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Revision of United States Drug Law

Alexander Fernandez
Syracuse University

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Revision of United States Drug Law

A Capstone Project Submitted in Partial Fulfillment of the
Requirements of the Renée Crown University Honors Program at
Syracuse University

Alexander Fernandez

Candidate for Bachelor of Arts in Philosophy and Art
and Renée Crown University Honors

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Capstone Project Advisor: _____

Capstone Project Reader: _____

Honors Director: _____

Stephen Kuusisto, Director

Date:

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Abstract

In this essay I will lay out two distinct but associated arguments that will show that United States drug policy on is both in principle and in practice unjustifiable. I will be focusing specifically on marijuana cocaine and heroin. While there are many controlled substances in the DEA schedules, I take it that showing current policy to be unjustifiable for these three substances will be sufficient to show that the policy of total prohibition and harsh punishment is wrong. The first section will normatively analyze the current policies of prohibition and punishment for use and sale of illicit substances. I will first show that our attitude towards certain psychoactive substances is hypocritical given our attitudes towards others. We allow the use of alcohol and tobacco, both substances that are deadly, addictive, and intoxicating, while disallowing the use of substances with similar levels of harm to the body. While there are many arguments that focus on the fact that some of these drugs (particularly marijuana) cause less organic damage to the body, I will argue that even if they are just as damaging as alcohol or tobacco, their prohibition is still unacceptable. As well, there are other dangerous but legal behaviors that we allow either because we think that people ought to be able to make their own decision knowing the risks or because we think a person has the right to do themselves harm if they wish.

Exectutive Summary

The point of this project is to show that the way that we think about drugs is skewed. We have a view of recreational drugs that separates them into a category that we have trouble defining the boundaries of. We fail regularly to consistently say what is and is not a drug. We also allow legally behaviors that seem to be analogous to drug use insofar as

they do the same kinds of things to us that we fear drugs will do. Especially in the cases of tobacco and alcohol, there does not seem to be any good reason to legally separate the regulation of their production and sale. Their active substances (nicotine and ethyl-alcohol) are both “psychoactive” meaning they alter the state of mind of the user in a significant way. Alcohol in particular can alter the state of mind of the user in very dangerous ways. Alcohol intoxication can be very dangerous not only to the user but to those surrounding the user, for instance, in the case of a drunk driver. Yet these two things are not only legal, but controlled in a completely separate way than recreational drugs. The question this project asks is why?

The second aim of the project is to use John Stuart Mill’s theory of a non-paternalistic government to justify the legality of recreational drug use. The basic tenant of Mill’s theory is that so long as your behavior does not harm others, then the government has no place in regulating such behavior. Essentially, Mill argues unless something you do is likely to do harm to someone else, there is no reason for the government to step in and stop you from doing it. His justification is that the best kind of society is one where the government only has as much influence over the lives of its people as it needs to in order to protect them, and anything else above that makes for a society that controls too much of the lives of its individuals. At the heart of this argument is the idea that a society can agree about something and be completely wrong. Thus basing restrictions of behavior of the individual on what society thinks is using the wrong metric. Mill gives us an objective metric by which we can judge whether a society has a reason to stop someone from doing what they choose to do.

The third part of the project is focused on the “drug wars” in Colombia and Mexico. The essence of the argument is that prohibition laws create the black market for drugs, since the demand exists and we have not found a suitable way to stamp it out. Since there is a demand for the product and the product is illegal, those who control it have no legal recourse to use in order to maintain whatever share of the market they have. Thus they must resort to violence, which, in some cases, can create a drastic escalation of violence, something we have seen especially in Mexico. On top of that the drug trade is sustained by the massive gaps in income in these two nations which makes either farming the resources for production or entering into the trade the best available option for some people. I argue that U.S. prohibition and policies within the Americas have been the catalyst for the drug trade across Latin America and that removing these policies will lead to stability. By making recreational drugs legal, especially marijuana, heroin, and cocaine, we would at bare minimum force existing cartels to legitimize and we would cut off the funding received by the armed rebels and paramilitaries that use drug trafficking to fund their campaigns of terror. Especially in Colombia pro-government paramilitaries use the money garnered from the drug trade to commit unspeakable atrocities, and removing the largest buyer of their product would deal them a terrible blow, if not a fatal one.

The heart of this project is that currently, drug policy is failing to accomplish just about anything. Drugs are prevalent just about everywhere in the U.S., and there does not seem to be an end in sight for it. All out civil wars are raging in the places where drugs are produced, yet we treat drugs as the problem and not a symptom of it. At bare minimum legalizing the production and distribution of these substances would serve to make drug use safer in the U.S. and may throw the tide of these civil wars in favor of the citizens who

are caught in the crossfire. At the very least, we have to recognize that something needs to change, and this project aims to point us in the direction of change in law that might actually change the situation.

Introduction

In 2013 the British Journal of Medicine released a study in which researchers compiled data from government as well as private sources in order to assess the effectiveness of the so-called “war on drugs”. In particular they analyzed data from the US Drug Enforcement Administration’s System to Retrieve Information from Drug Evidence (STRIDE). The data provided by STRIDE were focused on the change in price (adjusted for purity) and purity from 1990 to 2007 of three of the most popular controlled substances in the United States: heroin, cocaine and marijuana.¹

The government of the United States has, since the passing of the Controlled Substances Act in 1970, been actively engaged in attempting to rid the United States of what some have called the “epidemic” of drug use and abuse. Given that the DEA is incredibly well funded (having a budget over \$2.88 billion in 2014), it seems that we should be entitled, now 35 years down the road, to decide whether that expenditure is justified.² In a very large sense, the success of the war on drugs could reasonably be measured by how accessible controlled substances are. The DEA should feel successful if they have made it harder for people who want to do the thing the DEA is paid to make sure

¹D. Werb, et al. “The temporal relationship between drug supply indicators: an audit of international government surveillance systems,” *BMJ Open* 3 (2013): 2 doi:10.1136/bmjopen-2013-003077

² Drug Enforcement Administration “DEA Staffing & Budget.” DEA.gov.
<http://www.dea.gov/about/history/staffing.shtml>

they do not do. Thus were the price adjusted for potency for a given substance to increase, they could call it success, since this would make it harder for people to have access to the amount of drugs they want. They could also call it a success were the potency to drop, since people would have to buy more in order to get the same effect, thus decreasing accessibility.

The BMJ study earlier showed very effectively that the DEA has failed in those areas in regards to these three substances. Each of the three saw an increase in potency and a decrease in adjusted price. For marijuana, potency increased by more than 160% and price adjusted for potency decreased by more than 80%. This means that cannabis, in a decade and a half, more than doubled in potency while its price was nearly cut in half.³ For the DEA, this should be considered a failure and a spectacular one. While the drug war is extremely complex and involves many factors by which success might be judged, it would seem that this BMJ study has flatly shown the DEA to have failed in its most basic mission; that is, to rid the streets of America of the “epidemic” of drug use.

This study, while powerful, is one of many analyses of United States drug policy that has shown it to be incompetent at accomplishing any sort of goals we might think it to have. This study is not meant to make it look as though the DEA is not doing enough, but rather to show that even after it has done perhaps more than could ever have been imagined, drug use remains extremely popular and the illicit substance trade has flourished in its presence rather than being diminished by it. The question this study should make us ask is not how we can reform the DEA to achieve its goal, but rather whether its goal is possible to achieve, or even worth achieving. These questions become especially relevant

³ D Werb et al. “Drug Supply”, 3

when we consider that these data could not have been reported had there not been large demand for these substances in the United States. It is abundantly clear that people are still using, buying, and selling illicit substances even though it is illegal and punished heavily. Thus, this essay seeks to answer the question: If all these people want to do drugs, should we be trying to stop them?

A bulk of this argument rests on a non-paternalistic view of government as laid out by John Stuart Mill in “On Liberty”, and while I think it would be possible to argue directly from this view to allowing the use of recreational drugs I do not think this approach encompasses all that there is to be said on the subject. By elucidating some inconsistencies in the laws which govern which substances we are allowed to intake and which self-harming actions we can take, it becomes clear that the idea of legal recreational drug use is not so farfetched as it may have first seemed.

The second argument will focus on some of the practical reasons why drug legalization would be a positive and not just something that is morally permissible. While there are arguments that can come from the increased gain in taxes, relaxing the strain on the already overburdened prison system, and a general move towards better health and awareness of drug use, the issue I want to focus on is a little darker and is still more rooted in principals.

In 1920 the United States banned the sale and production of alcohol.⁴ The following decades saw the rise of some of the most notorious criminals in American history, who made large profits smuggling, producing, and selling illegal alcohol. While there is debate as to whether prohibition was the cause of their rise and the ending of it their downfall, there

⁴ Roderick Phillips, *Alcohol: A History*. Chapel Hill: University of North Carolina Press, 260

is no doubt that organized crime made a large profit on selling illegal alcohol.⁵ Americans still bought alcohol even though it was sold by people they knew were doing a great deal of harm to others. This era also saw the rise of “bathtub gin” cut with dangerous chemicals, “speakeasies” where patrons would secretly consume the illegal beverages, and bootleggers of all kinds.⁶ People bought unsafe, criminally owned and distributed alcohol even though it was prohibited. My argument intends to draw a parallel between these events and the events of today involving the groups who control the drugs that come into America. The cartels in Colombia and Mexico have been waging an all-out war with their respective governments for decades, a war that has claimed countless lives. The Taliban control heroin production in one of the richest poppy growing areas of the world, while the Triads control a large part of its distribution. Groups like these are funded, fueled, and kept running by America’s insatiable appetite for the things they sell that we are not allowed to produce or buy from reputable sources. This argument, though practical in nature, is founded on a simple principle: Americans want drugs, and if we can’t get them legally, we will get them illegally. In order for there to be a drug trade there needs to be infrastructure, but since no legal infrastructure exists for this, the infrastructure will be controlled by illicit groups. Since, by nature, they operate outside of the law, they are under no pressure to be in all other ways, aside from selling drugs, lawful. In many cases, they have turned extremely violent. I intend to give real examples of this and argue that by taking away one of the largest markets, there is a potential to undermine these groups where it counts: their wallets.

⁵ Phillips, *Alcohol: A History*, 265

⁶ *Ibid*, 265

These arguments will work in concert because neither one is sufficient to demand a change of policy. Without the theoretical argument, it seems that though we could stop criminals this way, the price would be too steep. Without the practical argument, it could certainly be retorted that lacking recreational use of drugs is not harming anyone and that to institute that infrastructure for the sake of pleasure is unjustifiable.

One immediate rebuke might be that any argument that works for these three will work *only* for these three. However I do not think that is the case at all. For one, I will not be arguing for their use based on their merits as opposed to other substances we might already intake, or contrast them with other drugs which are illegal. In fact I will be treating all three as a single unit, and my goal is to produce an argument that can be shown to work for all three, and thereby extend to whatever family of drugs share similar traits to them. My choice of substances seems much more critical given this information. These three drugs actually represent vastly different groups of substances, though they are often lumped together. I mean this not in terms of the category of drug they belong to but in terms of what kinds of effects they have on the body and what kinds of properties they display. For instance heroin creates a crippling physical addiction while cocaine and marijuana normally only create a psychological dependency. Thus my argument will need to show that even addictive substances ought to be legal for recreational use in order to be forceful. I do not intend to use my examples piecemeal but wholesale, as entwined as they often are in the minds of the public despite their vast differences.

Another initial objection might be that even if it were the case that recreational use is morally permissible, we would be better off without and therefore it ought to remain illegal. The essence of this argument is that drug use is a plague on society and causes too

many problems to justify allowing it. However, this argument is flawed in two very important ways. It follows from this line of thinking that the law can and ought to be used to create a “better” or “more acceptable” society by making “better” or “more acceptable” citizens. Yet the law is not used to do this. We would certainly be a “better” society if less people lied but telling a lie is not illegal except in very specific cases (such as libel or slander) and few would argue that this ought to change. The other major problem with this argument is that it assumes that legalizing recreational use will necessarily create more drug users. As will be discussed at the end of this essay, this has not been the case, especially among the youth, in places where similar laws have been enacted like Uruguay and Portugal. So long as we have at least no more drug users than before, this argument falls apart.

One final objection to starting this project would be that this sort of argument will in some way justify the violence of those who are involved in the illegal drug trade. This objection would claim that by stating that the government was in the wrong all this time, I would be justifying the brutal means to which people have gone to attain something that should have been allowed by the government. In no way does this argument do that. The right to have access to drugs is not a justifying condition for any violent acts committed by people in the name of getting high. Merely because you have something that I have a right to have does not justify my killing you in order to take it. Being denied recreational drugs is simply too weak of an offense to justify violence.

In order to actually begin this argument we need to first lay out what drugs are. Though my intent is to focus only on three banned substances, there must be a clear

understanding of how they are grouped and why. First we will examine the definition provided by the Controlled Substances Act (CSA). It states that the term *drug* refers to:

A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C). A food or dietary supplement for which a claim, subject to sections 403(r)(1)(B) and 403(r)(3) or sections 403(r)(1)(B) and 403(r)(5)(D), is made in accordance with the requirements of section 403(r) is not a drug solely because the label or the labeling contains such a claim. A food, dietary ingredient, or dietary supplement for which a truthful and not misleading statement is made in accordance with section 403(r)(6) is not a drug under clause (C) solely because the label or the labeling contains such a statement.⁷

This is, to say the least, a troubling definition when added to it we consider that the Title 21 definition of “food” is “(1) articles used for food or drink for man or other animals, (2)

⁷ FDA "Controlled Substances Act." Controlled Substances Act. June 11, 2009. <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm>

chewing gum, and (3) articles used for components of any such article”.⁸ This poses a very troubling question right from the start: since cocaine and marijuana can be ingested, and very often are, why aren’t they food? This is not an unfamiliar query, but one that is worth a momentary diversion. Marijuana and cocaine are both edible substances, and so can be used as food, arguably fulfilling clause (1). Moreover, by adding them to any pre-recognized food (à la pot brownies) you would at least be fulfilling clause (3). However, I think that it is reasonable to concede that they are drugs especially given that the DEA is given explicit authority over “controlled substances”, not just “drugs”. However, this inconsistency is one that, I think, is a good way to introduce the notion that the DEA is not using any objective criteria in deciding which substances are or are not prohibited. It may not be a point of much worth, but it does seem odd that the Drug Enforcement Administration has put out an unsatisfactory definition of what it is exactly their regulations enforce.

Since that definition has not really provided us with any answer as to what we are dealing with, let us instead examine some common properties of drugs. One thing common among drugs is that they are psychoactive.⁹ This means that they change the way the brain works and alter our perceptions of the outside world. Not all drugs are psychoactive (eg. Ibuprofen in normal doses) but ones used for recreational purposes almost always are. This makes sense in a very straightforward way. The psychoactive properties of drugs are what make them enjoyable to people, they are what creates the “high”.

Second many drugs may be addictive either physically or psychologically. Physically addictive drugs create a need in your body for the drug. As your body becomes accustomed

⁸ FDA "Controlled Substances Act"

⁹ Arthur Benavie. *Drugs: America's Holy War*. New York: Routledge, 2009.

to the drug's presence it begins to expect and require it for normal daily functioning. This means that removal of the substance can cause serious physical trauma or even death.¹⁰ A more close to home physical addiction is caffeine, as anyone who gotten a caffeine headache can attest to. Psychological dependence is one in which the person can stop using the drug without experiencing withdrawal symptoms, but has difficulty doing so due to the heavy use and psychological associations they have made with the substance.¹¹ These two can also overlap, which, incidentally, is something that can make quitting tobacco even more difficult.

While it is tempting to think that a further property might involve how they can be imbibed, as we have seen drugs can be both edible and inedible. Marijuana is certainly edible but heroin is not. While this seems a dull point, it brings up a clarification I would like to make. For the duration of the paper I will occasionally refer to marijuana as a drug (as it has been classified by the DEA) but not tobacco. The reason for this is that one has been classified by the DEA as a drug but not the other. The two share a similar property though: they are not synonymous with their active ingredient. The active ingredient in marijuana (the real "drug") is Tetrahydrocannabinol, THC, and the active ingredient in tobacco is nicotine.¹² Neither marijuana nor tobacco are *themselves* psychoactive, it is only because they contain these substances that they are. In both cases it is only the leaves that contain the mind-altering chemicals.¹³ Thus both substances are edible but contain the "drugs" of interest.

¹⁰ American Psychiatric Association "DSM-IV Substance Dependence Criteria." DSM-IV.
https://www.danya.com/dlc/bup/pdf/Dependence_DSM.PDF.

¹¹ APA "DSM-IV"

¹² Benavie, *Drugs*, 95

¹³ FDA "Controlled Substances Act"

Other than that, drugs are just like any other chemicals. They come in varying forms, states of matter, and means of production. It seems that lumping all of these psychoactive substances into one category of “drugs” may not be useful. However, for the purposes of this essay, when I refer to drugs I am referring to substances the DEA has listed in one of its five “schedules” of controlled substances.

Since we now have at least some basic idea of what a drug is, we can move into discussing how they are controlled. First, there is scheduling. The DEA separates controlled substances into 5 categories depending on three factors: How high the potential is for abuse or addiction, whether there are generally accepted medical uses, and whether the drug can be used safely. Schedule 1 contains substances with high potential for abuse, no currently accepted medical use, and a lack of accepted safety under medical supervision. Marijuana and heroin both fall under this schedule, as do MDMA, LSD, and Peyote.¹⁴ Schedule II contains substances with a high potential for abuse, some currently accepted medical treatment, and for which abuse may lead to physical or psychological dependence. Substances in this category include cocaine, methamphetamine, and morphine.¹⁵

Being caught in possession of any schedule I or II controlled substance without proper authorization is a felony, and penalties and jail times can range from 90 days to several years depending on state law and other specifics of the case, such as how much you are in possession of and whether there is intent to sell, especially intent to sell to minors.¹⁶ Scheduling of controlled substances is under the purview of the DEA and ultimately of the

¹⁴ FDA "Controlled Substances, Alphabetical Order." Controlled Substances Act

¹⁵ FDA "Controlled Substances, Alphabetical Order"

¹⁶ FDA "Controlled Substances Act"

Attorney General.¹⁷ At this stage no doubt there is an expectation that I will discuss where the three substances at hand really ought to belong given their specific qualities and effects. Especially in the case of marijuana it would seem that classification as a schedule I controlled substance is unwarranted. However, I do not intend to make such arguments. For the sake of argument I will concede that all three substances are correct fits for their scheduling. I intend to show that even if they fit these criteria a complete ban on their recreational use is not justified.

It is important to note that these laws are at a federal level. States all have their own laws regarding drug use and similarly their own penalties attached. For the purposes of this essay I will only be discussing federal law. Specific state laws may be discussed, for instance the recent lift of the ban on marijuana by Colorado and Washington. When I mention what the law ought to say on the whole, though, I will be referring to federal law, unless otherwise stated.

Part I: Hypocrisies and the Role of Government in Regulating Pleasure

Suicide

The largest complaint by far against allowing the use of drugs is that they cause harm to the user. Smoking either marijuana or cocaine (in the form of crack-cocaine) causes immediate damage to the lungs. Prolonged use of cocaine can lead to serious health problems, including erosion of the nasal membrane, tooth erosion, brain abscesses, and

¹⁷ Ibid

even psychosis.¹⁸ While Heroin normally causes little to no organic damage to the body, there is a higher risk of overdose than with the other two, as well as the dangers of using potentially infected needles to inject yourself with it.¹⁹ While studies have found that much of the worry about the kinds of damage that drugs can cause is, as Arthur Benavie points out in his book “Drugs: America’s Holy War”, baseless, there are still clearly risks associated with doing drugs that might lead to the users’ death. The question to be posed then is: do people have a right to do it anyway?

Let us examine the case of suicide. Suicide, in its most basic form, is absolutely legal. While there are prohibitions on certain kinds of suicide (e.g. New York City’s law against jumping off buildings) there are currently no laws that make such acts on the whole illegal, and with good reason.²⁰ In the first place it would seem quite silly to have a law that you could only penalize people for attempting to break. Furthermore, we take it as a matter of bodily autonomy that we have a right to end our lives when and how we choose. We believe that it is our right to decide for ourselves if our lives are worth living. Pushing the point even further it seems utterly cruel to try to put someone in prison for wishing to no longer live. The person who commits suicide does only themselves harm and so to punish them for that would be ludicrous. While there is some harm caused to the family by way of grief, this is not the sort of harm we deem punishable by the law. To break someone’s heart is not an offense worthy of jail time.

¹⁸ Arthur Benavie. *Drugs: America’s Holy War*. New York: Routledge, 2009. 9

¹⁹ Benavie. *Drugs*, 9

²⁰ Anemona Hartocollis. “Bid to Jump Off 86th Floor Was Illegal, Court Rules.” *The New York Times*. March 4, 2008.

Thus let us examine what exactly happens in the case of suicide. We might say the person who is to commit suicide makes an active and conscious decision to end their life at that moment. However, not all suicides are immediate. Some people overdose on sleeping pills and slowly drift into a painless death. Some might lie down before an oncoming train. Some might go to sleep with carbon monoxide wafting into the room. Thus, a better definition would be that the suicidal person makes an active and conscious decision to put into motion a series of events that they believe will end their life.

Now let us see how drug use works in. The claim is that drugs ought to be illegal because of the harm they might cause the user, namely that they will kill them. Should the user know this prior to taking the drugs, it seems to be a lot like a prolonged suicide. Let us use cocaine as an example, since it causes organic damage and death by overdose is accidental. Say that someone, call her Nikki, decides that she will start using cocaine. Not just using either, but using extremely heavily, spending a large amount of her time high on cocaine. Nikki is aware of the damage that prolonged use of cocaine will do to her and decides that the early death is worth the short life of hedonistic pleasure, living from high to high until she dies young. In this case she has made a conscious decision to set into motion a series of events that she believes will kill her. Thus, for Nikki, cocaine use is little more than prolonged suicide.

There are some ways that the cases differ. One is that Nikki can stop using cocaine and thereby save her life. Another is that the series of events was not set in motion in order to end Nikki's life, but to gain pleasure. The death at the end was only an unfortunate consequence, and an acceptable price to pay. Yet I think that these issues can be rectified. The first issue is only *prima facie*. Almost all methods of suicide have some sort of "out".

For many of the methods people use, a simple phone call to 911 is enough to save you. While there are some, a bullet to the head, for instance, that cannot be stopped once started, a good number of acts we would call suicidal can be. The second issue is only an issue if we assume that the goal of suicide is in fact death. While this seems straightforward I think it misses the point of suicide. The suicidal person is not looking for death but a release from pain and suffering. They believe that death is the only way for them to achieve this release. Thus death for the suicidal is not the end but the means to that end. While the thought that people do not commit suicide in order to die seems odd at first, it makes more sense if we add the real purpose to it: people do not commit suicide in order to die, but to be free from pain.

However, this case has some other potential flaws other than possibly being disanalogous. In this case Nikki *knew* that the drugs would cause her harm. However, many drug users do not know, at least fully, what the relevant harms are when it comes to drugs. Were the person to not know that cocaine was harmful, and harmful in those ways, then by no means could their actions be considered suicide, at least willing suicide. This brings to light one of the biggest issues with recreational drugs: people cannot assume risks they do not know about. Or can they? Consider that the information about the nature of cocaine and its effects on the body is readily available to anyone with internet access or, perhaps, being old-fashioned, a library card. This consideration splits ignorant drug users into two groups: the Willfully Ignorant and the Misled. The Willfully Ignorant are those users who do not know what the health risks of a drug are and, aware of that ignorance, choose to use it anyway. The Misled are those who believe the drug to be safe when it is not, either by being told by a disreputable source or by believing in popular misconceptions about the drug.

Note that I am including the potential to become dependent on it among the health risks of the drug.

It does not seem like a large leap to say that the Willfully Ignorant have decidedly assumed the risk of the actions they are taking, knowing that they could have dire consequences. Imbibing a substance you are aware you are uneducated about is a very plainly stupid decision and, by making it, the Willfully Ignorant have done something similar to suicide. They have made a choice that they know could lead to their death, a choice we have already shown someone has a right to make.

However there is an issue with the Misled. It is this group that defenders of drug law are more worried about. The Misled do not believe that what they are doing will lead to their death, so they have not made the choice they believe they have. However, the Misled are not a group exclusive to drugs. Misinformation about the relative safety of plenty of things exists. For instance, there are parents who ardently believe that by not vaccinating their child they are saving them from the potential of developing autism. However, in reality, they have been misled. There is little to no evidence to support what they have been told and they have now put their child at enormous risk of potentially fatal diseases like measles, rubella, and mumps. In the case of the parents it would seem they have a responsibility to be more attuned to what information is correct and what is not in the case of taking care of their child. Why then can we not apply the same kind of responsibility to the Misled in the case of cocaine? Before I answer that, I think it would be good to note that I do not intend for children to be lumped into any of the hypothetical groups who use drugs throughout this essay unless otherwise stated. As my thesis is founded on Mill's view on liberty, I can appeal to his notion that those without the capacity to make certain decisions

and who need to be cared for by others are not eligible for the same sorts of liberties as the general populace.²¹ As such, while we may quibble whether legal age for consumption of such substances should be 18, 21, 19, etc., I would put forward that children most certainly ought to be barred from using recreational drugs. I will return to this later, for now it only matters as this excludes them from being included in the Misled. Returning, we find that one issue with applying this responsibility is that there will be those without access to any information that might right their beliefs. Another would be that it would be unfair to put that kind of responsibility on people whose beliefs are easily swayed by faulty reasoning and false information. It is not their fault that they are not as capable of making an informed decision as others are. However, I think that in order to be consistent I can and will take a hard stance on this. The Misled who choose to imbibe drugs are in fact making a suicidal choice. Part of that choice is choosing to believe information that comes from disreputable sources. They are responsible for the consequences of that choice, as we all are for the consequences of all our choices. For instance people are held responsible for breaking laws they are ignorant of even if they have been misled by someone they trusted. It is the responsibility of anyone who chooses to take drugs to ensure for themselves that they know what they're getting into. The issue of the Misled will crop up in other places, as there are other issues they present, but in terms of the suicidal analogy, the Misled have made a suicidal choice by choosing to do something that could kill them, even though they don't know it will.

Thus we can see in what way recreational drug use could be considered a form of long term suicide. At minimum this analogy shows that we take it that the potential of

²¹ Mill, John Stuart, and Stefan Collini. *On Liberty ; with the Subjection of Women ; and Chapters on Socialism*. 13

something to end the life of the person who uses it does not justify it being labeled as illegal. If we are to be allowed to kill ourselves through hanging, shooting, poison, and starvation, then we ought to be allowed to kill ourselves through recreational substance abuse.

Self-Harm

This example ought to be short since it is incredibly similar to the previous one but it deserves some attention as it is different. Let us return again to the case of Nikki. Instead of choosing a life of unbelievable hedonism, she decides that she will do cocaine less frequently, so as to not drive herself to as early of a grave. She will still be doing significant harm to her body, though. Again at first this seems like something we want to prevent, and that the law would be a powerful way to do that. However, again we need to consider what sort of action Nikki is performing when she makes this choice.

Much like suicide, self-harm is entirely legal. You have the right to maim, defile, and destroy your body in just about any way you would like. To claim then that something ought to be illegal merely because it causes harm to yourself would be ludicrous. Again we need to investigate whether drug use is an appropriate parallel to what we would consider typical self-harm. In this case, it may not be as clear-cut. What we would think of as typical self-harm is to intentionally cause yourself pain or to hurt yourself in some other way because you derive some kind of pleasure or release from it. Cutting oneself is a go-to example of this. At first it seems we could say something similar to what we said in the example of suicide but this is a little different. Someone who self-harms in that way gets the

pleasure they desire from self-harming, while Nikki self-harms by getting pleasure. Recall that in the suicide case the person dying does not cause them to get what they desire but rather in order to get what they desire they must first die. We can, however, talk about other kinds of self-harm that are legal. Plenty of other substances which will be the subject of much of the following essay are legal yet cause harm to the person who uses them. Alcohol and tobacco are wonderful examples of this. In those cases the user knowingly causes themselves harm but as a sacrifice for the pleasure they will receive. The harm itself does not cause the pleasure, but is a side-effect of it, much as it is for the cocaine in Nikki's case.

Alcohol

On that note, we can segue nicely into discussion of the next legal vice: alcohol. As a brief overview ethyl-alcohol is a mildly toxic liquid that is formed by the fermentation of sugars by yeast.²² This substance, when drunk in small quantities, acts as a psychoactive drug, changing mood and altering perceptions. When consumed in too large an amount, it is extremely toxic and can cause death in relatively low doses depending on the person's height, weight, age, and body type.²³ Alcohol is a substance humans have consumed for thousands of years, in fact the oldest known recipe for anything is a Sumerian recipe for beer.²⁴ It is a staple of a large number of cultures around the world and that is not likely to change anytime soon.

²² Phillips, *Alcohol: A History*, 6

²³ *Ibid*, 1

²⁴ *Ibid*, 10

Given that, alcohol provides a lens into some of the dangers that could arise from legalizing marijuana, cocaine, and heroin. People can become physically dependent on alcohol, and that dependence can be devastating. Alcohol impairs motor function and can lead to accidental deaths by falling or slipping, or lead to deaths from using machines that you need to be sober to operate, namely cars. As well prolonged use can lead to brain damage, cirrhosis, heart failure, GI tract issues, and loss of motor functions.²⁵ Alcohol can also incite violent behavior in people, leading them to make terrible decisions that harm others, as well as impair your ability to make decisions leading people to be harmed and unable to fight back.²⁶ Even with all of those dangers alcohol is still one of the most frequently used and abused substances in America.

So now we get to ask the important question: why is alcohol legal and not other equally dangerous substances? One of the easiest and most immediate answers is that it should be illegal but we just don't have the capability to render it so. We have tried prohibiting it in the past and it made more problems than it solved, but not because outlawing alcohol was in principal the wrong thing to do. Let's examine this claim then. What exactly went wrong during prohibition? While we could delve into aspects of the issue like criminal control, the fact that alcohol was being produced in every other Western country, and that the amendment was largely passed to mollify special interest groups, I think for now we can stick to a simple answer: people still wanted to drink. To illustrate why this ruined prohibition from the outset, let us imagine someone, we'll call him Mike, who quite enjoys alcohol. Mike goes to the bar three times a week, gets pleasantly drunk

²⁵ NIAAA "Alcohol's Effects on the Body." Alcohol's Effects on the Body. <http://www.niaaa.nih.gov/alcohol-health/alcohols-effects-body>.

²⁶ NIAAA "Alcohol"

with his friends, and comes home without bothering anyone. Now imagine that prohibition comes into effect for Mike. He doesn't live close enough to a border to hop over for drinks, he's lost something he not only enjoyed on its own but as a social event, and he still very much wants to consume alcohol. Does it seem reasonable at all in this situation to conclude that Mike is just going to stop drinking? Some more idealistic among the crowd might say yes but we need to consider a few factors. Alcoholic beverages can be made at home. They can be made in basements, warehouses, backrooms, any place at all that the police would not see immediately.²⁷ Alcohol is also relatively cheap to make, the basic ingredients being grains or fruit, yeast, and water, which are all legal and used for other things besides making alcohol. Keep in mind too that Mike has a network of other people who enjoyed drinking since it is a social event, and they in turn have their own networks and so on. So access to illegal alcohol is not terribly difficult to get for Mike, even in a worst case scenario where he is making his own. Does the sudden illegality of it really sound like a good reason for Mike to not use this access? Absolutely not. So criminal enterprises can now capitalize on the desire for alcohol since reputable brewers cannot. Thus begin the problems of prohibition era America.

So now we can examine that answer. Prohibition could not work because people still wanted alcohol and still had access to it. However, we will return to this issue in the practical argument. A more interesting issue related to alcohol use is the behavior of those who use it. A commonly given argument against the legalization of recreational drugs is that people who use them might endanger others: for instance, the Florida man who,

²⁷ Phillips, 265

intoxicated on “bath salts”, proceeded to attack and eat the flesh of another human being.²⁸ While this is an extreme example, any substance that significantly alters your perception of reality can lead to behavior that harms others. Alcohol, however, happens to be one of those substances. Alcohol impairs judgment and can exacerbate aggressive tendencies in people.²⁹ Bar brawls are an easily accessible example of this kind of behavior. Since it also impairs motor function alcohol use also leads to the destructive practice of drunk driving. Drunk driving caused 10,322 deaths in 2012, or one every 51 minutes.³⁰ Thus let us return to the case of Mike. In this instance, Mike has gone on a drinking binge and drunkenly started a fight that ended with someone in the hospital with severe injuries related to being thrown violently through a plate glass window. Now compare that to Nikki, who, in a cocaine fueled rage, starts a similar fight that ends similarly with someone taking an unexpected trip through a formerly solid window. In both instances the negative behavior is attributable to the person’s consumption of a substance. Yet we would hardly consider the argument that we should bring back prohibition because someone got out of control while drinking. One very good reason for this seems overly simple. Many people drink alcohol without acting in such a reprehensible way. The behavior of one or a few bad apples ought not to spoil things for the rest of us who can responsibly get drunk. Why then, would we consider a similar argument for cocaine, heroin, and marijuana? In 1988, the war on drugs was becoming vicious with the introduction of crack-cocaine to U.S. cities. The drug was massively popular especially in poor urban areas, and was used to fund gangs

²⁸ Bath Salts

²⁹ NIAAA “Alcohol”

³⁰ CDC “Impaired Driving: Get the Facts.” Centers for Disease Control and Prevention. January 13, 2015. http://www.cdc.gov/Motorvehiclesafety/impaired_driving/impaired-driv_factsheet.html

within those areas heavily.³¹ In that year, there were 218 homicides` related to crack-cocaine. Of those, only 3 were attributable solely to crack-cocaine use. The vast majority (74%) were attributed to fighting among drug gangs, while the other significant portion (10.6%) were attributed to the co-consumption of alcohol.³² While these data do not encompass all of the violent behavior that might be associated with cocaine use, I think they provide what this section is discussing, information that sets the stage for believing that arguments given on drugs are hypocritical in relation to other things we want to consume. In 1988, it seems that the vast majority of people using crack-cocaine did so without harming others. Thus similar reasoning would lead us to conclude that cocaine use ought to be allowed, just as alcohol is.

One swift reply could be that I am equivocating on what cocaine is, since crack-cocaine is a different form. However, I take the distinction between the two to be superficial. Crack can easily be made from cocaine by heating it in baking soda and water and the active ingredient in crack is the same as in cocaine.³³ The only difference is the delivery system (smokable rocks as opposed to snortable powder) which changes the high slightly.³⁴ I take the difference between crack and cocaine to be as meaningful as the difference between smokable dried marijuana and marijuana baked into food, or the difference between chewing tobacco and cigarettes.

What this example shows is that this line of argument, that drugs lead to dangerous behavior, will only work if a vast majority of drug users cannot take the drug without

³¹ Benavie *Drugs*, 36

³² *Ibid*, 36

³³ *Ibid*, 35

³⁴ *Ibid*, 35

becoming a danger to others. This is simply not the case with most recreationally used drugs and it is certainly not the case with cocaine, marijuana, and heroin.

Sugar, Fat, and Obesity

America's obesity rates are alarming. Obesity is a medical condition in which fat levels within the body become a risk to the person's health.³⁵ Obesity can be caused by a variety of factors, but the most prevalent by far are poor diet and a lack of exercise.³⁶ Both diet and exercise are at least in some part choices to be made by the person involved. Some may argue that there is a genetic component that makes it out of a person's control whether or not they become obese, but I think that is an overstatement. I will concede that two people might have the same diet and exercise the same amount while only one becomes obese. For the purpose of this section, we will examine the case of Dom, an obese man. While Dom might become obese eating the same food and exercising as much as I do, it is not correct to say that his weight and health are out of his control. All the genetic component can do in this case is make it unfair that he is obese while I am not. Dom could exercise more, eat healthier, and in general make a more concerted effort to control his weight. Such things are certainly possible, at least in theory. Dom may be working too much for too little to have the time, money, and effort necessary for maintaining a healthy weight. Certainly this might be the case for many people but not for all, and in this example I want to examine the cases where obesity is directly affected by the choices that are made on diet

³⁵ WHO, "Obesity." WHO. <http://www.who.int/topics/obesity/en/>.

³⁶ WHO, "Obesity"

and exercise. Again, while this simplifies drastically the complex issue of obesity, there are enough people for whom this is the case that I think it is helpful to look at the issue in this way. Thus, for Dom, his obesity is, in part, a choice made by him, or at least the direct result of choices made by him. Getting healthy is possible, but it's hard, and Dom feels that the substantial effort it would take is too much for him especially weighed against his love for sugary and fat-filled foods.

Recent research suggests that sugar affects our brains in a way that is extremely similar to cocaine.³⁷ Sugar intake releases dopamine, a chemical that our brains use to reward us for behaviors that it thinks we ought to continue. Sugar, in short, makes us feel good. This response is theorized to be a hold-over from a time when sugar and fat rich foods were scarce.³⁸ Foods with lots of sugar and fat are energy rich and humans whose brains responded to them by releasing dopamine were likely to have had more energy and better ability to survive by having a higher energy intake. However, this was, as stated before, in a time where such things were rarities; they were treats that allowed us to do more work for longer and those who consumed them whenever they were available had a better chance of consistently being able to work harder for longer periods. Yet now such foods are everywhere, and we love to eat them. Our dopamine response can cause us to overconsume these foods in a way that the human body was never meant to, and never could before fairly recently. Thus, we are confronted with a case of addiction that biologically parallels drugs like cocaine, which, though not physically addictive like heroin, create strong psychological dependencies that are difficult to break.

³⁷ Magalie Lenoir et al "Intense Sweetness Surpasses Cocaine Reward." *PLoS ONE*: E698.

³⁸ Lenoir et al. "Intense Sweetness" *PLoS ONE*

Thus it makes sense to treat Dom's sugar intake in the same way we might treat Nikki's cocaine addiction. Dom has made choices throughout his life to consume a substance that he knows is not good for him. He is addicted to sugar, and it is affecting his health. He can change his behavior, but his addiction prevents him from wanting to strongly enough. The allure of the food he loves to eat is too much of a barrier to his healthy living. The point of this comparison, is that in no way have we ever considered banning sugar or creating more strict rules for its use. There have been some attempts to use law to curb the rising issue of obesity. In 2012, New York City introduced a law that banned the sale of sugary drinks in containers exceeding 16oz. The ban has since been repealed, many opponents of the bill citing consumer choice and civil liberty.³⁹ However, one could also argue that the ban would do nothing to stop people from consuming the same amount of sugary beverages, since they can just buy more 16oz. beverages instead of larger ones. The law was struck down by the New York Supreme Court in 2014, but it provides us with a good look at how laws curtailing drug use might be seen had they not already existed.⁴⁰ People are extremely uncomfortable with the notion of the government telling them what not to eat. Moreover, let us examine what the bill is intended to do. The intent was to stop people from becoming obese, especially children. Yet it seems abundantly clear that people ought to be allowed to be fat if they want to. We take it that people have a right to ruin their bodies with the food they consume, should they so choose. An argument can be made that children are not prepared to make that choice, but that discussion makes no difference for

³⁹ Grynbaum, Michael. "New York's Ban on Big Sodas Is Rejected by Final Court." *New York Times*, June 26, 2014, N.Y./Region sec.

⁴⁰Grynbaum "New York's Ban on Big Sodas Is Rejected by Final Court." *New York Times*

the analogy, as discussed in the section on suicide. We take it for granted that adults, simply put, have a right to be obese.

This analogy gives us an example in which an addictive substance is consumed by adults that directly leads to the deterioration of their health. Obesity can put a person at high risk for diabetes and cancer, as well as heart failure and other cardiovascular diseases.⁴¹ Yet nobody is clamoring for this substance to be banned. They cite their right to destroy their bodies while at the same time they argue that drugs are too destructive to the user to be allowed to be sold. They also cite the addictive nature of these substances, even though a heroin addiction might be healthier than an addiction to sugar. In relation to arguments involving a destructive, psychologically addictive substance, this example shows we should be treating sugary food the same way we treat cocaine.

Coffee

Coffee is one of the most popular beverages on earth. Its main ingredient, caffeine is a mild psychoactive stimulant. Though the FDA does not currently list caffeine as addictive, there are demonstrable withdrawal symptoms when “addicts” do not consume it, the hallmark of any physically addictive substance. Those who are “addicted” to caffeine, whose main vehicle of consumption is coffee, struggle with withdrawal from it when they have not had any. They feel tired, irritable, and have headaches, but fortunately these symptoms can be alleviated by simply drinking more coffee.⁴² As such I take it that caffeine

⁴¹ WHO, “Obesity”

⁴² Dusseldorp, M Van, and M B Katan. “Headache Caused by Caffeine Withdrawal among Moderate Coffee Drinkers Switched from Ordinary to Decaffeinated Coffee: A 12 Week Double Blind Trial.” *BMJ*, 1990, 558

is physically addictive and given the glaring inconsistencies in drug law that have already been pointed out I do not feel compelled by the FDA's refusal to list it as such. While it takes a seemingly small amount of caffeine to overdose (and likely die), about 5g for the average adult, this is equivalent to roughly 50 cups of coffee.⁴³ Taking in this amount in caffeine pills is not difficult and so overdose can occur that way, but for this substance I want to focus on its main method of delivery, which is coffee. So, for coffee we have an example of a physically addictive substance that causes little to no organic damage, similar to heroin. While there have been claims that excessive caffeine use can cause ulcers or other GI tract issues, I take it that substantiation of these claims would only make the argument stronger and not weaker.

Again, as with obesity, we have a clear cut example of something that is powerfully addictive that we love to consume and are not likely to prohibit anytime soon. And why should we? Drinking coffee makes us more alert, it elevates mood, and it focuses attention.⁴⁴ One of the largest drawbacks of caffeine addiction is that without the drug, we feel even worse than before we took it. Crashes from caffeine highs can be miserable, and can certainly change the way we act and feel. Now let us examine the case of heroin. The initial rush of heroin is incredibly euphoric and pleasurable, though short. After the initial high heroin provides a steady stream of pleasure to the user. Users live in a "warm, drowsy, and euphoric state" for 4-5 hours before coming back to sobriety.⁴⁵ Users of heroin are typically weekend abusers who do not make enough money to support a steady habit.

⁴³ Kerrigan, Sarah, and Tania Lindsey. "Fatal Caffeine Overdose: Two Case Reports." *Forensic Science International*, 2005, 67

⁴⁴ Kerrigan and Lindsey "Fatal Caffeine Overdose: Two Case Reports." *Forensic Science International*, 2005, 67

⁴⁵ Benavie, *Drugs*, 9

These people typically do not get addicted to heroin, as their use is not frequent enough.⁴⁶ For most who are addicted, withdrawal from heroin has been described as like getting the flu, something anyone can live through. The main issue is that cravings can last for sometimes up to six months, which leads to a higher rate of relapse among users.⁴⁷

So, is heroin close enough to caffeine to make a comparison? To do this let us make another comparison of two users: Andrew, who drinks two cups of coffee per day, and Olivia, who uses heroin at least 4 times per week (or about every other day). Both consume the drug in part because they are addicted to it but mostly because they enjoy it. It would be silly to pretend that a large part of the reason people do drugs is not that doing drugs recreationally is enjoyable for many people. Both can maintain their habit while working steady jobs. Contrary to the popular image of the junkie, heroin users can be and often are productive members of society, so for this example, we can assume Olivia is too.

So what might be some differences between Olivia and Andrew? Well, for one, Olivia's habit may be more expensive. Andrew's habit, should he be buying two medium hot coffees from Dunkin' Donuts, will likely cost him about \$25 per week.⁴⁸ Olivia, on the other hand, will likely be paying somewhere around \$40-50 per week to get high, assuming she uses 50mg per high.⁴⁹ Olivia's addiction may also begin to control her life in ways Andrew's doesn't. However consider that Andrew is addicted, and therefore must have coffee every day. He plans two parts of his day, every single day, completely around his access to caffeine, while Olivia can purchase heroin once a week and then consume it at her leisure.

⁴⁶ Ibid, 106

⁴⁷ Ibid, 107

⁴⁸ "Dunkin' Donuts Prices - Fast Food Menu Prices." Fast Food Menu Prices.

⁴⁹ Peter Weber. "Why Is Heroin so Cheap?" *The Week*, February 4, 2014

Andrew might do this by purchasing and making coffee, but at best it puts him at spending twice as much time on his addiction, preparing coffee once a day as opposed to preparing heroin once every other day. We might think that Olivia's addiction is more detrimental to her social life. Andrew can safely be high on caffeine at work, driving, and really anywhere. Olivia may use heroin at work, and depending on her job she may be able to do this without negative consequences, but she may also be in a profession where being high on the job is infeasible or dangerous. She certainly should not go driving while high. So Olivia is probably best off getting high at night or on the weekend with friends. We might also consider if Olivia is a higher risk for adverse behavior. While Olivia might be subject to abnormal behavior, so too is Andrew, since caffeine is a psychoactive drug. Olivia is a higher risk for harmful behavior, but Andrew's addiction can cause irritability and rage while Olivia's is more likely to cause irrational thinking and poor judgment. So, while we might think Olivia is at a higher risk, we have to concede that Andrew is still at sizable risk as well. Finally, we might think that Andrew's addiction is just plain safer. He never has to worry about overdosing, about infected needles, or about being caught. Let us consider, however, what Olivia's addiction might look like were she to be using heroin in a society where it is legal for her to do so, without the price of the drug changing. While she still has to worry about overdosing, she can be assured of the quality of her substance, and so he can find and maintain a dosage. She would likely also be purchasing her own needles, and so able to safely inject herself much like anyone who requires an insulin injection. Lastly, without the threat of legal action, she has no need to fear the police. So the differences in their addictions are in price and in an elevated risk of overdose and abnormal behavior.

So, if those are the differences between our two addicts, what about them makes Andrew's legal? It would seem, at least from this analysis, to be nothing. The differences in the two cases are negligible at best. However, we can consider the point that their worst case scenarios might be far different. We are never peppered by the media with images of strung out caffeine junkies, living on the streets doing whatever it takes to get another cup. Yet these junkies do not represent a large enough portion of heroin addicts to be taken as representative, and, as we discussed with alcohol, their behavior ought not to preclude the large numbers of people who use heroin and do not end up this way from getting high. As well, we might consider whether or not coffee's legal status contributes to this. Were caffeine to be illegal, we may very well have caffeine junkies lying in back alleys waiting to get buzzed on energy drinks. This issue can be left to rest for now as it will come up again in the practical section. Caffeine, like sugar, is another addictive substance that we use frequently without ever considering making it illegal. Yet the differences between those addictions and the addictions of recreational drug users are minimal. Moreover, society seems to have distinctly not crumbled in the wake of all of these addicts. Though addictions to caffeine and especially sugar have caused large scale health issues, they have not stopped us from being able to safely and peacefully coexist. Again, we have an example of a substance that we would never want to ban because we like consuming it, and because we can consume it without harming or even really affecting anyone else.

Tobacco

Tobacco is the closest thing that exists to a legal recreational drug in the United States. Dried tobacco leaves can be smoked in the form of cigarettes, cigars, and pipe tobacco, as well as absorbed through the gums in the form of chewing or “smokeless” tobacco.⁵⁰ Smoking tobacco is incredibly costly to a person’s health; tobacco use is the leading cause of preventable deaths in the United States.⁵¹ Tobacco use can cause lung cancer, heart disease, mouth cancer, and emphysema, just to name a few. In recent decades, anti-smoking campaigns like “truth”, a group aimed at ending teen smoking, have run numerous advertising and public advocacy campaigns to warn people of the dangers of smoking.⁵² Since 1965, cigarette companies in the United States have been required to put a warning label on their boxes to warn people of the health risks.⁵³

However, in America 42.1 million adults (about 18% of the total adult population) still use tobacco.⁵⁴ These numbers are surprisingly large given that information about the dangers of smoking are immediately and readily available. More often than not these dangers are pushed down our throats from a young age. Though the information is not available as to who knows and who doesn’t, I find it impossible to believe that every adult who smokes is absolutely unaware of the risks. In fact, I find it extremely difficult to believe that the vast majority of them do not know, at least in a very general sense, just how bad smoking can be. Yet 42.1 million adults made a conscious choice to use tobacco, and this needs explaining. In fact, I think we can provide a very simple explanation, which is that people like smoking. Smoking is a pleasurable experience for many. I posit that in ignoring

⁵⁰ CDC "Tobacco Fact Sheets." Centers for Disease Control and Prevention.

⁵¹ CDC "Tobacco-Related Mortality." Centers for Disease Control and Prevention.

⁵² "2014: THE BEGINNING OF THE END OF SMOKING." Truth. <http://www.thetruth.com/>.

⁵³ "The Reports of the Surgeon General: The 1964 Report on Smoking and Health." US National Library of Medicine.

⁵⁴ CDC "Fact Sheets"

the health risks, smokers have made a value judgment about their health, much in the way Dom decided that the effort of getting healthy was not worth the reward. They deem that the risk to their health is worth taking in exchange for the pleasure they receive. And who are we to stop them? Does a person not have the right to live unhealthily if they so choose. Quitting cigarettes is difficult it is nowhere in the ballpark of impossible, so once people decide the risk is no longer worth taking, they have the ability to stop taking it.

Again we can see instant parallels to heroin use, save that heroin does not cause the organic damage that cigarettes do. Yet, as I am arguing wholesale for all three, since cocaine does cause this damage the analogy can hold. In fact, as an example, tobacco represents most of the worst of the world of recreational drugs. It is extremely addictive, potentially dangerous, and unbelievably easily accessible. The only thing it fails to do is significantly alter behavior. Nicotine is only very mildly psychoactive, less so even than caffeine.⁵⁵ However, as we showed in the section on alcohol, we absolutely cannot use psychoactive properties to distinguish marijuana, cocaine, and heroin from legal substances. So what might else make tobacco different from those three? Well, though the inability of tobacco to produce adverse behavior in users does not make its case, this property comes with some interesting corollaries. One is that since tobacco does not affect behavior enough, it can be used wherever and whenever. Thus tobacco does not engender the kind of social effect you see from alcohol, marijuana, cocaine, and heroin. Without these effects tobacco has a much smaller effect on social behavior; i.e. nobody gathers somewhere for a night to just smoke cigarettes. This stops it from being a “party drug” as well as makes it much less likely to have adverse effects when mixed with other substances. The only other difference it seems

⁵⁵ John B Murray. "Nicotine as a Psychoactive Drug." *The Journal of Psychology*, 1991.

one could claim is that tobacco is much more difficult to overdose on than say heroin or cocaine. While it is difficult to smoke a lethal dose of cigarettes, nicotine poisoning can occur if someone smokes heavily while wearing a nicotine patch, and it is most common in workers in tobacco fields.⁵⁶

Thus, we are left with an addictive and dangerous substance whose only defining feature to possibly make it legal is that it is only very slightly psychoactive. This is a strange case indeed but unlike before, there are most certainly people who would like to see America become a nation that outlawed tobacco. Yet let us examine this in light of the other examples, where we were sure that we ought not to ban them. The main detractor of tobacco is that it is incredibly dangerous to a person's health, yet so is obesity. It is addictive, but so are coffee and sugar. Moreover, from the very beginning we have seen that the law permits people to end their lives or intentionally cause themselves harm, so again we might consider it like long-term suicide. Given all of the above examples, the hypocrisy of drug law should have started to become clear.

Summary

The above examples illustrate what I take to be some of the largest flaws in the arguments against the recreational use of drugs. They are intended to show that any ban based on appeals to arguments that involve the behavior of addicts, the health risks of drugs, or the addictive nature of these three recreational drugs necessarily requires us to ban other substances and actions that we would like to remain legal. These examples do

⁵⁶ "Nicotine Poisoning: MedlinePlus Medical Encyclopedia." U.S National Library of Medicine.

not, however, constitute a positive argument in favor of legalization. Someone could argue that the things I have listed ought to be made illegal in order to also encompass arguments against recreational drug use. However, I take it that the sort of people who would advocate for the prohibition of caffeine, sugar, self-harm, alcohol, tobacco, or suicide and remain consistent in their arguments are few in number. These substances and actions are overlapping in many of their properties, and so there is no single one of them you could ban without being logically inconsistent in your arguments. Again, this is no barrier to the existence of arguments advocating for the prohibition of some or all of these things. The barrier against that will come in the next portion of this essay, which will discuss what rights a government has against its people to ban these sorts of things. They will resurface as helpful examples in part supporting the non-paternalistic view of government, so this is not the end for these topics. However, metaphorically, the playing field is now even for all of them. What must come next is a good reason to think that all of these things and the three recreational drugs this essay discusses, are morally permissible, and so not able to be banned by the government.

Cocaine, Marijuana, Heroin, and Mill

In his famous essay “On Liberty”, John Stuart Mill outlined a way of thinking about the government that has been influential in our views of the relationship between a government and its people. In his own words, his theory can be summed up as “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”.⁵⁷ The theory of government that Mill argues against is known as paternalism. The largest part of this view that Mill is arguing against is the idea that a government can justify restrictions on liberty by appealing to what is best for each person.⁵⁸ That is, the government has the right to restrict people from doing things that would not be in their best interest. In “On Liberty”, Mill argues that what is “best” for anyone is to be free to make their own decisions based on whatever information they have at their disposal.⁵⁹ The essence of his argument is that an individual must not be held to whatever the commonly accepted view of the “best life” is. At its most extreme, one in which there is an inflexible communal compulsion to obey the dogma in all aspects of life, society produces nothing but “automatons” and carbon copies of the same person over and over.⁶⁰ In such a social structure, there is no room for growth, and so the society stagnates. On the other end of the spectrum, there is chaos as nobody is bound to act in a way that is morally acceptable. Thus, there must be some kind of social order; government must be allowed to restrict behavior. However, it must also allow people the latitude they will need in order to flourish.

Mill proposes that the point at which the behavior of the individual interferes with the interests of others.⁶¹ In other words, insofar as what you do affects you and only you, it is clear that the government has no place injecting itself into your life. One quick retort is that no behavior is of this sort, that the actions of a person will always affect those around them. Mill’s reply is that unless these effects are such that they violate some sort of

⁵⁷ Mill, *On Liberty*, 12

⁵⁸ Mill, *On Liberty*,

⁵⁹ *Ibid*, 17

⁶⁰ *Ibid*, 20

⁶¹ *Ibid*, 59

obligation or right of those people, then the government has no place restricting this behavior. He gives an example of a person whose drinking leads to him being unable to pay his debts. It is not his drinking but rather his inability to pay his debts that we find objectionable.⁶² Thus, simply because an act affects others does not mean it affects them in a way that must be regulated by law. From this we can see that Mill thinks the type of behavior that is open to being regulated is not just conduct that “causes harm” but rather conduct that either violates the goals or rights of others.⁶³ As well, those goals cannot be ones that intend to violate someone else’s rights.

It is also important here to briefly state what Mill thinks liberty itself is. The liberty that Mill is discussing is Social Liberty: “the nature and limits of the power which can be legitimately exercised by society over the individual”.⁶⁴ What Mill defines this liberty as consisting of has three parts: First, liberty of consciousness. Individuals must be free to think and decide for themselves. Their inner life belongs to them and ought not to be subject to interference. Second, liberty of tastes and pursuits. Mill states we ought to have freedom of “framing the plan of our life to suit our own character; of doing what we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them”. Third, liberty of combination. Mill claims that it follows from the second liberty that we must have the ability to associate ourselves with whomever we choose, and that we should be able to unite with anyone for

⁶² Ibid, 7915

⁶³ Ibid, 75

⁶⁴ Ibid, 5

any purpose, so long as that purpose is not to harm others.⁶⁵ Mill then goes on to say that any people whose government fails to uphold these cannot be considered free.

While Mill's conception of government and its role seems an oversimplification, this theory is robust enough to stand against practical objections against its implementation. The main issue many people have with the application of this conception is that there seem to be cases that straddle the line. However, I think that these cases can be resolved while still using his theory. There are accompanied with any action that ought to be restricted some basic questions that can be answered. The first two would be "who is being harmed, and how?" The inability to answer these questions makes restriction on behavior unjustifiable under Mill's theory. Answering these questions only puts us in a position to deem something morally reprehensible, not to decide that it ought to be illegal. For instance, lying is something that harms people, namely the person being lied to, yet we do not make lying on the whole illegal. We make it illegal in instances such as lying in court, where someone would come into much more harm than if say, someone told them their outfit was incredible when in reality, it was hideous. So we have a third question to answer: how much harm does the action in question actually cause? While white lies cause minimal harm, perjury can put innocent people in prison or keep dangerous criminals on the street. Thus there has to be a clear threshold met wherein someone is caused serious harm.

With that in mind, we can ask these questions about cocaine, heroin, and marijuana. The first two questions are difficult to answer with these three. There are a variety of situations in which drugs are used and abused, and so we need to talk about specific uses first, and then discuss of the general use of the drug. Let us start with Olivia, who uses

⁶⁵ Mill, *On Liberty*, 15

heroin in her home on her own time. Who is being harmed by her actions, and how? Well, Olivia is certainly harmed by her actions. She is losing money and valuable time in her life to the pursuit of pleasure. Here I will concede for the sake of argument that the loss of opportunity to do more valuable things constitutes actual harm to a person's goals and intentions, though this may be debated. Yet under Mill's theory harm to the person themselves is not enough to make it morally or legally reprehensible. As stated above this harm needs to violate some obligation they have to others. In order for self-harm to be reprehensible, we would need to show that a person has an obligation to society to keep themselves healthy and able to contribute. Clearly people have obligations to their general community. This is why they pay taxes, participate in civic matters, and in general why they refrain from harming others. However, it is not clear from this that people have an obligation to not consume controlled substances recreationally. In order to make this claim, we would need to show that the obligations someone has to a society include attaining a certain level of personal success in their work and home life. Yet we do not imprison people for being lazy. We do not arrest those among us who have chosen to do less than they can. Obligating someone to not do themselves harm in the sense of lost opportunity would lead us to obligate people to be as productive as possible, something that directly violates their right to "framing the plan of our life to suit our own character". So long as Olivia's inaction due to her drug use does not violate a specific obligation to others, she cannot be punished for not being as productive as she could have been.

Heroin use might also harm her body. She could overdose, get infected from using dirty needles, etc. as we saw in the example she shared with Andrew. As before, the majority of these issues would not exist were she to have access to heroin in the same way

she has access to alcohol and tobacco; that is, were heroin a regulated but legal substance to use. However, again, any harm she causes to herself is not, in and of itself, morally reprehensible. So any harm that comes to Olivia from her own drug use is not something that can be outlawed under Mill's theory.

Her use might cause harm to her friends, however. She might act erratically and physically harm someone, she might cause them harm by destroying their friendship by isolating herself, or she might say something that is emotionally harmful to them. Let us examine each instance. In the instance where she had caused them physical harm, she is certainly accountable for those actions. However, she is only accountable for the act of physically harming someone, not for her drug use, as we saw in the example of the drunkard provided by Mill. In the cases of destroying a friendship or saying emotionally harmful things she too is morally accountable, though only for those actions not her drug use. As well neither of these actions is illegal, and need not be caused by her drug use. Though there has been harm to her friends, it is not sufficient to warrant legal punishment. In all three cases, it would have to be shown that using drugs in the way Olivia does inevitably leads to those consequences. Yet, as we saw with alcohol, this is not the case. Mill discusses a similar case with the sale of poisonous substances.⁶⁶ While it may be that people purchase them only in order to do harm, this may not be their only nor their most common use. For instance, we sell poison in order to perform pest control. While many are also poisonous to humans and have been used to harm them, they are sold because many people need them in order to, for instance, grow food. Here Mill states that people who want to use poisons for innocuous reasons ought to be allowed to, and at most those

⁶⁶ Mill, *On Liberty*, 96

concerned about its use would only have the right to collect the information of the person buying them, so that they could be tracked down should they harm other with it.⁶⁷ This example applies to personal, private, recreational use of all three drugs, as they can all be used without harming others, or indeed affecting them at all.

Let us discuss another example, that of Lisa, who regularly uses marijuana. Now imagine that Lisa has become pregnant, yet continues her marijuana use. Use of marijuana during pregnancy can cause damage to the fetus and eventually result in damage to the child after birth.⁶⁸ In this case, Lisa's drug use has directly caused harm to another person. There is discussion of whether or not the unborn fetus constitutes a person and whether drug use during pregnancy ought to be controlled differently by Patricia King in her essay "Helping Women Help Children" but this is beyond the scope of this essay.⁶⁹ I will assume for the sake of argument that Lisa's actions have caused direct harm to another person, namely her child. In this instance Lisa seems to have fulfilled Mill's requirements for restriction of action by a society. We know who she has harmed: her child. We know how they were harmed: marijuana use during pregnancy can cause problems related to cognitive function and neurological development through childhood and adolescence.⁷⁰ We also know the degree of harm: the child is put a cognitive disadvantage which they will struggle against for a significant portion of their lives. In this case, it seems clear that what Lisa did is morally and legally reprehensible, as parents are held accountable for actions they take that endanger their children. Again, King may dispute this but for the sake of

⁶⁷ Ibid, 97

⁶⁸ Sonia Minnes, Adelaide Lang, and Lynn Singer. "Prenatal Tobacco, Marijuana, Stimulant, and Opiate Exposure: Outcomes and Practice Implications." *Addiction Science and Clinical Practice*

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⁷⁰ Sonia Minnes, Adelaide Lang, and Lynn Singer. "Prenatal Tobacco, Marijuana"

argument I will concede that what Lisa has done ought not to be allowed. However, her actions are distinctly different from Olivia's. Her drug use has violated an obligation that she had to another person. Again, like in Olivia's case, we are not so much perturbed that Lisa smoked pot, but that she did so while she was pregnant. Thus, Mill's theory allows for the restriction of drug use that could cause harm to others, such as driving while intoxicated, or getting high while pregnant.

So, here we have two examples of drug use, one that clearly harms others and one that clearly does not. Like the poison Mill discusses, these three drugs can be used benignly or dangerously and so restriction on their possession would need to be predicated on evidence that shows that benign use is either extremely unlikely or impossible. Yet this is not the case. Benign drug use is not only possible but more common than use that causes harm to others. However, both of these cases involved only one or two people. While it may seem that in order to scale this up we would have to then talk about the effects on a group scale, but Mill can preclude this for us. The initial premise of his view of government is that society is composed of individuals, and therefore laws that prohibit behavior must be thought of in terms of the individual.⁷¹ The idea of a non-paternalistic government is that the government must show that it has a right to prohibit the behavior of individuals and nothing else. The role of law is not to determine what would make for the best society, but to ensure that society itself can be dictated by the will of its individual members without those individuals harming each other. Therefore so long as the individual has a right to do drugs, then society ought not to restrict that behavior, regardless of whatever group interests it may have. Mill argues that this is because the best society is one in which

⁷¹Mill, *On Liberty*, 8

individuals are given as much freedom as possible to either flourish or to fail, because what is “best” is subject to the cultural and historical views of the majority. Those views need to be challenged, and ought not to be taken as the “best” society merely because the majority upholds them. Rather the individual ought to be free to choose whether or not they wish to conform to those norms, and only a society that upholds liberty as its highest value can achieve this goal.⁷²

Thus we have a philosophical basis for thinking that prohibition of recreational drug use is not justified, at least for drugs of this kind. There may be exceptions, such as “bath salts” where it is much more likely that you will harm someone other than yourself. Drugs that fall under this category will not fit the argument, but they do not need to. All that I intended to show was that the largest three, and others like them, generally only pose harm to the individual user, and so their use ought to be allowed. One might object that this is not enough. Merely because their use is allowable does not provide us with motivation to change the laws now. Perhaps that would be too large of a burden, or too radical a change to be worth it. However, the practical argument ought to erase these doubts. There are wars going on south of the border that are fueled by the illicit drug trade, which in turn is fueled by American Prohibition, and so not only would we have a philosophical motivation for change, but a practical one.

⁷² Mill, *On Liberty*, 14-15

Part II: The Drug Wars of the Americas

The Practical Argument

In this section I intend to outline the issues that U.S. drug policy has created in Latin America. Colombia produces almost all of the cocaine sold in the United States. Mexico produces a majority of the heroin we use and a large proportion of the marijuana that is sold in the U.S.⁷³ Almost all of the cocaine produced in Colombia is funneled into the U.S. through Mexico and the Caribbean.⁷⁴ The U.S. has spent a massive amount of resources combatting drug trafficking and guerilla warfare in these states, and it is generally argued that it does so in order to maintain its interests and control in that region.⁷⁵ However, Colombia and Mexico are in the midst of decades old civil wars. The violence is funded both by kidnapping and extortion as well as taxation and control of the black market for drug smuggling. I intend to argue that by decriminalizing these main cash crops, the U.S. will undercut a huge proportion of the finances for violent groups as well as set the tone for their prohibition policies, which in turn will further financially undercut the illicit trade. At bare minimum, I would contend that legalizing the use of just these three substances would serve to ease the violence in these two countries.

⁷³ Peter Watt, and Roberto Zepeta. *Drug War Mexico Politics, Neoliberalism and Violence in the New Narcoeconomy*. (London: Zed Books, 2012) 36

⁷⁴ Grace Livingstone, *Inside Colombia: Drugs, Democracy and War* (New Brunswick, N.J.: Rutgers University Press, 2004), 104

⁷⁵ Livingstone, *Inside Colombia*, 1-69

Colombia

The United States is by far the largest consumer of cocaine by mass in the world. Colombia produces at least 80% of the world's cocaine and some estimates say that close to 90% of the cocaine consumed in America has its origins in Colombia.⁷⁶ The primary ingredient in cocaine, coca, is grown in only three places: Colombia, Peru, and Bolivia.⁷⁷ Thus, it is this coca production that cements Colombia's place in the chain of drug trafficking. As well, Colombia stands out from its South American neighbors in terms of the bloody conflict which has raged there for generations. Grace Livingstone argues that the roots of this conflict can be found in Colombia's sharp class divisions. Since gaining independence, political and economic control has rested with the wealthy elite, and this inequality has only deepened as the years have passed.⁷⁸ Laws and regulations favor the wealthy landowners and put poor peasant farmers at a huge disadvantage. While Livingstone focuses mainly on the economic drivers of the Colombian civil war, drugs do play a huge part of that. The essence of her argument is that for those who live in the rural areas of the country, access to markets is extremely difficult.⁷⁹ The wild geography and lack of infrastructure in the fertile agricultural parts of the nation make it so that transporting crops to markets is so costly that growing yucca, a crop encouraged as a replacement for coca by the government yields only a 4.5% profit.⁸⁰ This is not nearly enough for someone to reinvest in the farm; in either livestock, more crops, or better equipment. In most cases,

⁷⁶ Ibid, 212

⁷⁷ Ibid, 212

⁷⁸ Livingstone, *Inside Colombia*, 72

⁷⁹ Ibid, 101-102

⁸⁰ Ibid, 102

it isn't even enough to cover repair costs for what they already have. Livingstone points out that most Colombian peasant farmers are just one poor harvest away from losing what little economic power they have.⁸¹ Yet coca, when boiled down into a paste, is much lighter and easier to transport than other crops, and can be sold much closer to home. Thus coca yields close to 50% profits.⁸² Given that, it is unsurprising that many farmers would opt to grow coca instead of growing another crop. While coffee and bananas are large cash crops in Colombia, they are grown in different regions than coca and it is the farmers in the regions where coca can be and is grown that are of concern, since they tend to be poorer and more vulnerable.⁸³

So who benefits from the production of coca? The immediate response is to think that the farmers do, with such high profit margins. However, as Livingstone points out, cocaine is sold at a much higher price in the U.S. than coca paste is to drug traffickers and refiners. In fact, the coca paste is sold at 0.2% of the price of cocaine in the United States.⁸⁴ Thus those who control its sale and distribution are the ones who profit the most. And who are these people? Again the immediate and American response is that it is the rebels, especially the Fuerzas Armadas Revolucionarias de Colombia (FARC), who control over a third of the landmass in Colombia, typically referred to as "narcoguerrillas".⁸⁵ These groups' main source of funding is taxation of the cocaine trade. They do not deal directly in it but allow it to exist in order to fund their war.⁸⁶ However, in response to these groups, who are typically left-wing, right-wing paramilitary forces have sprung up across Colombia, the

⁸¹ Ibid, 78

⁸² Ibid, 102

⁸³ Ibid, 72

⁸⁴ Livingstone, *Inside Colombia*, 102

⁸⁵ Ibid, 179

⁸⁶ Ibid, 53

largest and most productive being the Autodefensas Unidas de Colombia (AUC).⁸⁷ The AUC, and other paramilitary groups, are founded on the ideals of “anti-subversion” meaning they aim to crush the anti-establishment guerilla fighters. The AUC, however, is infamous for targeting civilians instead of guerilla fighters. Their main tactic involves brutal murder of large numbers of civilians in order to terrorize them into flushing out the guerilla fighters.⁸⁸ Though they act in defense of the Colombian government, they are not actually military combatants and as such exist illicitly. However, the Colombian military often turns a blind eye to their actions.⁸⁹ These are primarily funded by drug trafficking. In 2001, Carlos Castaño, the founder and leader of the AUC, estimated that 70% of their funding comes from the trafficking and sale of cocaine.⁹⁰

There is certainly a case to be made that this will not necessarily cut out their funding. Why would they lose control of the Colombian drug trade merely because it is legal in the United States? Would they not just become legitimate businesses on the front who secretly fund the same kinds of violent people? These are legitimate questions, and I think I have the answers for them.

Dismantling the Drug Trade

To see how the argument works, we have to understand how and why the black market is the way it is. While the inner workings of illegal trade are complex and rooted in

⁸⁷ Ibid, 109

⁸⁸ Ibid, 12-15

⁸⁹ Ibid, 12-15

⁹⁰ Livingstone, *Inside Colombia*, 109

the cultural histories of the places where they exist, illegal trade on all levels shares some commonalities that arise from the logical necessities of prohibition. Let us begin with the premise that Americans want to do drugs. This is not so much an assumed premise, but a demonstrable fact. So there is demand for a product. Once the product is prohibited demand remains. However, prohibition of a product so widely demanded will necessarily produce an underground trade of it. There will always be those who seize a business opportunity especially one where you cannot see the effects your product has on the people who use it. Smuggling involves a long chain of middlemen and so normally most people involved have no relation to the end user. Once a product is prohibited, the profitability from its sale goes up as well. Overhead costs for smuggling increase the end price, and the fact that the product is regulated only by market pressures pushes the price up further, especially when distribution is controlled by only a few groups. Thus, imagine you are the head of one of these groups. If someone attacks a shipment, steals your product, or tries to move in on your trade, what do you do? You can't very well go to the police to report that someone stole your illegal drugs. In order to maintain control there has to be some kind of retribution for interference with your business. Thus you must get violent. The most ruthless, savvy, and cunning rise to the top and will necessarily control the trade. When this power rests in the hands of a select few, the trade is more stable. When you have several larger groups vying for control, the internal violence is escalated. There will always be clashes between the government and these groups, but that amount of violence is likely to remain the same whether one or many people are in control. The only instance in which violence does not become the norm for these groups is if all of them refuse violence. However, as soon as one group resorts to violent tactics, the others must match or beat that

level of violence in order to compete. These groups rest on just a few pillars though: the production, the distribution, and the sale. Dismantling any one of these can result in a collapse. Attacking the production would mean coming after those who supply drug traffickers with their product: farmers, refiners, and smugglers. Attacking distribution would mean coming after shipments and halting the movement of drugs into their largest base of sale. And attacking the sale would mean coming down on dealers, buyers, and users. So who can we go after to stop this issue? Typically our response has been to go after all three, but this has very clearly not worked. The U.S. drafted and financed the chemical spraying of coca plantations in order to stop production, we have massive border protections especially in Mexico, and the DEA comes down on dealers and buyers without remorse.⁹¹ Yet the problem persists. However, we can attack their sales without coming after buyers by legalizing their product.

So what happens when the product is legalized? Buyers now have a choice between drugs that are likely comparably priced while one has guaranteed purity, is legal to buy, and does not fund a civil war. While the street price may be cheaper (and it may not be depending on how agricultural subsidies are given and how international trade laws apply) its purity is clearly not guaranteed and is illegal to purchase. The typical buyer will likely go for the legal product. For instance alcohol, after prohibition was repealed, went back to being bought and sold in regulated stores. Illegal alcohol production persists but it is an extremely small proportion of the production and sale of alcoholic beverages in the U.S.⁹² Those who controlled the illegal alcohol trade took a huge blow after the end of prohibition

⁹¹ Livingstone, *Inside Colombia*, 123-7

⁹² Roderick Phillips, *Alcohol: A History*. (Chapel Hill, NC: UNC Press, 2014), 302

and though they continued to operate after the repeal, they had to find new sources of finance and many disappeared within the following decade.⁹³

Many are quick to point out that the rise and decline of these organizations does not mirror the institution or repeal of prohibition.⁹⁴ Many were in existence before and continued to exist afterwards. While it could be argued that they were simply the first to capitalize on prohibition and that they stayed around by shifting their focus to other means of funding, we can find a better analogy. Peter Watt and Roberto Zepeda point out in “Drug War Mexico” that during prohibition there was a steep rise in smuggling of alcohol across the border which declined rapidly after its repeal.⁹⁵ Most smugglers transitioned easily into smuggling heroin and marijuana, both domestically produced in Mexico.⁹⁶ Thus we have a clear example that prohibition encouraged and necessitated the rise of smuggling of the prohibited product from Mexico to the United States. This gives us a good foundation to claim that the same forces are driving the smuggling of cocaine, marijuana, and heroin from Mexico into the U.S.

Mexico

The rise of drug trafficking and violence in Mexico has somewhat paralleled Colombia’s. Both were simultaneously driven by the immense gaps in wealth and high unemployment and poverty among its labor force. Both were also aided by corruption and

⁹³ Phillips, *Alcohol*, 265

⁹⁴ *Ibid*, 265

⁹⁵ Watt and Zepeta, *Mexico*, 21

⁹⁶ Watt and Zepeta, *Mexico*, 22

propaganda by those loyal to the established regime. As well both have erupted in the last few decades into unrecognized civil wars between leftist guerillas and corruption aided right-wing paramilitaries. And in both the money gained from drug trafficking has financed the violence.

Mexico differs in its relation to the United States: The largest consumer of drugs in the Americas. We share a border that is long, sparsely populated, and difficult to monitor. The true rise of drug trafficking in Mexico began after the repeal of prohibition. After the repeal, much of the infrastructure (mainly tunneling) was converted to smuggle cannabis and opium into the United States.⁹⁷ As heroin and marijuana are domestic products of Mexico, they saw this rise in trafficking much earlier since cocaine did not gain a true foothold in the United States until the 1970s. However, both stories truly begin in the 1970s, as the cocaine boom aided Mexican traffickers since they would be the ones to move the product into the U.S.⁹⁸

Again, as in Colombia, drug trafficking is an attractive option for the poor and especially the rural poor. Marijuana and opium are high profit cash crops, and the staggering unemployment and poverty levels make for people desperate for work in order to survive.⁹⁹ This also pushes people towards the lucrative business of drug trafficking. Disillusioned with a corrupt and often violent government, the poor are vulnerable to being enticed by the high returns of smuggling drugs. Since officials are paid off both in the

⁹⁷ Ibid, 22

⁹⁸ Watt and Zepeta, *Mexico*, 33

⁹⁹ Ibid, 79

United States and Mexico, smuggling drugs across the border is often not too difficult.¹⁰⁰ Tightening border security in the last few years has done little to stop the influx of drugs.

Livingstone and Zepeta (for fluidity's sake here, I will refer to Watt and Zepeta by only the latter author's name) both argue that the policies that have been introduced are clearly insufficient to stop the issue. Plan Colombia, a U.S. backed operation to eliminate coca plants, failed utterly to destroy even a small percentage of the plantations.¹⁰¹ Similar chemical approaches in Mexico were met with better success, but still failed to stop growers from simply moving.¹⁰² Attempts to use violence to end the war have failed utterly. Finally, border security and domestic enforcement have failed to work. In both cases the authors state that this is because the drugs are not the problem, they are a symptom of it.¹⁰³ The inequality and political corruption makes it almost inevitable that this kind of violence would come to be. In order to solve the problem, they state that we needed to address the inequality long ago. As well in both cases the authors state that fixing such things now may still not curb the violence, as ingrained as it has become. Their solution would be to try to curb drug use in America through education and reform of legislation, especially regarding foreign trade.¹⁰⁴ While Livingstone does not consider repealing the prohibition on these drugs. Zepeta argues that such legislation would aid the cause, but deems it to be too radical to pass.¹⁰⁵ However, given the strong philosophical

¹⁰⁰ Ibid, 26

¹⁰¹ Livingstone, *Inside Colombia*, 136

¹⁰² Watt and Zepeta, *Mexico*, 93

¹⁰³ Ibid, 231

¹⁰⁴ Watt and Zepeta, *Mexico*, 232

¹⁰⁵ Ibid, 231

arguments in favor of legalizing recreational drug use, I think that such legislation is the best option.

Oddly enough neither of these countries has nearly as high percentage of drug use as the United States.¹⁰⁶ In both the “problem” of drug abuse is almost non-existent, yet their regulation of drug use is as strict if not more strict than U.S. regulations. Both Livingstone and Zepeta argue that these policies only came into place under U.S. pressure.¹⁰⁷ The low rates of drug use do not explain the policies in place, and given the amount of support the U.S. gave to these policies, it is not hard to agree with them. Given that the United States has applied this pressure, we might wonder what would happen if we would relieve it. Allowing legal drug use in the U.S. might be enough of a catalyst for other American nations to follow. Legalizing use in both the place of production and the place of distribution might be enough to undercut those funded by the illicit drug trade.

Practical Summary

We have already seen what legalizing would do to demand for illicit drugs in the United States, but what would happen were Mexico and Colombia to adopt such policies as well. In Colombia, without a viable consumer base in the United States, the paramilitaries would be underfunded and unable to continue fighting. The Guerillas would be wounded by the loss of trade and weakened still by the loss of farms to the government, since they would now be legal and not have to deal with the Guerillas. In Mexico, the high corruption

¹⁰⁶ Livingstone, *Inside Colombia*, 148

¹⁰⁷ *Ibid*, 148-50

would turn against the drug traffickers. Unable to continue to pay off as many people and continually in competition with legal suppliers, they would be dealt a huge blow both politically and financially. State revenues from the lands regained would help to maintain some kind of infrastructure for the reforms. Of course, as suggested by Livingstone and Zepeta, these reforms would need to simultaneously address the issues of inequalities from which these problems arose. Even in legal trade the corruption would cause serious harm and perhaps perpetuate the violence, though likely not to as large of scale. At bare minimum legalization would force drugs to be controlled for purity, a major issue in drug overdoses. At the very least such reforms would make a trade that is thriving and has no signs of stopping safer for the people who are hurt the most by it, the poor and the abusers.

Part III: Considerations

Infrastructure

At this point we have to give a positive account of just how exactly a licit drug trade would work in the United States. Neither of these arguments have any force unless there is some way to safely control the drug trade without putting an undue amount of strain on the nation. Two obvious solutions come to mind: just changing the scheduling of those substances leaving them in control of the DEA, or putting them under the strict jurisdiction of the FDA. However I think that these are both inadequate solutions. Both agencies exist to control the medical use of such substances. Neither the FDA nor the DEA currently have control over any substance used purely recreationally.¹⁰⁸ There is currently no infrastructure in either of those organizations to qualify them to be in control of recreationally used substances.

Infrastructure, in a fairly straightforward way, is vital to ensuring that those who choose dangerous behavior do so knowing the risks and how to minimize them. I am currently licensed by the Professional Association of Diving Instructors to scuba dive to 100ft with nothing but a tank of air and a vest to control my buoyancy, something which is extremely dangerous. Yet I and thousands of others do so safely and without endangering others on a regular basis because there is infrastructure in place. Something similar can

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work for the drug trade, ensuring at bare minimum purity per gram, significantly reducing the risk of overdose.

The organization best equipped to handle this task is the Bureau of Alcohol Tobacco and Firearms (ATF). As seen in the sections on alcohol and tobacco, these two substances are the closest thing we have to recreational drugs. They are under the control of a separate bureau from the FDA and the DEA and it makes sense, since those substances are used radically differently than the others that the FDA and DEA control. There is a model for infrastructure that can be scaled up to incorporate other recreational substances, in just the same way that the ATF regulates tobacco and alcohol. All that would be required would be necessary revenue and personnel, which would be available if there was a scaling down in the DEA since the three largest issues for them would no longer be under their purview. Similarly, the ATF grants states latitude in their regulation of alcohol and tobacco, which means that there would be less need for federal interference in the lives of their citizens, which benefits both groups.¹⁰⁹

Since it is at least feasible to imagine a relatively easy transition in policy without endangering the lives of the citizens in a significant way, we now have the basis to begin writing a change in drug policy. This final addition ensures that these arguments do not just exist in the abstract, but have a connection to the concrete world of actual law and practice. Zepeta was doubtful of such measures passing in Mexico or even widespread across the United States, but I disagree. We do not have to rewrite all of our laws and create an entire new entity to handle legal recreational drugs. We already have an entity in charge of that,

¹⁰⁹ Bureau of Alcohol Tobacco, Firearms, and Explosives “About”

and adding to their responsibilities would only be detrimental if those responsibilities were not being relieved from another government agency.

Is it possible?

Let us take one short moment to review an analysis after Colorado's first year of legalizing recreational marijuana use. The Washington Post gathered data reported from Colorado's police departments to analyze whether statewide there had been an increase over the first year in crimes which people feared would be a result of the legalization. Fatal car accident rates remained unchanged though still considerably lower than they had been over the past-decade. Crime rates overall in Denver went down. To top it off the state generated \$76 million in revenue from taxes and licensing.¹¹⁰ After such a short time it is still hard to tell if there are any demonstrable long term effects but so far society seems to have found a way to not crumble. Uruguay has seen similar success since it implemented legalizing cannabis in 2014.¹¹¹ Though this is an important example, I feel not compulsion to belabor the point. So far we have not seen widespread collapse of society at either the level of a territory or of a nation-state. This fact speaks briefly, but loudly, in favor of such legislation.

Synthesis

¹¹⁰ Ingreham, Christopher. "Colorado's Legal Weed Market: \$700 Million in Sales Last Year, \$1 Billion by 2016." Washington Post. Washington, D.C. February 12, 2012.

¹¹¹ John Walsh and Geoff Ramsay. "Uruguay's Drug Policy: Major Innovations, Major Challenges." Foreign Policy at Brookings: 1-19.

In summary, we have three parts of a total argument in favor of repealing the prohibition of, at minimum, these three substances. They cause only harm to the user the vast majority of the time, and are not a danger to society. Their prohibition has created a black market that spans two continents and which finances two bloody civil wars in close neighbors of the United States. We have the means available to smoothly transition into policies which would place the control of recreational substances in the hands of those with the most experience with them, the ATF. It is feasible to accomplish, the government has no right to deny their citizens this behavior, and current policy is clearly inadequate. We have a worthy goal, proper motivation, and the means to accomplish it, and so we ought to.

To conclude, this is not an argument to entice people to take drugs. This is not meant to romanticize addiction or make these substances seem safer than they are. Instead this is an argument in favor of allowing people to choose risky behavior if they think that it is worth it. Each of us has the right to decide how valuable our time here on Earth is, and the right to trade away years at the end for more pleasure now. The place of government is only to ensure that we do not devalue the time of others by endangering their lives. It is a far better society that allows its citizens to be free to fail, because it then allows its citizens to be free to determine their own measure of success.

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