

## The War on Drugs: Is It Time to Surrender?

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Two decades after the doomed and undeclared war in Vietnam, America has declared itself at war with drugs. Recent polls have blasted illegal drugs as public enemy number one; in an era of budget retrenchments and hands-off government, the crusade against drugs has become a central priority for federal action and funding. All told, expenditures on all aspects of drug enforcement, from drug eradication in foreign countries to imprisonment of drug users and dealers in the United States, totaled in 1987 over ten billion dollars. Convicted drug offenders crowd our prisons: nationwide in 1987, 750,000 people were arrested for violating drug laws, and many faced stiff mandatory sentences. Drug “czar” William Bennett has called for capital punishment for drug dealers and remarked that “morally” he doesn’t “have any problem” with beheading as the method of execution. In unison schoolchildren shout “Just say no!” and everyone knows what it is they’re saying no to. Even legal drug use — the consumption of alcohol and tobacco — is declining steadily, as we strive toward the goal of drug-free schools, drug-free neighborhoods, a drug-free America.

Yet few think this is a war we are winning. Despite accelerated enforcement efforts, the black market in cocaine has grown to record size. Crack, the most lethal cocaine derivative, was all but unheard of five years ago; today 15 percent of infants born in the nation’s capitol suffer brain damage from exposure to crack in the womb. Drug-related murder rates soar; drug-related

violence holds our inner cities hostage to fear; drug-related civil war rages in Colombia. Is the drug war one we can possibly win?

Indeed, the drug war itself has come to be more deadly than the enemy it is waged against. The greatest costs are incurred, it can be claimed, not by drugs per se, but as a direct or indirect by-product of their criminalization. While 90 percent of Americans appear to be opposed to the legalization of drugs, decriminalization measures are gaining support across the political spectrum; advocates of legalization range from conservative William F. Buckley to the liberal, black mayor of Baltimore, Kurt Schmoke.

Are there moral considerations that tell in favor of legalization? Can we draw parallels between how we treat legal drugs such as tobacco and alcohol and how we should treat illegal drugs such as heroin, marijuana, and cocaine? Should we legalize drugs as a way of respecting individual autonomy against government paternalism, or as a way of showing compassion to the victims of addiction? Most important, do the consequences of legalization promise to be less terrible than those we now face?

### The Argument from Consistency

A first argument offered for legalization is that currently illegal drugs are in no relevant way morally different from the most popular legal drugs — alcohol and tobacco — and so consistency demands that if beer and cigarettes are legal, marijuana, heroin, and cocaine should be legal as well. There is certainly nothing particularly distinctive, nothing inherently worse, about the drugs that through historical accident happen to find themselves on the “illegal” list. After all, narcotics were legal in this country only a century ago, with a wide choice of hypodermic kits available for purchase from the Sears, Roebuck Catalog. Many doctors at the turn of the century prescribed opium as a treatment for alcoholism, viewing opiate addiction as the lesser of two evils. And cocaine, of course, gave its name to Coca-Cola, of which it was long an ingredient.

If anything, illegal drugs are far less harmful than the legal ones. The federal data for 1985 documented 2177 deaths from the most popular illicit drugs: heroin, cocaine (including crack), PCP, and marijuana. Diseases related to alcohol and tobacco, on the other hand, kill close to half a million Americans every year. No illegal drug is more clearly linked to drug-induced violence than alcohol; nicotine and alcohol are both powerfully addictive. Ethan A. Nadelman, assistant professor of politics and public affairs at Princeton University, suggests that “if degrees of immorality were measured by the levels of harm caused by one’s products, the ‘traffickers’ in tobacco and alcohol would be vilified as the most evil of all substance purveyors.”

But parallels between legal and illegal drugs can cut both ways. While Prohibition produced a level of crime and gang violence eerily prescient of today’s drug-related crime and violence, it also slashed alcohol consumption in half, with all the attendant benefits to

human health and family stability. Legal drugs may take a greater toll on health and happiness precisely as a result of their legality — and so of their widespread use and cultural entrenchment. Sue Rusche, director of the National Drug Information Center of Families in Action, claims that “illegal drugs kill fewer people only because fewer people use them.” Why on earth, one might ask, would we want to encourage the use of cocaine and heroin on a par with today’s levels of smoking and drinking?

But in any case, the argument from consistency is a weak one. Robert Fullinwider, research scholar at the Institute for Philosophy and Public Policy, regards the argument that if we tolerate alcohol and tobacco, we are somehow logically bound to tolerate crack in the same way, as the kind of foolish consistency that is the hobgoblin of small minds. We make our laws not only on the basis of logic, but of history; we have an entrenched cultural history with some drugs that we need not repeat with others. Thus Fullinwider, who is inclined toward drug legalization, notes that we could treat cocaine and heroin, if legalized, very differently from alcohol and tobacco. It would be insane, for example, to allow advertising of such drugs; we needn’t permit a whole new array of billboards extolling their pleasures.

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### The Argument Against Paternalism

A second argument against criminal penalties for drug use is essentially an argument against the exercise of state power to coerce citizens’ private and personal choices regarding what they do with their own “free” time. Steven Wisotsky, professor of law at Nova University, argues that “zero tolerance” of drug use is simply an inappropriate goal for a liberal society. “The overwhelming majority of incidents of drug use,” Wisotsky claims, “are without lasting personal or societal consequence, just as the overwhelming majority of drinking causes no harm to the drinker or to society.” For Wisotsky, “The . . . goal of a drug-free America, except for children, is both ridiculous — as absurd as a liquor-free America — and wrong in principle. This is not a fundamentalist Ayatollah land after all. A democratic society must respect the decisions made by its adult citizens, even those perceived to be foolish or risky.”

David A. J. Richards, in his book *Sex, Drugs, Death, and the Law*, also argues that we must respect “the

individual's ability to determine, evaluate, and revise the meaning of his or her own life." Drug experience, Richards suggests, "is merely one means by which the already existing interests of the person may be explored or realized." While it may seem strange to claim that the drug addict is voluntarily pursuing his or her own possibly quite reasonable goals, Richards sees the whole concept of addiction as complex and highly confused: talk of "addiction" conflates the *physiological* features of tolerance (the progressive need for higher doses of a drug to secure the same effect) and physical dependence (the incidence of withdrawal symptoms when drug use is stopped), with the *psychological* centrality of the drug in the user's system of ends, and, most important, with a *moral* judgment that drug use is intrinsically degrading or debasing. These features have no necessary connection to one another. Moreover, the moral condemnation of certain drug use as drug "abuse," according to Richards, involves importing middle-class values into judgments about others' lifestyle choices. He writes, "The psychological centrality of drug use for many young addicts in the United States may, from the perspective of their own circumstances, not unreasonably organize their lives and ends."

But it hardly takes a set of stuffy "middle-class values" to argue that involvement with a highly addictive drug such as crack counts as a form of slavery. The insatiable craving for crack leads people to neglect and abuse their children, to live in unspeakable filth and foulness, to commit any crime to service one all-encompassing obsession. No crack mother, it is safe to say, views crack addiction as a future she would choose for her children. John Kaplan, professor of law at Stanford University, observes that the anti-paternalistic principle of letting each person decide for himself "seems singularly inappropriate when it is applied to a habit-forming psychoactive drug that alters the user's perspective as to postponement of gratification and his desire for the drug itself." Kaplan cites research showing that cocaine scores by far the highest "pleasure" score in laboratory experiments on drug use and is also the most "reinforcing" of drugs known to man: in animal studies, monkeys, if permitted, will perform a given task again and again to gain a reward of cocaine, neglecting food or rest until they die of debilitation.

The anti-paternalistic argument for legalization of drugs is most persuasive for benign and non-addictive drugs like marijuana — but marijuana is the least of our drug problems today. When the drugs to be legalized are dangerous and highly addictive drugs like crack, the argument fails. If paternalism is justifiable anywhere, it is justifiable here. Paternalistic prohibitions against highly addictive drugs are legitimate in principle; the central issue, as we shall see shortly, is how they work in practice.

### The Argument for Compassion

By contrast, a third argument for the legalization of

drugs starts from a very different assumption: that drug abuse is a serious health problem, a condition to be addressed with compassionate medical aid rather than stigmatizing criminal sanctions. While the argument against paternalism downplays the addictiveness of many drugs, the argument from compassion fastens on this as its starting point. As Baltimore's Mayor Schmoke, a leading advocate of this position, argues, "Addiction is a disease, and whether we want to admit it or not, addicts need medical care." Decriminalization, for Schmoke, is a means of reassigning responsibility for the epidemic of drug abuse away from the overburdened criminal justice system to the public health system, where it properly belongs.

Given the fundamental nature of drug addiction, Schmoke points out that "we cannot hope to solve addiction through punishment... Even after prolonged periods of incarceration, during which they have no physical access to heroin, most addicts are still defeated by their physical dependence and return to drugs... The sad truth is that heroin and morphine addiction is, for most users, a lifetime affliction that is impervious to any punishment that the criminal justice system could reasonably mete out."

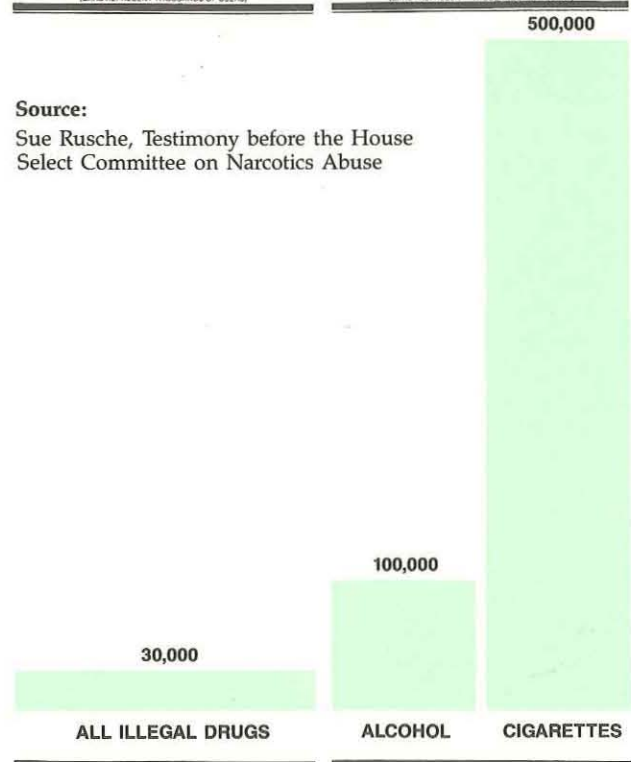
While the anti-paternalism argument would justify a relatively free market in drugs on the analogy to current arrangements for alcohol and tobacco, the argument from addiction would point to a prescription system as we have today for tranquilizers and other drugs under the control of the medical establishment.

#### NUMBER OF AMERICANS KILLED BY ILLEGAL DRUGS

(BARS REPRESENT THOUSANDS OF DEATHS)

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#### Source:

Sue Rusche, Testimony before the House  
Select Committee on Narcotics Abuse

A prescription system, however, would fail to eradicate the worst problems accompanying the criminalization of drug use, for it is likely we would continue to see a booming black market in the controlled substances.

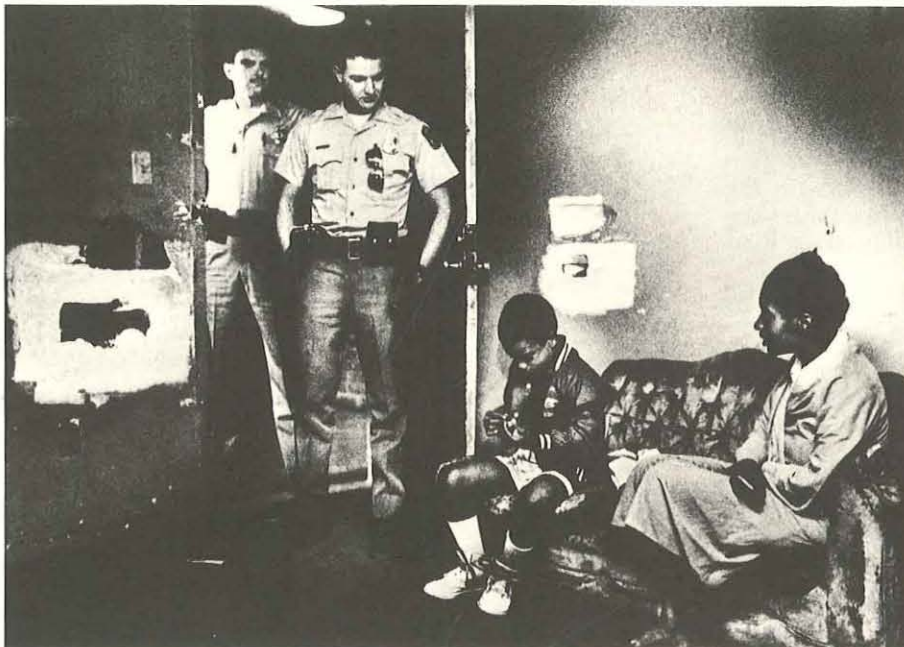
### The Argument from Consequences

However tolerant and compassionate our attitudes and policies may be toward drug users, we may take a very different and far dimmer view of drug pushers. How can we sanction the terrible harms wrought by those who purvey drugs such as crack and PCP to children and to other vulnerable groups? By taking steps toward legalizing drugs it seems that we implicitly condone and legitimate a market in misery.

on drugs and benefits from any intensification of it. At best, increased enforcement simply boosts the black market price of drugs, encouraging more drug suppliers to supply more drugs. The publicized conviction of a drug dealer, by instantly creating a vacancy in the lucrative drug market, has the same effect as hanging up a help-wanted sign saying, 'Drug dealer needed — \$5,000 a week to start — exciting work.'

Given this kind of financial incentive to deal in illegal drugs (an industry boasting an estimated \$200 billion in annual sales), Fullinwider suggests that no criminal sanction can work to dissuade the dealer. The necessary cost-benefit calculations are easily performed: given that the rewards are enormous and certain, no

Dudley M. Brooks, *The Washington Post*



*Six-year-old Dooney Waters lives in a Maryland crack house with his mother, who described herself in a Washington Post series as 'a slave to cocaine.'*

But the most powerful and persuasive argument for the legalization of drugs is simply that however morally distasteful legalization of crack and PCP might intrinsically be, in practical terms the alternative is far worse. A sane policy analysis must consider not only the harm caused by using illegal drugs, but also the harm caused by the measures we take against them. The war on drugs is turning out to be a holocaust for our inner cities, and on these grounds it is unconscionable not to surrender.

In the first place, the war on drugs creates all-but irresistible financial incentives for drug dealers. Black market prices of heroin and cocaine are about a hundred times greater than their pharmaceutical prices: on one estimate, for example, \$625 worth of coca leaves has a street value in the United States of \$560,000. Such hyper-inflated prices mean hyper-inflated profits. As James Ostrowski, former chairman of the New York County Lawyers Association Committee on Law Reform, explains, "Failure [of the war on drugs] is guaranteed because the black market thrives on the war

penalty, even Bennett's favorite beheading, can act as a countervailing consideration, unless the penalty can be made equally certain. And it cannot, even if all the resources of all our police forces and all our courts were to be devoted exclusively to the war on drugs.

Furthermore, the circumstances of criminalization worsen the consequences of the drugs themselves on users. As drug interdiction efforts have increased, drug traffickers have turned to smuggling purer forms of their product; for example, the average purity of cocaine has soared. More potent law enforcement leads to the development of more potent drugs. Schmoke is one who argues that "crack is almost entirely a result of prohibition." Illegal drugs keep getting stronger, even as legal drugs are becoming weaker, with health pressures for low-tar cigarettes, light beer, and wine coolers. There is no Food and Drug Administration regulating the content and purity of illegal drugs, so users buy drugs of uncertain strength, adulterated with various poisons. The illegal status of drugs hastens the spread of AIDS by posing obstacles to needle exchange

programs; it inhibits drug users from seeking needed medical attention.

The most serious negative consequence threatened by decriminalization of drugs is a possible increase in use. Opponents of legalization argue that drug-prohibition laws succeed in deterring many people from trying drugs and reduce their availability. But while the lessons of Prohibition lend some support for worries about increased drug use following the repeal of drug laws, decriminalization of marijuana by about a dozen states in the 1970s did not lead to increases in marijuana consumption; in the Netherlands, which decriminalized pot during the 1970s, consumption has actually declined significantly. Culture seems more important than law in determining patterns of drug use. One may doubt that most Americans would inject cocaine or heroin into their veins even if given the chance to do so legally. And, finally, usage could double or triple without tipping the balance in favor of any escalation in the war on drugs, given the scale of the devastation from that war.

One last danger of the war on drugs, and in some ways the most troubling, is the threat that it poses to our civil rights. In a state of war, ordinary protections of civil liberties may give way to an all-out effort to combat the enemy. The same is true in the war on drugs. Wisotsky expresses concern about what he sees as two dangerous and related phenomena: "(1) the government's sustained attack, motivated by the imperatives of drug enforcement, on traditional protections afforded to criminal defendants under the Bill of Rights [such as more permissive use of illegally seized evidence, relaxation of search and seizure requirements, and draconian mandatory sentences], and (2) the gradual but perceptible rise of "Big

Brotherism" against the public at large in the form of drug testing, investigative detention, eavesdropping, surveillance, monitoring, and other intrusive enforcement methods." He concludes, "Since the early 1980s, the prevailing attitude, both within government and in the broader society, has been that the crackdown on drugs is so imperative that extraordinary measures are justified. The end has come to justify the means. The result is that Americans have significantly less freedom than they did only five or six years ago" — all in the waging of a war we cannot win.

### Conclusion

Whatever the strength of any other arguments for the legalization of drugs, a sober cost-benefit analysis that pays heed to the terrible costs brought by our national war on drugs seems to support some degree of decriminalization. In the end, the best war on drugs may be to revive and overhaul our old war on poverty: to take the resources and energy marshaled in the war on drugs and direct them instead to programs designed to combat the entrenched hopelessness that makes drug use and abuse so tragically appealing.

The sources quoted in this article are: Ethan A. Nadelman, "The Case for Legalization," *The Public Interest*, vol. 92 (1988); Sue Rusche, testimony before the House Select Committee on Narcotics Abuse and Control, September 29, 1988; Robert Fullinwider, interview; Steven Wisotsky, testimony before the House Select Committee; David A. J. Richards, *Sex, Drugs, Death, and the Law* (Totowa, N.J.: Rowman and Littlefield, 1982); John Kaplan, "Taking Drugs Seriously," *The Public Interest*, vol. 92 (1988); Kurt Schmoke, testimony before the House Select Committee; and James Ostrowski, "Thinking about Drug Legalization," *Cato Institute Policy Analysis*, No. 121 (May 25, 1989).

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## Nuclear Waste Storage: Your Backyard or Mine?

Nearly forty years after the United States began producing nuclear waste as a by-product of generating nuclear power, we still have not succeeded in disposing of any of it. Thousands of metric tons of high-level radioactive waste now crowd temporary storage facilities near the reactors that produce them. For twenty-five years the problem was virtually ignored, leading former South Carolina governor Richard Riley to remark, "There is a basic law of nuclear waste often overlooked: all waste remains where it is first put."

The issue became politically salient around 1975, and after much debate, Congress passed the Nuclear Waste

Policy Act in 1982. The NWPA called for a site to be opened in a Western state by 1993 and a second site in the East by 2003; it also provided for extensive public involvement in the site selection process and even allowed local authorities a veto power over the selection of a site. However, the reasonable provisions of this law soon came unhinged. Thus, in 1986, President Reagan selected three candidate sites — in Washington, Nevada, and Texas — from those already studied by the Department of Energy, and he canceled plans to find a second site in the East. After further political maneuvering, the House of Representatives was left to