coverage they have set much of the tone for the national debate on drugs. Moreover, the President's one-time, half-hearted rebuttal of Elders never carried moral conviction and was not backed by clear policy. So her words carried more weight. In fact, on drug enforcement, the Clinton Administration generally is ambivalent and lacks coherence or direction.<sup>2</sup>

**Third**, there is a feeling that the worst may be over and that it is time to relax legal restrictions against drug use. In 1993, the University of Michigan High School Senior Survey, one of the nation's largest annual drug surveys, reported that declines in adolescent use of illegal drugs in recent years were holding. Significantly, this research indicated that perceptions of risk and peer norms, not the availability of drugs, led to declines in use.

But the survey also noted that attitudes among younger students, particularly eighth- and ninth-graders, who were not hearing any coherent social message about the risks of using drugs, were drifting back to an earlier view that experimenting with illegal drugs was not so bad. The 1994 survey confirms this pattern. In addition, the major survey of hospital emergency room admissions for 1993 shows increases in admissions for drug-related emergencies. These are warning signs—not a confirmed trend, but a series of flashing lights.

Forced to deal at first hand with the consequences of virtual legalization in the 1960s and 1970s, Americans reacted strongly by demanding action to stop crime and drug trafficking on America's streets. That mood has not changed. Officials and pundits who wish to change public attitudes on this issue need to marshal better arguments and stronger evidence to support the case for drug legalization than they have mustered thus far. The most fashionable arguments do not begin to make a valid case for such a momentous change in public policy.

Members of Congress, state legislators, and ordinary Americans following the legalization debate should keep certain points in mind in this debate. For one thing, there is no single argument for legalization; advocates use an assortment of arguments, many of them contradictory. This *Backgrounder* presents a distilled but representative range of these pro-legalization arguments. Several assumptions underlie these arguments, and these assumptions are presented in their starkest form in order to make them clear and explicit. For another, the issue cannot be resolved simply by an appeal to undisputed interpretations of the data. Moreover, several questionable assumptions underlie the arguments for legalization. Once these assumptions are analyzed and rejected, the case for drug legalization is severely weakened.

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<sup>2</sup> See John P. Walters, "How the Clinton Administration is Abandoning the War Against Drugs," Heritage Foundation *Backgrounder* No. 989, June 16, 1994.

## THE FAULTY LOGIC OF LEGALIZATION

Some Americans have for long favored immediate legalization of all illegal drugs, particularly marijuana, cocaine, and heroin. Others, such as the editors of *High Times* and the National Organization for the Reform of Marijuana Laws (NORML), have focused on the legalization of cannabis as just another lifestyle choice. But these views are marginal to the current debate on drug legalization.<sup>3</sup> More important are the views of “mainstream advocates” of drug legalization, most of whom are prepared to acknowledge that drug abuse is bad for individuals and society but still believe that legalization in some form would be good public policy. Thus, public personalities as different in their views as Surgeon General Joycelyn Elders, *National Review* Editor-at-Large William F. Buckley, Nobel economist Milton Friedman, and Baltimore Mayor Kurt Schmoke have argued for some degree of legalization. To weigh today’s campaign for legalization, lawmakers must explore the views of these influential advocates.

Seven main arguments are used to justify legalization. Though not every advocate uses every argument and not everyone who does use them advocates legalization *per se*, all seven figure one way or another in the rationale for legalization. These arguments are:

- ① **The prohibition of drugs only leads to more crime.**
- ② **Interdiction has failed.**
- ③ **Society cannot afford the costs of imprisoning drug offenders; enforcement falls disproportionately on minorities, and the cost exceeds the benefits.**
- ④ **Drug use is not that bad.**
- ⑤ **Society permits alcohol and tobacco use, which kills many more Americans.**
- ⑥ **The drug problem is primarily a treatment issue. In addition, policy should focus on demand reduction.**
- ⑦ **In a democracy, the government has no right to interfere in the private lives of citizens if their activities harm nobody else.**

Incorporating all seven of these converging propositions, implicitly or explicitly, is the general argument that because society has no right to control private drug use, and cannot do so effectively. The only proper conclusion from this argument, it is claimed, is legalization, whether it be absolute legalization (all drugs should be legalized for all individuals), which is a distinctly minority view, or some form of controlled legalization (drugs would not be made available to everyone who wanted them, such as those below a certain age), the most common position.

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3 See Robert Peterson, “Legalization: The Myth Exposed,” in Melvyn Krauss and Edward Lazear, eds., *Searching for Alternatives: Drug-Control Policy in the United States* (Stanford: Stanford University Press, 1991), pp. 324-355.

### **ARGUMENT #1: Prohibition cannot work and encourages crime.**

Americans are painfully familiar with the experience of prohibition. Against the backdrop of Eliot Ness battling Al Capone, the social experiment of trying to control alcohol consumption is seen as a dismal failure. By analogy, it is claimed that any effort to control any other drug must be doomed to the same fate. So the alternative must be to legalize drugs; not to do so means more opportunities for criminals and ineffective policies which punish innocent victims with draconian laws.

The most impressive spokesman for this point of view is Nobel laureate Milton Friedman, according to whom, "Drugs are a tragedy for addicts. But criminalizing their use converts that tragedy into a disaster for society....Our experience with the prohibition of drugs is a replay of our experience with the prohibition of alcoholic beverages." Friedman maintains that had cocaine been legalized in 1972, there would have been no crack epidemic because crack would not have been invented and there would be far fewer addicts. "The lives of thousands, perhaps hundreds of thousands of innocent victims would have been saved....The ghettos of our major cities would not be drug-and-crime-infested no-man's lands. Fewer people would be in jails, and fewer jails would have been built." Moreover, adds Friedman, "Colombia, Bolivia and Peru would not be suffering from narco-terror, and we would not be distorting our foreign policy...." The answer is to decriminalize drugs and treat addicts, which is more humane than seeking to punish them:

Decriminalization would not prevent us from treating drugs as we now treat alcohol and tobacco: prohibiting sales of drugs to minors, outlawing the advertising of drugs and similar measures. Such measures could be enforced, while outright prohibition cannot be. Moreover, if even a small fraction of the money we now spend on trying to enforce drug prohibition were devoted to treatment and rehabilitation, in an atmosphere of compassion not punishment, the reduction in drug usage and in the harm done to users could be dramatic.<sup>4</sup>

Thus, to paraphrase Friedman, with legalization, drug use will drop, crime will be reduced, and Americans will be better off with more money in their pockets. According to this view, prohibition has caused immense harm, and the solution is decriminalization. Professor Friedman's view best represents what may be called the "prohibition-cannot-work" school. Many others, some marshalling considerable facts about the failure of alcohol prohibition, use this putative analogy to suggest the futility of any prohibition against drugs.

The foundation of Friedman's argument rests on the failed experiment with the prohibition of alcohol and the validity of the analogy between alcohol and illegal drugs. But interpreting the experience of prohibition in the 1920s and 1930s is not as simple as is usually assumed. The Eighteenth Amendment to the Constitution did not make alcohol consumption illegal; it prohibited the manufacture, sale, importation, or transportation

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4 Milton Friedman, "An Open Letter to Bill Bennett," in Rod Evans and Irwin Berent, eds., *Drug Legalization: For and Against* (La Salle, IL.: Open Court Press, 1992), pp. 49-52. For a more detailed expansion of this argument see also Friedman, "The War We Are Losing," *Searching for Alternatives*, pp. 53-68.



of intoxicating liquors. But because the law did not prohibit consumption, it contained an inconsistency which it could never overcome: it made alcohol illegal to produce but left it legal to drink. A more consonant policy doubtless would have been less ambiguous in its intent and no doubt more effective in its results. The equivalent of prohibition today, with respect to drugs, would be to make drug use legal but to prosecute suppliers.

Despite this inconsistency, prohibition did have a positive effect. Alcohol consumption declined during the years of prohibition by between 30 percent and 50 percent, a significant change given alcohol's 5,000-year history of social acceptance and sanction. Alcohol-related deaths from cirrhosis declined sharply. Mental hospital admissions from alcohol-induced psychosis declined by 50 percent. And overall violent crimes did not increase, despite sharp increases before prohibition. Nor did prohibition create organized crime, which existed well before the Eighteenth Amendment or the Volstead Act.<sup>5</sup> It did give organized crime a boost, of course, but was not decisive in its creation or survival. A careful examination of the evidence concerning the effects of prohibition may not settle the issue, but the claims that prohibition was a complete failure are not based on historical facts. Too often, proponents of drug legalization ignore the historical facts and rely on myths about prohibition to make their case.

The experience of alcohol prohibition, moreover, is not in any case a fitting analogy for drawing conclusions about drug prohibition.<sup>6</sup> Alcohol, for better or worse, has a long heritage of social acceptance, and there is now considerable evidence that small amounts have some health benefits. Further, alcohol is safe for most people in small amounts and can be self-administered with a strong likelihood of self-control even over a lifetime of use. No similar claims can be made for psychoactive drugs, not even marijuana. This is not to deny, of course, that abuse of alcohol does untold damage to individuals and costs society enormous sums in health care and lost production.

Unlike alcohol, major illegal drugs such as heroin and cocaine have no long history of social acceptance. An overwhelming 80 percent or more of the public supports keeping these drugs illegal. These drugs are products of modern chemistry, being concentrates of naturally occurring substances. They also are far more powerful than alcohol, have stronger effects on users, are more destructive of personality, and are more addictive. The tradition that advocates of legalization must overcome is the public's unwillingness to accept legalization as a positive good. Since no one, including Professor Friedman, argues that drug addiction is desirable, it makes no sense to legalize substances that will cause yet more harm when overwhelming public support for their prohibition already exists. In this respect, the analogy to alcohol simply fails.

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5 Mark Moore, "Actually, Prohibition was a Success," *Drug Legalization*, pp. 95-97. For a counter argument, see John Morgan, "Prohibition Is Perverse Policy: What Was True in 1933 Is True Now," *Searching for Alternatives*, pp. 405-423.

6 This is not the place to discuss the requirements, intricacies, and liabilities of the appropriate use of analogies. Suffice it to say that, to be valid, there must be a respectable correspondence between the various elements of the analogy. An analogy works best when it is demonstrating parallels between lines of reasoning. It is far more dubious when used to argue that because A is so, by analogy, B must be so. Regardless of how close this correspondence is, an analogy is an illustration of a point, not a proof. It cannot substitute for facts.

But prohibition of illegal drugs, legalization advocates argue, only supports the growth and spread of organized crime and violent street crime. Alcohol prohibition created the Mafia, the argument goes, and drug prohibition has created and deepens the influence and effects of drug cartels and crime in general.<sup>7</sup> Even if this indictment were true, which it is not, it would not justify the conclusion that society must quit trying to control drugs.

**Crime and Drugs.** The case for a causal connection between prohibition and organized crime or crime in general is not persuasive.

In the first place, organized crime in America was not created by alcohol prohibition. Crime has prospered in many conditions without the boost attributed to prohibition, here and elsewhere.

Second, despite the claims that prohibition increases the profitability of controlled items, thus creating better opportunities and smarter organizations, no one has convincingly shown a causal link between prohibition and the growth of organized crime. Alcohol prohibition certainly increased the chances for profits, but organized or individual crime is opportunistic. Criminals will exploit any illegal avenue to increase profits. To claim that prohibition creates crime and that crime and criminals largely would disappear if drugs were legalized is interesting but hardly convincing.<sup>8</sup>

Third, the voluminous research on the relationship between violent crime and drugs does not indicate a causal link between legalizing drugs and stopping crime. Many criminals use drugs, and some drugs exacerbate violent tendencies. And a significant number of criminals committed crimes before they used them, not because they used them.<sup>9</sup> They do not become model citizens with legalized drugs. Some addicts resort to property crimes and violent crimes to sustain their habits. There is no evidence, however, that legalizing drugs would suddenly change all this. In the Netherlands, where drug use in certain areas is legal, property crime by addicts remains high. Unless drugs are distributed free of charge, at some point the addict is unable to earn an income and must resort to crime or panhandling to finance the habit. And the behavioral side effects of taking a drug do not disappear if the drug is made legal. If drug use increases with legalization, legalizing drugs is far more likely to create more crime, not less.

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7 See Ira Glasser, "Drug Prohibition: An Engine for Crime," *Searching for Alternatives*, pp. 271-282, for this argument in its most determined form.

8 One of the more breathless of these assertions holds that "We would be able to walk virtually any street at night as crime would be significantly reduced. Our criminal justice system would no longer be in gridlock. Our police could spend their time becoming members of the community....Courts would not be forced to plea-bargain...." Kevin Zeese, "Drug War Forever?" *Searching for Alternatives*, pp. 251-268.

9 For a comprehensive review of these relationships, or the lack of causal links, see the definitive study by James Q. Wilson and Richard Herrnstein, *Crime and Human Nature* (New York: Touchstone Books, 1985); the various studies in Michael Tonry and James Q. Wilson, *Drugs and Crime* (Chicago: University of Chicago Press, 1990); and the studies in Mario De La Rosa *et al.*, eds., *Drugs and Violence: Causes, Correlates, and Consequences*, NIDA Research Monograph 103 (Rockville, MD: NIDA, U.S. Department of Health and Human Services, 1990).

Fourth, the analogy between alcohol prohibition and experience with the prohibition of heroin and cocaine will not survive close scrutiny. Most areas of major opium production have no meaningful prohibition but still experience drug gangs. The Burmese government, for example, exercises no or only intermittent authority in most growing areas in what is the world's largest opium-producing region; and since most of the opium is consumed locally, prohibition on use, which is similarly lax, is not a major factor either. These areas are dominated by local warlords, who created themselves from opium profits and local nationalist sentiments, not from prohibition.

In the case of cocaine, awareness of the extent of the problem did not catch up with reality until production was on a massive scale in Bolivia, Colombia, and Peru and the cartels were deeply entrenched and well-financed. Although production and use were illegal in the United States and in the Andes, there was no real control of production at source and only pitiful efforts at interdiction and enforcement in the United States until cocaine wars and addiction exploded on American streets. It was the introduction of crack cocaine in 1986, and the death of young Maryland basketball star Len Bias, that aroused the public and led to the Reagan Administration's vigorous counter-drug policies and enforcement. The problem of organized crime in drugs *preceded* any real attempt at control.

For the sake of argument, however, let us assume a causal relationship between prohibition of substance and a rise in crime. Let us further assume that this relationship proceeds the way legalization advocates would have it: that prohibition creates crime and not the reverse. Does it necessarily follow that society is wrong to continue efforts that do not resolve the problem and may even make it worse? Not unless one believes that drug use and its consequences are acceptable in the first place and that any effort to control them is inherently wrong.

Here an analogy will help to illustrate that prohibition, even if it fails or makes the problem worse, can be useful and necessary. There is a worldwide market for counterfeit airplane parts, and there also is a universal prohibition on making and selling them. This prohibition has not stopped their manufacture or sale; instead, it has made production far more lucrative. As one would expect, the result is more illegal parts. The view that forbidden fruit only makes matters worse leads to the conclusion that, since prohibition has failed and seemingly has made the situation worse, legalizing counterfeit parts is an acceptable solution. By this analogy, we should legalize counterfeit parts and be willing to fly in planes that carried them. The fact that we do not indicates that there is another value at work other than simply legalizing difficult problems.

In fact, society retains a right, and in many cases an obligation, to sustain programs that only reduce—but do not eliminate—the problems they are designed to resolve. This is true with respect to pollution, violent crime, child abuse, and countless other areas where there is no hope of ultimate success in ending the abuse. Many legalization advocates recognize this when dealing with other social issues, but apparently not when it comes to drugs.

In the case of drug control, absolute success is not necessary to justify prohibition, nor is an unpleasant side-effect necessarily sufficient cause to end it. Too many advocates of legalization argue that anything less than a Stakhanovite performance in ending drug production, smuggling, and use is proof that decriminalization is the only appropriate response, but such an argument is not sustainable in any other area of social policy. After



several thousand years, civilized societies have failed to eliminate murder, rape, or child abuse. Nor have they eliminated organized crime, the manufacture of counterfeit airplane parts, or genocide, but no one seriously sees these failures as justification for surrender.

Is there something inherent in drug use that sets it apart from all other behavior subject to social control? Perhaps so. In the meantime, however, complete success is not a justifiable criterion for judging the success or failure of prohibition, the admissibility of social controls, and the need to decriminalize drugs.

## **ARGUMENT #2: Interdiction has failed.**

Closely allied to the anti-prohibitionist argument is the view that because efforts to stop the flow of drugs have failed and are bound to fail, and because interdiction strategies have distorted American foreign policy and put allied countries needlessly at risk, America must discard this hopeless effort. Drugs, after all, continue to flow. The conclusion: the U.S. government should stop trying to do the impossible.

Mathea Falco, Assistant Secretary of State for International Narcotics Matters during the Carter Administration, makes this point in her book, *The Making of a Drug-Free America*, to justify a treatment-focused policy. "Not only have we failed to reduce the supplies of illicit drugs," says Falco, "we have also failed to reduce the human toll of our drug problem. Record numbers of arrests have not diminished violent crime, addiction, and urban blight."<sup>10</sup> The implication here is that all these problems are the result of drugs, a claim made by many others.

Her conclusion: stop interdiction efforts or at least focus on treatment and demand reduction in order to create a drug-free America. The putative failure to stop the flow of illegal drugs, however, by itself, does not justify foregoing interdiction. Most arguments against interdiction seem to assume that 100 percent success is the only justification for such a policy.<sup>11</sup> In any other context, this would be absurd.

The most common indictment of interdiction is that, despite heroic efforts, it has not cut off the flow of drugs or reduced appreciably their street price, but this indictment succeeds only by removing interdiction from its context and pretending that it must stand alone. In the best of all possible worlds, in which positive actions produce only expected results, price and availability would be sufficient as a basis for judgement. But the world is less than perfect, and so expectations need to be more humble.

Price and availability, in fact, are not decisive in judging the success or failure of interdiction. In the first place, no one who has argued for interdiction believes that it would stop all illegal drugs or stop efforts to produce and use them. In the face of two of the most powerful motives—the desire for altered states of consciousness and the desire to turn a profit—human nature and ingenuity will find a way no matter how serious the effort to stop them. Second, the real world of drug trafficking is a reactive one. Trafficking

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10 Mathea Falco, *The Making of a Drug-Free America: Programs that Work* (New York: Times Books, 1992), p. 9.

11 It should also be noted, contrary to Falco, that interdiction did virtually eliminate marijuana imports into the United States in the 1970s, and subsequent enforcement efforts have substantially raised, and kept uniformly high, street prices of what used to be a relatively cheap drug.



is big business, and traffickers are well-organized and well-financed. They can and do learn from their mistakes, and their size and diversification mean that they can survive even heavy blows aimed at their operations. Thus, for every action taken against them, they adjust and respond with new initiatives. Since interdiction alone cannot completely control trafficking or use, it cannot stop them. Its aim, however, is not a final solution, only a workable one.

The principal contribution of interdiction is to raise the risks and costs of trafficking and in using drugs. The effects are reflected in the high street price of illegal drugs, a price that already takes law enforcement into consideration. Arguments such as those by Peter Reuter, a drug analyst with the RAND Corporation, to the effect that more interdiction raises the price of drugs only marginally and is therefore of little use, thus are largely irrelevant. High prices and the risk of prosecution deter potential users and discourage many frequent users. They are one of the reasons people quit before their casual use can become an addiction. By keeping prices high, interdiction and enforcement are elements of demand reduction. At home, interdiction thus is not a supply-reduction strategy but a demand-reduction program, and part of a coherent social message that drug use is wrong and punishable. And it has worked. According to John Walters, former deputy director of the White House Office of National Drug Control Policy, the Bush Administration's interdiction efforts resulted in a significant reduction in the availability of cocaine. This not only drove up the price of the drug, but also coincided with a decline in cocaine-related deaths and a 27 percent reduction in cocaine-related emergency room treatments.<sup>12</sup> Internationally, the purpose of interdiction is to create difficulties for the major criminal groups that traffic in and profit from illicit drugs. The disappearance of the Medellin Cartel illustrates that resolve and perseverance work.

The two key influences on potential users, as reported by addicts and casual users, are the risks they perceive in trying to buy drugs and the ease with which they can do so. The higher the risk and greater the difficulty, the higher the deterrent value. To be sure, this equation seldom works for hardcore addicts, but casual users are discouraged by a riskier environment. Further, interdiction and law enforcement efforts are visible representations of a social judgment about drug use. Clear, unequivocal standards send a signal to potential users, especially the young, about acceptable behavior.

From 1985 until recently, visible interdiction and enforcement have contributed to steady declines in all categories of drug use except among hardcore addicts. The decisive criteria for success in counter-drug programs lie in measuring the rates of use and addiction and changes in public attitudes, not in counting the total number of seizures or the present street price of a given drug. Data collected by the National Household Survey on Drug Abuse show that casual or non-addictive use of cocaine was "dropping dramatically" when the Reagan and Bush Administrations were stepping up interdiction efforts. A rough estimate during the period 1985 through 1992 was an almost 80 percent decline in non-addictive users of cocaine, significantly reducing the overall demand for the drug.<sup>13</sup> Advocates of legalization or treatment-only recognize this pattern in relation to their own position when they note that the measure of their success will not be avail-

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12 See Walters, "How the Clinton Administration Is Abandoning the War Against Drugs," p. 20.

13 *Ibid.*, p. 21.

ability, price, the amount of drugs seized, the number of people incarcerated, or the number of patients in treatment, but changes in public attitudes and declines in users and addiction rates.

By these addiction rate standards, the record of prohibition is impressive. By 1992, after a decade of increased enforcement and treatment efforts, national surveys showed that teenage drug use was at the lowest levels in 20 years; monthly cocaine use had dropped 78 percent; close to half of cocaine production was being seized and major trafficking organizations had been disrupted or eliminated; negative attitudes towards drug use were predominant in high schools and the broader public; drug costs remained high; and using drugs was widely seen as a risky choice. Taken in the context of the epidemic proportions of drug use during the 1960s and 1970s, these were stunning gains.<sup>14</sup> Interdiction is not solely responsible for this success, it also cannot be singled out as a failed element. It was and must be a component in any coherent strategy aimed at reducing drug use.

But what of the claim that interdiction distorts U.S. foreign policy and puts democracy at risk in such places as Bolivia, Colombia, or Peru? The ultimate question is whether interdiction contributes to the security of U.S. citizens, not whether it responds to the concerns of other countries. When a threat emanates from a foreign source, U.S. policy makers are obligated to respond. For example, when Libyan-sponsored terrorists killed Americans in Europe, American policy makers did not focus on whether a strong response would destabilize Libya, but on whether it would secure American interests. In considering drug issues, Americans are perfectly within their rights to demand that countries which are the source of dangerous drugs coming to the United States control production and trafficking, especially when the drugs are illegal in these countries and by international agreement. American policy makers are, of course, properly concerned about preserving democracy overseas. The consideration is whether U.S. interdiction efforts are a threat to democracy in these countries and, if so, whether the threat is so great that it outweighs the value of international efforts to interdict dangerous drugs.

In this context, certain facts are relevant. First, democracy in Bolivia and Peru has been shaky on its own terms, aggravated by the mismanagement of local authorities, long before any U.S. interdiction efforts. Second, the power of the drug lords to corrupt local society, to use violence to intimidate local authorities on a massive scale, and to suborn the institutions of justice, is so extensive that the true threat to democracy lies in the existence and continued operation of these criminal organizations. Far from targeting foreign countries, U.S. interdiction efforts are designed to work with these countries to strengthen domestic institutions and to resist their subversion and intimidation by increasingly powerful criminal cartels.

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<sup>14</sup> For a solid discussion of these efforts, see *Ibid.*, pp. 11-22.

### **ARGUMENT #3: Enforcement has failed.**

Critics of counter-drug policy are fond of pointing out that the U.S. prison population is the highest in the world and that, despite draconian drug laws and punitive enforcement, drug use continues and drugs are readily available. The costs of imprisonment are heavy, they add, and the money misspent on enforcement could be employed better elsewhere; moreover, the fact that enforcement efforts fall disproportionately on minorities suggests that the policy is inherently racist. A more humane and compassionate approach, they say, would focus on treatment.

This is presented as *prima facie* evidence for dramatically changing U.S. drug policy. The basic assumption: Government action to enforce laws, not individuals who use drugs or break the law, is the real problem. Hence, Professor Friedman argues that "Had drugs been decriminalized 17 years ago, 'crack' would never have been invented (it was invented because the high cost of illegal drugs made it profitable to provide a cheaper version) and there would be far fewer addicts."<sup>15</sup> This is a truly breathtaking assertion.

Critics of existing laws also seem to believe that there is some appropriate level of prison population in relation to the general population that can be used to measure the linkage between prison size and counter-drug policy. Such an argument, if used to justify a similar position on child abuse, would never be taken seriously. But critics actually seem to use it in this case largely because they are uncomfortable with enforcing the laws on drug use.

Just as the continued presence of drugs does not prove the failure of interdiction, simple prison numbers and the fact that drug use continues do not prove that enforcement has failed. Nor do the statistics constitute sufficient grounds for a major change in policy. After two decades of virtual legalization in the 1960s and 1970s, followed by less than a decade of renewed enforcement during a palpable decline in social cohesion that produced dramatic increases in drug abuse and criminal behavior, the appropriate level of arrest and incarceration is still not clear. In fact, there is no way to establish such an appropriate level, and none of the advocates of this argument has advanced a specific figure.

Nationwide figures for 1991 show roughly 14 million arrests of all sorts. The largest proportion (29 percent) were for alcohol-related offenses such as public drunkenness, driving under the influence, under-age drinking, and disorderly conduct. Direct drug-abuse violations accounted for only 7 percent of the total, although drugs figured in some arrests for property and violent crime as well. In 1991, the state, local, and federal prison population for all offenses was roughly 1.2 million, or 0.5 percent of the U.S. population.<sup>16</sup> Is this percentage too high or disproportionate? If so, compared with what? Of this 1.2 million, roughly 22 percent were imprisoned primarily for drug offenses; the remaining 78 percent were imprisoned for other crimes, although many of these inmates also may have used drugs.

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<sup>15</sup> Friedman, "An Open Letter," *Drug Legalization*, p. 50.

<sup>16</sup> These figures are drawn from Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, quoted in John Walters, "Race and the War on Drugs," an unpublished paper; and from *The Uniform Crime Reports: Crime in the United States, 1991* (United States Department of Justice, 1992), pp. 212-213.



There has been a large increase in the number of Americans in jail as a result of increasingly effective drug law enforcement. But, contrary to the contentions of some critics, the majority of these offenders are not simple drug users specifically targeted by an overzealous criminal justice system.<sup>17</sup> The greatest increases were not from among addicts, who generally received less attention and lighter sentences, but from among pushers, enforcers, and organized crime groups—as would be expected after a period of relatively lax law enforcement and an explosion in drug-related criminal activities. There also has been an increase in the overall prison population as the result of increases in violent and property crimes quite apart from drugs.

Advocates of legalization and treatment-only say that the number of inmates in jail on drug-related charges has grown sharply because of increased enforcement; the figure generally given is a doubling between 1979 and 1988.<sup>18</sup> This figure is used to illustrate the alleged harm caused by enforcement, supposedly proved by the fact that drugs remain available despite the arrests. The conclusion: end the harm done by arresting people.

But this is not a logical conclusion. At the same time that cocaine use and arrests sharply increased, hospital admissions for overdose and drug-related emergencies increased seven times, and crack-related incidents increased fifteen-fold.<sup>19</sup> The number of cocaine-addicted newborns is estimated to be 2.5 percent of live births in the United States, or roughly 100,000 children a year who made no independent choice to use drugs.<sup>20</sup> Overall health care and collateral costs have soared. But there is no connection between these overdose statistics and the claim that drug law enforcement has failed. Nor do these facts themselves justify a significant redirection of public policy. In point of fact, as enforcement increased in the 1980s there were dramatic declines in *overall* drug use. There is at least some evidence, then, as reflected in use and health care statistics, to suggest that law enforcement can reduce drug use and addiction rates.<sup>21</sup> There is no evidence to suggest that ending drug law enforcement efforts will lower use rates or the harm done by addiction. In fact, evidence indicates that it is law enforcement and criminal justice pressure that leads many addicts into treatment who would otherwise not seek help.

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- 17 "The US Government's 'War on Drugs' has become a war on drug users—a public moral crusade and law enforcement extravaganza that cordons off a rigid public policy from badly needed ideas and insights of medical and public health professionals who have spent a lifetime studying addiction, its causes and consequences." David Lewis, "Medical and Health Perspectives on a Failing US Drug Policy," *Daedalus*, 121 (Spring 1992), pp. 165-194.
  - 18 See Peter Reuter, "On the Consequences of Toughness," *Searching for Alternatives*, pp. 138-164, for an overview of the numbers.
  - 19 Tom Morganthau and Mark Miller, "Tougher Law Enforcement Will Win the War on Drugs," in Neal Bernard, ed., *War on Drugs: Opposing Viewpoints* (San Diego, CA: Greenhaven Press, 1990), 207-213.
  - 20 Joel Hay, "The Harm They Do to Others: A Primer on the External Costs of Drug Abuse," *Searching for Alternatives*, pp. 200-225.
  - 21 Surveys indicate that monthly cocaine use among non-addicts dropped almost 80 percent between 1985 and 1992. Annual use of illicit drugs by high school seniors dropped from 54.2 percent in 1979 to 27.1 percent in 1992. Indeed, in every category except hardcore abusers, there were significant declines in all types of drug use. See Walters, "How the Clinton Administration in Abandoning the War Against Drugs," pp. 11-14.



Still, advocates of a serious enforcement policy never claim that it would end drug use. The aim is to protect the public from the worst predators, engage in a struggle to reverse the trend of increasing drug use throughout the population, and send an unambiguous signal to potential new users that drug use has negative social consequences. Unlike hardliners who claim that a treatment-focused policy will produce a drug-free America, enforcement officials recognize that enforcement—like interdiction—is only one instrument in a range of policies that must be employed. Even then, human nature being what it is, no combination of policies will end drug use. Any claim that offers a magic bullet is classic oversell that demands the best possible result in advance.

Critics of enforcement policies go on to claim that the money spent on enforcement and prisons is disproportionately high and should be spent on treatment which would end drug use and crime. One would expect such claims to be based on strong evidence, but the numbers thrown about do not demonstrate either that there is a causal connection or even a correlation between money spent on treatment and reductions in crime or drugs, or that money spent on prisons is wasted. No such connection is demonstrable. No count of prisoners, no budget totals, no indicator of current and heavy use of drugs has established that enforcement money is misspent or that treatment instead of enforcement is a better cure. The question in any case requires an answer based on social values and a public consensus, not on data alone, and the American people have answered that they consider enforcement essential to any solution.

Consider also the claim that enforcement is unfair and racist.<sup>22</sup> What is the evidence? Simply that more minorities, particularly black Americans, than other groups are in prison for drug-related offenses as a proportion of the population. For those who use such numbers to justify race-norming, this argument makes sense, but it is wide of the mark.<sup>23</sup> In fact, most black offenders are in jail for black-on-black crimes. That a larger proportion of blacks is in prison is explained by the uncomfortable fact that street crime is more prevalent in primarily black, inner-city neighborhoods than elsewhere and that it occurs more openly and therefore is more easily solved and prosecuted. The alternative to enforcement is to leave the decent citizens in inner-city black neighborhoods—the vast majority—to fend for themselves among the predators.

Consider that data on regular cocaine use from the National Institute on Drug Abuse (NIDA) show that twice as many men as women use cocaine but that drug arrests run five men for every one woman because men are more likely than women to commit violent crimes and are therefore more subject to arrest. These figures are not said to establish discrimination against men or in favor of women. Moreover, in cities with black mayors and chiefs of police, the proportions of arrests among whites and blacks are the same as for the rest of the country. Unless one assumes that even in these cases racism is the only explanation for different arrest rates, the argument does not hold. Using raw fig-

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22 See, for example, Steven Duke and Albert Gross, *America's Longest War* (New York: Putnam Books, 1993), Chapter 9, p. 160ff.

23 The argument that best underscores the fallacy in this type of reasoning is found in Thomas Sowell's various works, but most particularly in *Civil Rights: Rhetoric or Reality?* (New York: Quill, 1984) and *The Economics of Politics and Race* (New York: Quill, 1983).

ures on arrests and simple comparisons of percentages to draw self-serving conclusions is a familiar, but invalid, practice.<sup>24</sup>

#### **ARGUMENT #4: Drug use is not that bad.**

Some advocates of legalization contend that the dangers of drug use are overstated and do not warrant strong enforcement efforts. Taken literally, this argument was more plausible in the 1960s and 1970s, when less was known about the full effects of many drugs. Few now claim that the use of psychotropic drugs represents no serious health hazard and that use should be celebrated as a liberation of consciousness. Instead, the most visible spokesmen for this view, such as Professor Ethan Nadelman of the Woodrow Wilson School, assert that such drug use represents no special liability, certainly none greater than tobacco or alcohol, that justifies prohibition.<sup>25</sup> “The logic of legalization,” says Nadelman, “depends in part upon two assumptions: that most illegal drugs are not as dangerous as is commonly believed, and that the most risky of them are unlikely to prove widely appealing precisely because of the obvious danger.”<sup>26</sup>

This is not an isolated view. Steven Duke and Albert Gross, in their book *America’s Longest War: Rethinking Our Tragic Crusade Against Drugs*, with an introduction by Baltimore Mayor Kurt Schmoke, offer the observation that “The risks of psychoactive drug use are substantial but no greater than those accompanying many other recreational activities” such as hang-gliding, boxing, mountain climbing, motorcycle riding, hunting, bicycle riding, or boating.<sup>27</sup> Echoing Nadelman, they argue that “the use of heroin and cocaine in a free market system would adversely affect the quality of the lives of the users and those around them in a way not appreciably different than does alcohol use” and that “the total number of drug abusers... would not be essentially different than is the case in our hybrid system of legalization.”<sup>28</sup> Or, “Hardly anyone would be a drug abuser who does not already abuse at least one psychoactive drug.”

For this to be true, for the same number of people engaged in these other “risky” activities as in using drugs, one would expect to see a corresponding number of lives cut short and other consequences. Thus, one would have to expect that some loss of life, increased health care costs, lost labor, family violence, higher crime, damaged fetuses, and so forth to be counted among the costs of recreational biking, boxing, hunting, sports gardening, and similarly risky behaviors. For example, drug-using workers are 3 to 4 times as likely to have on-the-job accidents, 4 to 6 times more likely to have off-the-job accidents, 2 to 3 times more likely to file medical claims, 5 times more likely to file workman’s compensation, and 25 percent to 35 percent less productive on the job.<sup>29</sup> Yet

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24 See William Wilbanks, “The War on Drugs Is Not Racist,” *War on Drugs: Opposing Viewpoints*, pp. 83-88.

25 See Nadelman, “Beyond Drug Prohibition: Evaluating the Alternatives,” *Searching for Alternatives*, pp. 241-250; “The Case for Legalization,” *Drug Legalization*, pp. 19-26; and “Thinking Seriously About Alternatives to Drug Prohibition,” *Daedalus* 121 (Spring 1992), pp. 53-84. Nadelman’s arguments are not atypical. The many other articles sympathetic to legalization and treatment-only policies in this issue of *Daedalus*, which focuses on rethinking drug policy, constitute a representative collection of views and arguments that mirror Nadelman’s views.

26 Nadelman, “The Case for Legalization,” p. 24.

27 Duke and Gross, *America’s Longest War* (New York: Putnam Books, 1993), p. 2.

28 *Ibid.*, p. 5.

nobody suggests that bicycling addicts and others impose corresponding broad-ranging increases in personal costs that the whole community must bear.

Americans are not living in the 1970s, or the age of *Reefer Madness*, when there was little scientific research on the addictive nature of psychotropic drugs or the considerable health consequences of prolonged exposure to them. Quite the contrary. Recent medical evidence on the effects of drug use has forced supporters of legalization to stress the need for sustained, vigorous treatment programs—a frank admission that there is a serious health hazard. But they still downplay the dangerous aspects of drug use. Even if this hazard were no greater than that represented by tobacco (a generous concession) there would be no comfort in recapitulating the catastrophe of widespread tobacco use.

Tobacco is implicated directly in some 300,000 premature deaths in the United States each year. The immense collateral costs in health care requirements, lost labor, damaged fetuses, and debilitated lives run to billions of dollars. Reliable figures place drug-related premature deaths, at current levels of use, at somewhere between 3,000 and 20,000,<sup>30</sup> added to which are the correspondingly high collateral costs. An intuitive argument would hold that as psychotropic drug use increased after legalization, the death toll and collateral costs also would rise. Legalization arguments ignore this. But what of the second assumption: that legalization would not result in dramatic increases in the use of these drugs precisely because they are so dangerous?

**International Experience.** The contention that legalization would not trigger large increases in use is based on optimism rather than evidence. Of course, the contention cannot be proved without a state or nationwide experiment in legalization. Americans are encouraged to accept it as an article of faith. There is, however, international evidence that argues for the opposite conclusion. In 1987, Zurich, Switzerland, opened Platzspitz Park as a haven for heroin addicts. The idea was based on tolerance. Initially, there were only a handful of addicts, but word quickly spread among Europe's growing heroin-addicted population that Platzspitz Park was a haven for drug users. The park quickly became a disaster area. Addicts poured in, but more important, local addiction soared. And the park itself became a dangerous place. Ultimately, reacting to public outrage, city officials reversed themselves and ended the experiment.<sup>31</sup>

The Netherlands offers another example. Often hailed as the best model of social tolerance of drug use, the Netherlands has chosen largely not to enforce anti-drug laws and to tolerate drug use in specific areas, particularly certain sections of Amsterdam. The as-

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29 Robert Dupont, "Never Trust Anyone Under 40: What Employers Should Know about Drugs in the Workplace," *Policy Review* No. 48 (Spring 1989), pp. 52-57.

30 This wide range reflects different interpretations of the record. Lower figures tend to come from proponents, higher ones from opponents of legalization. See James Ostrowski, writing from the Cato Institute, "The Moral and Practical Case for Drug Legalization," *Hofstra Law Review* No. 18 (Spring 1990), pp. 607-702, quoted in Duke and Gross, *America's Longest War*, pp. 76-77 and endnote 119, on why the lower numbers are justified. For the rationale for higher numbers, see Morton Kondracke, "Don't Legalize Drugs: The Costs are Still Too High," *Drug Legalization*, pp. 283-289.

31 Duke and Gross, *America's Longest War*, pp. 256-257. The authors see this as one of the examples justifying legalization.



sumption was that tolerance and a good treatment program would deal with the addict population, which would gradually wither away when users understood the inherent dangers of drug use, and that drug use and again the crime associated with it would remain isolated. Instead, as in Platzspitz Park, addicts from all over Europe came to the Netherlands, and the local addict population has soared. Crime also has soared, both in the specified areas and more generally. Today, by some estimates, the Netherlands is the most crime-prone nation in Europe, and authorities are reconsidering many of their basic assumptions in the face of public pressure. Furthermore, Dutch efforts to license legal heroin use quickly ran aground amid huge increases in crime and overdose deaths, despite generous treatment and information programs.<sup>32</sup> As one advocate of legalization admits, “We have a lot to learn from the Dutch.”<sup>33</sup>

Historical evidence in the United States also suggests that drug use would soar if drugs were legalized. Americans can examine the vast social experiment with drugs in the 1960s and 1970s. Liberal political leaders, the popular press, Hollywood, intellectuals, and other “opinion makers” downplayed the dangers of drug use, when they did not extol it, and pushed for nonenforcement of existing anti-drug laws. It was a pervasive social message: drug use is a personal choice with no serious negative side effects or socially deleterious consequences. While not everyone went as far as Dr. Timothy Leary in celebrating the new age of a higher humanity thanks to LSD, the cumulative message was unmistakable. America’s youth got the point. There was an explosion in use—despite widespread information on the negative health implications—followed by a crime wave, increased social violence, and growing health care costs. Drug traffickers also got the message, profiting handsomely.

Prohibition did not create this increase in crime and social problems. *De facto* legalization did. But according to legalization advocates, the reaction to the problem of drug addiction from the 1960s and 1970s was overblown by hysterical researchers, moralizing do-gooders, conservative politicians, and the mindless press; the health care costs of illegal drugs also allegedly were exaggerated. In short, the problem did not justify all the fuss.<sup>34</sup> And based on the assumption that the present user population would not increase with legalization, they claim that future costs will not be as bad as projected, and will not be as bad as for tobacco or alcohol—or at least will be no worse if drugs are legalized.

Needless to say, these views are subject to challenge. There is nothing to justify a claim that the drug epidemic was the figment of narrow-minded moralizers, that it was not all that serious, and that the costs were exaggerated. The facts point to a very different conclusion. And there is nothing in the available evidence to show that society should not hold drug users to a measure of responsibility for their acts or continue to control access to dangerous drugs.

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32 See Peterson, “Legalization: The Myth Exposed,” *Searching for Alternatives*, pp. 334-35.

33 Steven Wisotsky, “Statement of Steven Wisotsky before the Select Committee on Narcotics Abuse and Control,” in *Drug Legalization*, pp. 181-212.

34 This argument is made explicitly in David Lewis, “Medical and Health Perspectives on a Failing US Drug Policy,” but is implicit in many others.



### **ARGUMENT #5: We permit the use of tobacco and alcohol; why not drugs?**

Proponents of legalization argue that illegal drugs should be treated the same as tobacco and alcohol. This is another argument by analogy. Tobacco and alcohol are legal, and yet they are responsible for 500,000 premature deaths a year and staggering health care and allied costs. Therefore, because psychotropic drugs kill far fewer people at present levels of use—which supposedly will not increase—America should legalize them and treat the insignificant consequences that follow.

Proponents of this argument use a barrage of facts to show the sad consequences of legalized tobacco and alcohol, arguing that because tobacco and alcohol are legal and cause collateral damage, America should legalize psychoactive drugs. Not only is this illogical, it establishes no causal relationship between the elements. Indeed, the reverse can be argued: prohibit the use of tobacco and alcohol because of the immense harm they do. Such a prohibition is not politically feasible in the case of tobacco, but it certainly is more logical than saying that because alcohol and tobacco take a terrible toll, a heavy toll from legalizing drugs is therefore acceptable.

One can imagine the storm of ridicule that would accompany a suggestion that business should be permitted to increase the production of environmentally unsafe wastes because firms already produce so much, or that enforcement of environmental laws should be made merely symbolic because so much damage has already been done. Such an argument could not be made seriously in public. Yet advocates of legalization seem to enjoy a certain cachet, especially among elite audiences, when they use the same brand of logic. If anything, the considerable social and economic costs of dealing with the legal use of tobacco and alcohol are substantive arguments for not adding to the collective woe by legalizing dangerous drugs.

### **ARGUMENT #6: The only rational policy is a treatment approach.**

Treatment figures prominently in the legalization argument. To legalization advocates, drug abuse is no more than a medical problem needing treatment; any other approach is misplaced, bound to fail, and wasteful. From this position, they claim that treatment linked to education about the risks of drug abuse is the only strategy needed to deal with any residual problems from drug use following legalization; this treatment-only approach, in conjunction with legalization, will end drug abuse, reduce crime, and deter future abuse, or at least keep it at an acceptable level. They dismiss the notion that cheap, readily available legal drugs will mean a significant increase in use, apparently not even believing that manufacturers of legalized drugs would find inventive ways to advertise their products to increase sales. They consider that money spent on anything other than treatment programs is wasted.

To be fair, not everyone who favors a treatment strategy wants to legalize, or dismisses complementary control efforts so completely. Mathea Falco, to her credit, rejects the idea. She favors significant redirection of funds from law enforcement to treatment, which she expects to end addiction and deter future use. Her concept of demand-control strategy, however, basically undercuts the efficacy of any other approach, taking away with one hand what it seems to give with the other. Most treatment professionals, doctors, and many public health officials also are not for legalization. Their main concern is with the quality of present treatment, which many believe is poor and inadequate. They tend to believe that there is too much focus on enforcement, and many of their claims

for treatment are hyperbole designed to attract attention and force a reallocation of public money to them in line with their priorities. To be sure, this is indeed a budget battle over who gets how much for what purpose. But advocates have yet to provide evidence that spending, say, 80 percent on treatment and 20 percent on enforcement will produce all the wonders claimed for such a shift.

Unfortunately, many treatment-only advocates endorse the encompassing view of the benefits to be anticipated from legalization and therapeutic-only policies generally. For this reason, there is little practical difference between them and proponents of out-right legalization. Treatment-only advocates do not object to drug use; they merely assert that demand reduction based on treatment is the only practical way to reduce or end the drug abuse problem. Use is permissible, abuse is a medical problem, and both will wither away before beneficent, compassionate therapy. It is this view that attracts most of the attention and distorts discussion of a serious national problem.

This position is a defining characteristic of today's legalization argument: treatment is the only workable and realistic answer to drug abuse. All others are futile or worse. Adopt this approach and "The world would be healthier, safer, and more humane."<sup>35</sup>

In its distilled form, a treatment-only focus implicitly means that treatment will deter future use and that treatment and education will do what no other policy has done or can do—create a drug-free America.<sup>36</sup> According to this view, if it is known that treatment for drug abuse is available, linked to tobacco-type awareness programs, it will be possible to persuade the young and other potentially vulnerable populations not adept at recognizing the negative long-term consequences of immediately pleasing choices to refrain from using drugs. The inescapable conclusion is that people will choose to be drug-free. "Repeal of drug prohibition respects the decision-making ability of each individual," writes Kevin Zeese. "The individual is responsible for his or her own health and well-being rather than the government. When presented with the true risks of drug use most individuals will make sensible choices."<sup>37</sup>

Most legalization or treatment-only advocates do not claim that 100 percent success is possible, but all seem to believe that prohibition and enforcement have failed and cannot work because they have not had 100 percent success. Treatment is said to be the best approach because of its inherent promise to make America a drug-free society, although one searches in vain for any evidence for such a bold contention. What is often offered as evidence is either the British experience with heroin control (or that of the Netherlands) or the U.S. experience with reducing tobacco use. Because these worked, it is argued, drug treatment in a legalized environment will work.

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35 Zeese, "Drug War Forever?" *Searching for Alternatives*, p. 267.

36 In Falco's words, "We know that a drug-free America is within our grasp." This is so, she maintains, because of demand-control strategies. *Drug-Free America*, p. 202. Such a claim is, as most treatment advocates will agree, hyperbole. Even the most ardent legalization advocates do not argue that we would have a society totally free of drugs. But the assumption of a drug-free nation underlies the treatment-only position, which then is carried to extremes in order to sell it.

37 Zeese, "Drug War Forever," *Searching for Alternatives*, p. 265.

**The British Experience.** In essence, the British in the 1920s and for 40 years thereafter had a largely treatment-only philosophy for dealing with heroin addiction.<sup>38</sup> The government did not legalize heroin, but created a treatment regime where existing, known addicts were given access to medical care and supervision. Initially, this also meant that doctors could prescribe controlled heroin doses to their addicted patients, most of whom were women and middle-class. This was a policy based on the idea of heroin use as an illness; it seemed to be humane, healthy, and compassionate.

By the 1980s, the system was in ruins. There was a sudden explosion in heroin use, generally linked to the huge increase in worldwide supply. By the mid-1980s, with the official blind eye to heroin use, known addiction rates were increasing at about 30 percent per year, but indications were that actual use was 5 or 20 times that of officially acknowledged levels.<sup>39</sup> In 1960, there were just 68 heroin addicts known to the British government. In 1968, there were 2,000. But by 1982, there were 20,000 in London alone.<sup>40</sup> Addicts no longer were mostly women or middle-class, but came from every part of society. Doctors learned that prescribing set doses of heroin did not satisfy their patients' demand for drugs, which grew with use. The therapeutic question became whether to continue to supply the drug at unsafe levels, contrary to medical ethics, or to resist, which meant patients would buy heroin on the streets. Doctors also discovered that some patients sold their legal supplies to others. Doctors then shifted to prescribing methadone. Addiction to heroin still soared. There was a nationwide education campaign on the dangers of heroin, but addiction soared even higher. The British public demanded action. The government pursued a mixed policy of supply control and demand control, but addiction still rose. It continues to rise, compounded by growing cocaine addiction and rising crime.

The question becomes: If complete success is the criterion for adopting an approach, what happens when neither demand nor supply control works? One could simply do nothing, but nothing means letting addiction find its natural level (whatever that is), hoping that legal drugs will not lead to increased use and even higher health and other social costs. The British treatment approach did not end or reduce addiction; nor did the British save a great deal of money. If the criterion for adopting a program is that it will succeed where others have failed, the British example does not even come close to making the case for treatment only.

**The Tobacco Experience.** Tobacco use is another area "treatment advocates" cite to show what is possible. In the last 25 years, over half of all cigarette users have given up smoking, not because cigarettes were illegal or users faced imprisonment, but because of highly successful public information programs and social pressure to quit. This experience is cited as a model for how we should deal with drugs: legalize them and convince Americans not to use them.

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38 This is a complex story with considerable bureaucratic battling over control or treatment. For a fuller account, see Horace Judson, *Heroin Addiction in Britain: What Americans Can Learn from the English Experience* (New York: Harcourt, 1982).

39 David Turner, "Pragmatic Incoherence: The Changing Face of British Drug Policy," *Searching for Alternatives*, pp. 173-190.

40 James Q. Wilson, "Against the Legalization of Drugs," *Drug Legalization*, pp. 26-45.



The tobacco experience, however, is not necessarily a good model for drug legalizers. Today, after an immense effort, including heavy moralizing and growing restrictions on smoking, there are still 55 million smokers and 300,000 tobacco-related premature deaths a year. Costs of tobacco-related health care run at about \$60 billion each year. By comparison, annual enforcement, current health care, and collateral costs for illegal drugs run between \$40 billion and \$50 billion; imprisonment costs for all 1.2 million inmates run about \$16 billion.<sup>41</sup> If America maintains this level of efficiency in reducing tobacco use for another 25 years, there will be only 25 million smokers, 150,000 deaths, and (with inflation) another \$60 billion in costs. From this chain of logic, one is supposed to conclude that success with tobacco will be repeated with psychotropic drugs after legalization. But is this progress with tobacco compelling reason to legalize drugs? Even if one were to make the unwarranted assumption that there will be no substantial increase in the number of drug users from present levels after legalization, one would still have to accept at least 10,000 or so deaths and, conservatively, \$50 billion in health care and related costs each year. Moreover, if there is an increase in use and addiction, these costs will rise. That "if" is critical.

Legalization and treatment advocates employ a sleight-of-hand, however, to suggest there will be no increases in drug use. Although they denigrate the war on drugs as a total failure, many nonetheless acknowledge that overall use has declined from the previous high levels of the 1970s and 1980s. They attribute this to demand-reduction efforts, especially to greater public awareness of the dangers of drugs, but seem to suggest that this awareness arose spontaneously. Why?

The spontaneous awareness view assumes that vigorous enforcement and supply-control efforts made no contribution to public awareness that drugs were bad. Instead, society somehow just came to its senses. Moreover, according to this line of reasoning, this heightened awareness will contain future demand, even if the government changes its position to suggest that drug use is acceptable. Advocates of legalization confidently expect, for example, that since only a small percentage of the 20 million or so who tried cocaine when it was illegal became frequent users, legalizing cocaine use would lead to no increase in addiction. To ordinary Americans, this may sound like nonsense, but this is the inherent logic of the treatment-only and legalization arguments.

#### **ARGUMENT #7: It is no business of government.**

A common position of legalization advocates is that drug use is a matter of personal choice and therefore should be beyond government regulation. To many Americans who resent government regulation, this is the most persuasive of all the arguments for legalization.

The American democratic republic is premised on the rights of the citizen against the government and the insistence that government not be permitted to transgress these rights, among which is a limit on government interference in the private interests and personal choices of individuals. At a time when the federal government is inventing

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<sup>41</sup> Because the sources vary wildly, these numbers represent averages.



more reasons to intrude into every aspect of Americans' personal lives, this is a vital concern.

Drug use, the argument thus runs, is a personal choice. It affects no one but the user. No harm is caused to others, so government has no right to interfere, even if intervention might benefit the individual. By logical extension, this would mean that if the individual became an addict who needed treatment, the rest of society, acting through the government, would have no legal or moral obligation to respond, although few legalization advocates are quite so rigorous in pursuing the argument to such a conclusion.

The most persuasive argument for this harm-minimization approach is found in John Stuart Mill's classic work of political theory, *On Liberty*. Mill argues that the coercive powers of the state should not be used against an individual unless that person is engaged in acts harmful to others. Individuals must have a significant range of choice over the decisions that affect their lives, and the state should not interfere with the free exercise of that wide-ranging liberty. This "self-regarding" or "self-determining" philosophy seeks to maximize the individual's freedom of choice: "the sole end for which mankind are warranted, individually or collectively," in Mill's formulation,

in interfering with the liberty of action of any of their number, is self protection...the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant, he cannot rightfully be compelled to do or forbear because it would be better for him to do so, because it will make him happier, because, in the opinion of others to do so would be wise or even right.<sup>42</sup>

This noble argument rightly recognizes the necessity of balancing individual rights and responsibilities and the authority of the state. But Mill himself recognized that individuals and their rights do not exist in a vacuum, and accepted that individual rights also carries with them an individual responsibility to others not to act in a way that will cause harm. Rights, in other words, have reciprocal obligations.

Advocates present the case for legalization as if, by definition, drug use cannot harm others, so there is no reciprocal obligation to refrain from use. They argue further that the only harm derives from the effort to restrict this free choice or, on balance, that the harm of enforcing a prohibition is far worse than any harm caused by personal use. Thus, all efforts by society to restrain individual access to drugs, to control use, and to punish breaches of the law are immoral because they are unjustified.

In this light, the six arguments already discussed here, despite their logical inconsistencies and factual shortcomings, begin to make sense. It becomes clearer why the claims are made that drugs themselves are not so harmful, that legalization will mean no costly increases in addicts, why prisons will empty and streets will become safe, and why Americans can expect nothing but savings from legal, taxable drugs. It is important for legalizers to make these claims, because once one acknowledges the possibility that

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42 John S. Mill, quoted in Lloyd Weinreb, *Natural Law and Justice* (Cambridge, MA: Harvard University Press, 1987), p. 135.

harm might be done to others by a personal choice to use drugs, the entire personal-rights position becomes untenable.

The problem is that harm is done. Many graphic examples exist to demonstrate the social harm caused by this individual choice (Figures on crime and HIV exposure are not included here because it might be argued—and often is—that these problems are the result of prohibition and enforcement).

Some 25 percent to 60 percent of the homeless are addicts whose homelessness is due in large part to addiction and their inability to manage money or make rational, reasonable decisions. They are increasingly supported at public expense because of the moral obligation felt by society. The harm is done not only to themselves, therefore, but also to the taxpayers and others in society who feel obligated to help the homeless.

Some 75 percent to 80 percent of the 1.2 million to 1.5 million teenage runaways are substance abusers, and not because prohibition made them use drugs or run away. The harm is done not only to themselves, but also to their parents and those who have to deal with the consequences.

Some 30 percent to 50 percent of mental patients are chemical abusers, and 50 percent to 60 percent of these are users of crack and cocaine. They are largely on public support. The harm is done to the taxpayers.

As many as 11 percent of young mothers use drugs during pregnancy. The harm is not just to these young mothers, but to their unborn children. Approximately 2.5 percent of all live births—some 100,000 babies per year—are born addicted to cocaine. They have life-long learning disabilities and emotional problems. Once again, the harm is done to unborn children and to taxpayers who must pay the treatment bills. And the harm can last a lifetime.

About \$50 billion is devoted annually to dealing with the health care and other collateral costs of drug addiction. These would not disappear with legalization and almost certainly would increase. This harm is done to anyone who has to pay higher private insurance premiums or higher taxes for public health programs, to pay these costs incurred by addicts.

There are approximately 500,000 heroin and 2 million other substance abusers. Their care is increasingly a demand on society. Once again, the harm is done to the taxpayer.

Legalization advocates tend to respond to these numbers by countering that the costs of enforcement and prohibition are greater and therefore somehow cancel out these costs. As an example, they argue that incarceration costs, which run about \$16 billion a year for all offenders, of whom some 22 percent are in jail for drug crimes, are so disproportionate as to obviate any theoretical harm from personal drug use. The problems of addicted babies are the result of poverty and social conditions, not drugs; and so on.

The bargain-basement mentality of legalization advocates includes this interesting bit of arithmetic: legal drugs will return immense revenues from taxes, which will more than cover the diminishing costs of treatment and related drug problems. It is hardly likely that anyone would accept this notion if applied to alcohol and tobacco, in addition to which legalization advocates seem to assume that the taxable profits from legal drugs will be on a par with profits from illegal drugs—which are some 9 times higher than a

legal price is likely to be—in a population that is not going to use the drugs anyway. If that were the case, taxes on legal drugs would not even come close to paying for the medical and treatment costs of a fraction of the treatment population unless the taxes were so high as to make bootlegging attractive, which defeats the purpose of legalizing.

Since advocates of legalization invoke the language and logic of morals in order to defend their position, it might also be appropriate to raise, as part of the harm done, the moral consequences for others from this personal choice. What is at issue is whether the community has a right to interfere in personal choices to protect community interests. Most Americans recognize that “We have laws...precisely because we cannot leave the vindication or avoidance of wrongs to the commands of self-interest. When our obligations collide with our ‘interests,’ even men and women with the best of intentions may need an additional support to firm them up in their strength to choose what is right and avoid what is wrong.”<sup>43</sup> To the extent that even the most ardent legalization advocates—apart from the Leary wing of the movement—recognize the harm done to individuals by drugs, they acknowledge a public interest. In particular, they recognize that drug addiction deprives individuals of many of the attributes of individuality: the ability to exercise free judgment, to recognize responsibility, and to render respect to others. As James Q. Wilson notes, “Nicotine alters one’s habits, cocaine alters one’s soul.” Wilson continues,

The heavy use of crack, unlike the heavy use of tobacco, corrodes those natural sentiments of sympathy and duty that constitute our human nature and make possible our social life. To say, as does Nadelman, that distinguishing morally between tobacco and cocaine is “little more than a transient prejudice” is close to saying that morality itself is but a prejudice.<sup>44</sup>

Since Nadelman himself invokes the language of morality to argue against prohibition, he must accept that morality is more than a prejudice; if not, his position carries no weight.

If there is no common standard to which we may appeal in such matters of public concern, then virtually any putatively consensual act is permissible. Sex with a consenting minor, for example, is no more morally offensive than ignoring a sign prohibiting walking on a lawn. Yet there are no advocates of drug legalization or harm minimization—who abhor the thought of someone else’s idea of morality being enforced on others—who would favor permitting someone to molest children. The harm-minimization advocate would respond that molestation harms the child and thus violates an innocent who is not fully competent to make a truly independent choice. But this argument invokes two criteria—the need to demonstrate harm done to another and the need to show that the other was not competent to choose. These criteria mirror exactly the fundamental questions at issue with respect to drug abuse: does the drug abuser harm anyone else, and is the addict competent to choose whether or not to continue use?

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43 Hadley Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* (Princeton: Princeton University Press, 1986), pp. 415-416.

44 Wilson, “Against the Legalization of Drugs,” *Drug Legalization*, pp. 40-41.



The problem is that those who favor drug legalization or harm minimization dismiss both arguments as irrelevant when it suits their case and invoke them again when it suits. By arguing that drug users should be treated rather than left strictly free to continue using drugs, however, legalization advocates admit that the community must act to prevent or limit harm to users. Such action imposes a cost on the community. The very claim that treatment, in some cases even mandatory treatment, is the answer to drug abuse is an admission that harm is done beyond individual choice. This harm is done to the community that must pay for treatment, to the family affected by a drug-abusing member, to the work force that must risk drug-impaired workers, to babies who are truly innocent victims. Furthermore, drug use leading to addiction, which is a profound risk for anyone using psychoactive drugs, also leads to a loss of volition, of the competence necessary to make a truly informed, independent choice. No one decides to use drugs because he wants to become an addict. No one thinks it will happen to him. It happens nevertheless.

If one accepts the legalization interpretation of the harm-minimization argument, one is left with this anomaly: Surely we must accord the individual the right to be an addict; but, recognizing the consequences of addiction, the user has no corresponding obligation to avoid use, and society no right to make him do so.

The harm-minimization argument thus falls short on the very issue of self-determination upon which it is based. The exercise of liberty depends upon the ability to exercise self-determination. The irony is that drug abuse, while it may have begun as a volitional act, ends in the loss of volition to the demands of an addiction. The defining characteristic of the self-determining individual is lost. Since it can be known in advance that this will be the likely outcome of drug use, it is cruel indeed to argue that it is an individual's sacred right to destroy the very faculties that define him as a person and society's duty to assist him, and knowing this, it is a strange and malicious charity that would have society help someone to acquire an addiction rather than take steps to prevent it if possible.

Underlying the "freedom" argument also seems to be the notion that the individual bears no responsibility for personal choice and that, somehow, addiction is society's fault and the victim is owed reparations. This same claim is advanced in other areas of American social life. Not long ago, Americans routinely spoke of the criminal paying his debt to society; now liberal academics speak of society being to blame for creating the conditions leading to criminal behavior. But the problem of drug addiction is the result not of some decisions by a rational entity called "society," but of individual choices that create a social concern. Until policy makers clearly understand this, they are bound to have difficulty sorting out the proper relationships between individual rights and limits on government authority. If human beings, as Aristotle noted, were beasts or gods, no law would be necessary; there would be no need to intervene in their personal choices. This not being the case, human society is built on law and the obligations of each in relation to all. Faced with the question of drugs, society retains a right and a duty to act, even if the chances of success are considerably less than 100 percent.

## WHAT KIND OF LEGALIZATION MIGHT POLICY MAKERS ADOPT?

Even if federal or state policy makers were persuaded by these seven spurious arguments in favor of legalization, they would have to decide what form of legalization to introduce. What version promises safer drugs, removal of profit to criminals, safer streets, fewer addicts, fewer criminals, better civil rights, humane policies, deglamorized drugs, and even new tax revenues? Options range from complete legalization of all drugs for all people to controlled legalization that would limit the drugs available and who can buy them. There is no consensus among legalization advocates, some of whom say the issue needs more study, but a representative list of approaches typically includes the following:

- ✗ **Legalize** heroin, cocaine, and marijuana outright (or perhaps in phases), but set an appropriate minimum age, such as now applies to alcohol, for buyers. As a variation, legalize possession but not selling (ironically, the equivalent of alcohol prohibition in the 1930s). Permit only licensed clinics to dispense the more dangerous heroin and cocaine as a prescription drug (as in the British example) while offering treatment to users.
- ✗ **Continue** to restrict more dangerous “designer” drugs. Many legalization advocates recognize the logical inconsistency of arguing for restraints on some drugs but not all; even some of the more ardent recognize that enterprising chemists might produce truly frightening concoctions.
- ✗ **Prohibit** advertising for the sale of these items as part of the effort to keep people from buying them.
- ✗ **Substantially increase** funding for research to find a safe substitute for existing drugs, to develop safer forms of these drugs, or to determine just how dangerous or safe particular drugs are.
- ✗ **Vastly increase** funding of treatment and prevention programs—supposedly to be paid for with the savings from law enforcement and tax revenues from drugs that have been legalized.
- ✗ **End** virtually all drug testing except in jobs affecting safety, such as airline pilots.
- ✗ **Stop** all the negative rhetoric about the “War on Drugs” and wage peace instead.

These approaches will work, advocates claim, because “America is becoming more health conscious....Drugs will not stand in the way of this fitness revolution. The citizenry knows better.”<sup>45</sup> They will work because it is wrong to interfere in people’s personal choices, because they will take the profit motive out of crime, because they will end urban blight, punitive moralizing, and perhaps even tooth decay. They will lead to

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45 Todd Brenner, “The Legalization of Drugs: Why Prolong the Inevitable?” *Drug Legalization*, pp. 157-179.

fewer addicts or, at worst, to people who know how to use drugs more rationally and moderately.

One can raise objections to all of these options, and many have been discussed in this analysis, but one or two additional observations might be useful. Legalization advocates recognize that society has a right and an obligation to control access to dangerous substances that might harm individuals and others. This is the basis for placing an age limit on use. No one wants minors to have access to drugs. But, what is a minor? The age limit is variable. To a legalizer, it is probably around eighteen. To a seller, it is probably around seven, because a seven year-old has lunch money and an allowance. In any event, it is generally accepted that there should be laws to prevent the sale of drugs to minors, but how does this avoid the very objections to prohibition that legalization advocates raise? Advocates seem to assume that enforcement in this case will not lead to the “forbidden fruit” mentality or produce more crime and addiction because minors will know they are not competent to make personal choices open to adults. Further, they naively believe that producers and marketers of drugs will accept these age limits and that criminal organizations will not try to addict younger Americans.

Some legalization advocates also maintain that America can legalize some dangerous drugs and not others, but what is the logical basis for doing so? How does one avoid violating the rights of users and creating the same prohibition-driven suite of crimes and misdemeanors that are condemned now as so inherently wrong? Having essentially scrapped enforcement and the rationale for it, how does one combat the organized crime groups that will exploit this market? If an enforcement capability for such prohibited drugs is retained, how much is society justified in spending on it? Some legalization advocates suggest a 90/10 split—that is, 90 percent to treatment and prevention, and 10 percent to enforcement. A moment’s reflection, however, will show that there is no rational basis for such a split. So policy makers are back to the same troubling public policy question of how to determine the amount of time and money that is needed and who among the many claimants will get the resources.

It would be possible to continue piling up the logical inconsistencies, the conclusions based on desires, and the expectations based on hope. The point, however, should be clear: None of the claims made by legalization advocates, in and of themselves, meet the test of factual certainty or logical necessity that would justify so vast a social experiment. There is nothing in the logic of these claims that overrides the expressed public conviction that legalization is wrong.

Legalization’s advocates make expansive claims for their solution. Admittedly, all public policy debates require a degree of hyperbole to overcome social inertia (certainly, advocates of the War on Drugs have committed sins in this regard), and supposed cure-alls are not uncommon in political discourse. Drama aside, however, what is appropriate in public posturing is not appropriate in trying to reach a sober assessment of what to do. In the case of drug control, the evidentiary standards for dramatic shifts in public policy that override experience demand more than posturing and confident assurances.

If there is no such conclusive evidence for a substantive shift, the inherent logic of the position must be conclusive and convincing. But the logic of legalization is fundamentally flawed. Legalization claims as its outcome an end to drug-related crime, a drop in drug use, an increase in public awareness of the dangers of drug use, a corresponding de-



cline in all collateral costs, a deterrent to any increased use, and an end to the need for draconian state intervention in private lives—in short, a panacea.

It is no wonder that, at first blush, the argument is so appealing. It is categorical and untroubled by the contingent outcomes that so bedevil other, less self-confident claims. As the previous analysis indicates, however, legalization cannot deliver on any of these promises.

## WHY AMERICA NEEDS A MORE CONSISTENT DRUG POLICY

America has not been served very well by the rhetoric of the War on Drugs. Whatever short-term advantages it may have offered as a public relations tool to win support for a difficult, long-term effort, in the end it was a rhetorical bonanza for legalization's advocates and sympathizers. It has become muddled with the imagery of a war, with metaphors of timely, unconditional victory, of an honorable peace, and of a return to normalcy. This rhetoric is misleading and has led to many of the charges raised against the campaign—that it cannot succeed, that it is futile, and that enforcement has not stopped trafficking and use, lowered the price, or reduced availability. If it cannot be won, they proceed, why spend the time and money? Wars end. This one has not. Society cannot win, so declare peace.

But there can be no "peace." If America cannot end drug production and use, and yet cannot give in to the temptation to give up, what are the options? The problems of drug use are not simple and will not respond to simple solutions. It must be understood that there can be no victory parade, at least not in the sense of ending the problem, only manageable limits.

The Reagan and Bush Administrations were on the right track, and their strategy was the product of 25 years of trial and error, of public frustration and congressional pressure. In essence, it codified a lesson-learning process. The lesson is simple: America needs to engage; it needs money; it needs the President on board; it needs to demand interagency coordination; it needs to coordinate law enforcement efforts with intelligence and military efforts; it needs to involve the international community; it must have a strategy that relies on both demand- and supply-reduction approaches; it needs patience, stamina, and perseverance—even a sense of humor.

The difficulty for policy makers lies in figuring out how all these parts interrelate to produce something that has some coherence. Policy makers must balance conflicting claims, resolve maddening "turf" issues, and develop budget priorities, which means striking a balance between resources spent on demand reduction efforts and those spent on supply. As part of this, however, it is important not to set them up as opposite poles but to realize that they are complementary. The Bush Administration placed more emphasis on supply reduction because that was the area longest neglected and the one in which the public saw the most immediate threat. It nevertheless also substantially increased demand reduction programs. Supply reduction and enforcement efforts, in fact, are part of any sophisticated demand reduction program; conversely, reducing demand will influence supply and price.

America also needs indicators of success. As suggested earlier, these lie in public perceptions of the appropriateness of drug use, in attitudes toward use and perceptions of risk (including punishment), and in learning whether use is growing. For many of the measures employed in responding to this threat, little direct pay-off will ever be seen. Enforcement, for example, is not a solution, but only one instrument in a comprehensive effort. It keeps prices high, adds weight to the social message that drugs are bad, makes life more difficult for criminals, and helps keep drugs away from most people. In isolation, however, it does not deter drug use.

More specifically, policy makers need to

- ✓ **Construct** more prisons and improve existing ones.
- ✓ **Enforce** tougher laws for distribution and sale of illegal drugs.
- ✓ **Expand** education efforts.
- ✓ **Increase** funding for community-based programs of treatment, education, and enforcement.
- ✓ **Increase** funding for drug research.
- ✓ **Increase** funding for treatment and conduct a careful review of existing programs for effectiveness as a justification for funding.
- ✓ **Make** greater efforts to engage international cooperation on law enforcement, interdiction, extradition, financial crimes, and eradication, linking development assistance to progress on drug control.

Finally, policy makers must recognize the long-haul nature of the problem and eschew quick-fix metaphors. Americans need to be told that we are in a reactive environment in which someone is waiting to respond to whatever is done. Policy makers must keep explaining their policy to the public.

Most important of all, Congress must not legalize drugs.

## CONCLUSION

Americans can never reasonably expect to eliminate drug production and use. Declaring war on murder will not end it, and there will be no end to the struggle against drug use. But neither is it possible to accept drug use as an inevitable evil. To do so would cause social chaos. Even most legalization advocates recognize the harm that drugs do and propose ways to lessen their effects. The difference is that they believe individual claims override community ones, that the evil of drug use is preferable to worse evil of oppressive and intrusive government, but their evidence is not compelling and their logic, even less so.

After seeing the results of widespread drug availability and use in the 1960s and 1970s, the American public demanded action. The action they demanded, and upon which they still insist, is to attack drug trafficking and punish use. They have not accepted the false notion that addiction is a victimless crime; too many families have been

destroyed for that fiction to carry much weight. They still believe in individual obligations to balance individual rights. They are not prepared to honor claims on the public treasury to substitute therapy for responsibility.

Policy makers have an obligation to respect those opinions and to take them into account. To go against such widely and deeply held convictions may be the mark of statesmanship in some circumstances. The public can be wrong; and when clear-sighted analysis based on convincing evidence is available, genuine leaders act upon it no matter how overwhelming the public sentiment. In this case, however, statesmanship is not required; good sense is.

The public is right.

Prepared for The Heritage Foundation by  
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