

# Drug Prohibition and Individual Virtue

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*As far as economics is concerned, the market for drugs, as in all other cases, maximizes the welfare of all who participate in it, at least in the ex ante sense. Legalization—like the repeal of alcohol prohibition—will also help solve drug related problems such as crime, impurities leading to death and child abuse. Nor does it follow from the fact that such substances are addictive and harmful that using them must be coercive, and should be banned. Also rejected is the 'public health' argument that legalization would result in too great a rate of addiction.*

## 1. Introduction

This paper argues the case for legalizing<sup>1</sup> drugs such as marijuana, cocaine and heroin. It claims there are no market failures that justify prohibiting of these opiates, and there is nothing in positive economics that precludes legalizing drugs. On the contrary, a free market in marijuana and other drugs enhances economic welfare.<sup>2</sup>

This conclusion stems from the argument that there are always gains from trade. Whenever any two persons engage in commercial activity both must gain in the *ex ante* sense since neither party would take part in the endeavour unless he expected to be made better off from it.

The claim is not that a free market in drugs will enhance economic welfare *ex post*, but only in the *ex ante* sense. When viewing trade *ex ante*, one does so before it actually takes place and anticipates a benefit from it. That is the reason one agrees to take part in it. Economic welfare in the *ex post* sense occurs after the trade. To have gained in this regard the participant must continue to regard himself as better off because of the trade.

If this insight applies to ordinary trades, it holds no less in the case under consideration. Were I to sell you an ounce of cocaine for \$100, at the point of sale I must value the money more than the opiate, and you must rank the two items in the inverse order. Since trade is a positive sum game, we both gain.

It cannot be denied that third parties often feel aggrieved. Citizens may be

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<sup>1</sup> Actually relegalization, since these substances were legal until the passage of the Harrison Narcotics Act in 1914.

<sup>2</sup> For a general discussion of drug prohibition see Judson 1974; Trebach 1978; Szasz 1985; Hamowy 1987; Boaz 1990; Thornton 1991.

affronted when consenting adults engage in voluntary capitalist acts, temperance leagues might object to alcohol sales, and health advocates might object to cigarette advertising. But as third parties their misgivings do not count in welfare calculations (Rothbard, 1977).

There are several good reasons for disregarding the welfare of third parties.<sup>3</sup> First, according to the old saw, 'talk is cheap'. A third party can verbally oppose any given trade. But that opposition cannot be revealed through market choices in the same way that trade between the two parties indicates a positive evaluation of the transaction.

Secondly, by definition, third parties do not take part in market transactions, and no benefit accrues to them on those occasions. People, of course, are free to enter the market and offer goods or services for trade. Only then can their economic welfare be enhanced. But the welfare of third parties *qua* third parties cannot be counted, since we do not contend it will be enhanced.

Several objections might be raised against these claims.<sup>4</sup>

## 2. Drug-related Problems

After citing statistics on the large number of drug-related problems it is frequently argued that things would not improve with legalization.

One reply to this might be 'So what?'. No one ever claimed that legalization would solve *all* problems. If legalization makes drug-related problems no worse, and improves matters in other ways, there would be a *prima facie* case for ending prohibition.

Legalization will likely reduce drug-related problems. Impurities in narcotics would be better dealt with by legitimate businesses than the present fly-by-night operations created by prohibition. And there would certainly be fewer drive-by shootings, which indiscriminately kill innocent bystanders.

The implication of this objection appears to be that if drugs were prohibited the problems would dissolve. But there are serious difficulties with this line of reasoning. First, since drugs like crack are already outlawed, the horrible statistics indict the present system, not the non-existent legalization scenario. Secondly, it is widely conceded that government cannot successfully ban addictive substances from its own jails where, presumably, bureaucrats have more control than elsewhere in society. But if the state cannot prohibit opiate use in prison, it is unlikely to eradicate drug use outside prisons without resorting to policies that circumscribe civil rights.

## 3. Coercion

If one is forced to trade ('Your money or your life'), then one does not gain, even in the *ex ante* sense. How does this relate to the sale of narcotics? Some drugs, such as crack cocaine, are highly addictive. The choices of addicts are not fully voluntary, perhaps not voluntary at all. They are constrained, comparable to the 'choice' of a person who has a gun to his head. (Steinbock, 1994, p. 221)

<sup>3</sup> We are here discussing third parties whose rights to person and property are not being violated.

<sup>4</sup> These objections have been articulated by Steinbock (1994) in response to Block (1994).

This objection is problematic because one can gain by choosing even under the threat 'Your money or your life'. If you value your life more than your money, you are better off if you are allowed to choose life over money. Consider an addict offered one ounce of his favourite narcotic for \$100. Are we to say that he would be better off, from his own perspective, if he could not make this choice? If the person in danger of being murdered is made better off by being given a choice, why does this not apply to the addict?

#### **4. The 'Public Health' Perspective**

According to this viewpoint, addictive materials are physically harmful to the person who uses them and they should be banned, even though others are not harmed. Drug prohibition is viewed here as analogous to seat belt laws which save thousands of lives each year. As Steinbock (1994, p. 223) argues: 'Since the infringement on individual freedom is minuscule, and the social good so great, the intrusion is warranted'.

But such inherently unquantifiable variables cannot be measured, much less weighed against each other. Interpersonal comparison of utility is incompatible with valid economic analysis.

Moreover, many things besides drugs and driving without seat belts are deleterious—chocolate, ice cream, hang gliding, boxing, automobile racing, and fried chicken to name a few. Were we to accept the logic of the public health argument we would have to forbid all these items and activities.

Let us concede for the sake of argument that heroin is harmful. Even so, legal suppression does not improve the health problem; rather it exacerbates it. This is because the more severely prohibition is administered, the stronger will be the potency of the ensuing drugs. A smuggler would rather risk transporting a suitcase full of cocaine than marijuana because of its greater value. In the early 20th century prohibition led beer manufacture to decline and hard liquor manufacture to increase.

#### **5. Many People Might Become Addicted under Legalization**

There are good reasons to suppose that the number of addicts would not rise significantly by ending prohibition. Drugs are a necessity, not a luxury, to users; and the price elasticity of demand should be very low. Under legalization, incentives to 'hook' an addict would be reduced.

Moreover, even if, say, three-quarters of the population were to become addicts, there would still be nothing in positive economics to justify banning these substances themselves. Again, many of the disastrous effects of narcotics stem not from the actual substances, but from their prohibition. Under legalization, the usual social problems associated with drugs (crime, overdosing, the frantic attempt to find a fix) would tend to disappear.

Suppose that were homosexuality legally prohibited 1% of the population would engage in this practice. Alternatively, were it allowed, 75% of males would engage in it. Would Professor Steinbock advocate forbidding homosexuality under such assumptions? Suppose further that under prohibition the spread

of AIDS would be very much decreased. Would her 'public health approach' then urge a law incarcerating gays?

Yes, libertarianism "has absurd results," as Steinbock maintains. But this is due to our absurd supposition of 75% addiction—made only for argument's sake. When equally unlikely assumptions are fashioned so as to attack other philosophies, they, too, can be shown to be "absurd," based on such a faulty criterion.

## 6. Alcohol Prohibition and the Argument from the Status Quo

According to Steinbock (1994, p. 234): 'Because narcotic and opiate drugs have been illegal since the beginning of this century, they aren't viewed by most people as something to which they have a right. *Keeping* drugs illegal would not engender widespread anger and resentment, as *making* alcohol illegal would.'

Missing from this analysis is any concern with liberty or freedom. Such concern would lead us to ask not whether people think they have a right to some substance but whether they actually do have these rights. Concern with liberty would lead us to ignore political feasibility.

Consider a doctor who recommended in the 1950s that people stop smoking in order to save themselves from cancer. At that time, tobacco use was very well entrenched; perhaps even more than alcohol at present. Given the political impossibility of changing the smoking habits of Americans in the 1950s, Steinbock would have thrown up her hands in dismay and given up the good fight. A person with a true concern with public health, in contrast, would have said: 'I don't care whether it is politically possible or not, tobacco causes cancer. Case closed. Full steam ahead, and let's ban cigarettes!'

But there is yet another problem with this argument about feasibility—according to the logic of the argument we should have never prohibited narcotics at the turn of the century, nor should we have prohibited alcohol in the 1930s. For these policies, at those times, would have led to 'widespread anger and resentment'.

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