

PART TWO

Foundation

Can any policy, however high-minded, be moral if it leads to widespread corruption, imprisons so many, has so racist an effect, destroys our inner cities, wreaks havoc on misguided and vulnerable individuals and brings death and destruction to foreign countries?

Milton Friedman
New York Times
January 11, 1998

Drug use degrades human character, and a purposeful, self-governing society ignores its people's character at great peril.

William J. Bennett
National Drug Control Strategy
1989

Philosophical Underpinnings

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Many of the arguments in the legalization debate involve empirical matters—either evaluative descriptions of the status quo or predictions about the likely consequences of a change in policy. But purely moral arguments also play a prominent role. Many prohibitionists assert that drugs should be banned because drug use per se is immoral. On the other side, many legalizers and decriminalizers argue that U.S. drug laws are hypocritical, or too draconian, or that they infringe on an individual’s right to take drugs. Nonempirical arguments are outnumbered by empirical assertions (not necessarily accurate) in American newspapers, but quantity says nothing about the force or conviction with which the arguments were believed or felt. Nor does quantity reveal the origins of the authors’ views; empirical claims may serve as a means of bolstering an essentially values-based conviction. Additionally, it may be that the kinds of people who write op-ed essays (especially those that get published) are more enamored of, or at least more fluent in, empirical argumentation. Scrolling through the messages on any of the growing number of pro-

and antidrug discussion groups on the Internet, one can find a much greater reliance on nonempirical, morals-based arguments.

The debate cannot be neatly parsed by distinguishing facts and values; philosophers and scientists have long rejected a strict fact-value dichotomy as untenable (see Cole, 1992). Values affect the selection, measurement, interpretation, and evaluation of research findings (MacCoun, 1998b). Moreover, the very belief that one might use facts to help adjudicate moral issues is itself a moral position (e.g., it is a central tenet of utilitarianism). Thus, before tackling the empirical claims, we briefly survey the underlying philosophical issues. Philosophical positions are not always explicit in the policy debate, but they nevertheless shape the politics of drug policy formation. Moreover, people's moral views (e.g., their respect for drug laws) influence the effectiveness of drug policies.

CONSEQUENTIALIST VS. DEONTOLOGICAL ARGUMENTS

The utilitarian tradition, originating in the works of Jeremy Bentham and John Stuart Mill, enjoins us to evaluate acts and rules by their consequences—specifically, by their net contribution to human utility. The term *utilitarian* carries considerable intellectual baggage and has sinister overtones for many. Most readers will have encountered thought experiments showing how chilling conclusions can follow from seemingly innocent utilitarian premises. (A surgeon has five patients facing death; each needs a different organ for transplant, but none have been donated. In walks an unwitting, healthy young flower deliveryman. . . .) Over a century of debate, the tradition has yielded many variants, each sprouting up as needed in response to utilitarianism's many critics. Utilitarian theories vary with respect to the proper objects under scrutiny (e.g., individual acts vs. rules for acting), the interpretations of utility (e.g., happiness, welfare, or the more content-free operational definitions of modern economics), and units of analysis (momentary experiences vs. individual actors vs. aggregate

societies; see Parfit, 1984). We will sidestep these philosophical pot-holes by offering in place of utilitarianism a more general notion, *consequentialism*—the claim that it is appropriate to evaluate certain acts or rules by evaluating their empirical (i.e., observable) consequences.

Most closely associated with Immanuel Kant, *deontological* positions assert that certain moral obligations hold irrespective of their empirical consequences. Most of the injunctions of the world's leading religious traditions (e.g., thou shalt not kill) are deontological in nature, although as Blaise Pascal pointed out, the choice between salvation and damnation certainly offers consequentialist food for thought. Inherent sinfulness is frequently the argument against toleration of homosexuality and prostitution but less frequently against drug use, perhaps because though psychoactive plant use predates Biblical times by millennia, the New Testament is silent on the topic. (Drunkenness is condemned, but moderate alcohol consumption of course figures prominently in the story.) A particularly eloquent deontological statement against drug use comes from James Q. Wilson (1990, 1993):

[I]f we believe—as I do—that dependency on certain mind-altering drugs *is* a moral issue and that their illegality rests in part on their immorality, then legalizing them undercuts, if it does not eliminate altogether, the moral message. That message is at the root of the distinction between nicotine and cocaine. Both are highly addictive; both have harmful physical effects. But we treat the two drugs differently, not simply because nicotine is so widely used as to be beyond the reach of effective prohibition, but because its use does not destroy the user's essential humanity. Tobacco shortens one's life, *cocaine debases it*. Nicotine alters one's habits, *cocaine alters one's soul*. The heavy use of crack, unlike the heavy use of tobacco, corrodes those natural sentiments of sympathy and duty that constitute our human nature and make possible our social life (Wilson, 1990, p. 26; italics added).

Deontological arguments are at least as popular on the legalization

side of the debate, most prominently among libertarians (e.g., Richards, 1982; Szasz, 1974, 1987). Thomas Szasz endorses two variants of the libertarian position on drugs in the following quote:

I believe that we also have a right to eat, drink, or inject a substance—any substance—not because we are sick and want it to cure us, nor because a government-supported medical authority claims that it will be good for us, but simply because we want to take it and because the government—as our servant rather than our master—does not have the right to meddle in our private dietary and drug affairs (Szasz, 1987, p. 349).

The affirmative argument is that we have a right to use drugs. One can readily assert a *natural* right to drug use, but it is more challenging to identify a comparable *positive* right to drug use, a right protected by the U.S. Constitution or statutory law.¹ A class of narrow exceptions involves the religious use of psychedelics by organized religious groups. The negative argument is that government has no right or standing to prohibit the ingestion of drugs (or other acts involving one's own body), so long as no one else is being harmed in the process. This latter point deserves emphasis. Few if any libertarians believe that the law must tolerate acts by drug users that cause serious and direct harm to others (see the discussion that follows); they simply assert that such acts already fall under the purview of acceptable nondrug criminal laws.

Individuals (other than philosophers) don't fit neatly into consequentialist or deontological categories. These terms refer to types of arguments, not necessarily types of people, and most of us hold a mix of both types of views. Policy analysis tends toward consequentialist positions, but most people hold many categorical deontological beliefs. It is useful to think in terms of the *psychological weights* that people place on different arguments. We give arguments zero weight

1. Sweet and Harris (1998) provided a detailed examination of a possible unenumerated legal right to drug use under the Ninth Amendment.

if they appear completely irrelevant, but also if they appear morally repugnant (Elster, 1992; Fiske & Tetlock, 1997). At the other extreme, arguments can be decisive and “trump” or preempt all others; in such cases, the individual’s views are frozen and largely impervious to counterargument or evidence. But research on the psychology of attitudes suggests that, in practice, these trump arguments are rare.² We now examine the philosophical sources for many of the considerations that need to be weighed.

THE LIBERAL TRADITION

John Stuart Mill

John Stuart Mill’s *On Liberty* (1859/1947) is the starting point for contemporary debates on the legislation of morals. It is the cornerstone for the liberal tradition in moral and political philosophy, not to be confused with the term *liberal* as used in contemporary U.S. debates. Early in the essay, Mill articulates what has come to be known as the *harm principle*; it is worth quoting at length:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right. These are good

2. Unidimensional responses to multidimensional problems are not uncommon—we’ll see that offenders sometimes choose crime that way—but the explanation often involves limited motivation or cognitive capacity rather than the press of moral convictions. A psychological implication is that overall assessments will be unstable, as weights are recomputed due to situational fluctuations in the relative salience of the various dimensions.

reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he would do otherwise. . . . The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign (pp. 144–5).

Mill justified the harm principle on utilitarian grounds, stating, “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest” (p. 148).³ But as Skolnick (1992, p. 138) noted, “the enduring influence of *On Liberty* and its harm principle is derived less from some exquisite utilitarian summation than from Mill’s intuitions about the despotic potential of government.”

Joel Feinberg

Joel Feinberg’s (1984, 1985, 1986, 1988) four-volume analysis of “the moral limits of the criminal law” is arguably the leading contemporary exposition of the Mill tradition. Feinberg offered what he believed was a more defensible statement of the harm principle:

It is always a good reason in support of penal legislation that it would be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) *and* there is no other means that is equally effective at no greater cost to other values (1988, p. xix).

To this, Feinberg added an *offense principle*:

It is always a good reason in support of a proposed criminal pro-

3. Mill did not assert, as is sometimes assumed, a *natural right* to freedom interference: “I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility” (p. 145). Nevertheless, others have derived Mill’s principle from nonconsequentialist appeals to liberty or autonomy as intrinsic rights or goods (see George, 1993).

hibition that it is necessary to prevent serious offense to persons other than the actor and would be an effective means to that end if enacted (1988, p. xix).

For Feinberg, “the harm and offense principles, duly clarified and qualified, between them exhaust the class of good reasons for criminal prohibitions” (p. xix); together, they characterize “the liberal position.” (Omitting the offense principle produces the “extreme liberal position.”) Much of his four-volume work is directed toward articulating the necessary clarifications and qualifications. Two are especially important. Feinberg’s harm principle applies only to *wrongful harms*, which involve “setbacks to another’s interests” that violate another’s rights and not to *nonwrongful harms* (setbacks that do not violate the other’s rights) or *nonharmful wrongs* (violations of another’s rights that do not set back another’s interests). Similarly, Feinberg’s offenses are “caused by wrongful (right-violating) conduct of others,” but not the larger class of “disliked mental states” not caused by right-violating conduct.

Drug Laws

Feinberg’s offense principle is central to debates about pornography but seems largely irrelevant to the drug law debate. Conceivably certain acts committed in a state of intoxication might meet Feinberg’s offense principle, but those are readily dealt with by various nondrug criminal laws (e.g., public nuisance and public decency laws). The harm principle, on the other hand, plays a crucial role in the drug legalization debate. Because the major theoretical alternatives to the liberal tradition are generally much less restrictive about the legislation of morality, one might argue a fortiori that if drug prohibition can be justified under the harm principle, it is even more acceptable under alternative moral schemes (see Moore, 1991, p. 532).

Thus, a key question for the justification of drug laws is whether drug use causes wrongful harms to others. For decades, the term

victimless crime was used to characterize drug use, gambling, and prostitution. But in recent years, this term has been fading from use, and to the modern ear, it already sounds quaintly naïve, or even mildly offensive. This is more of an expansion in consciousness than in conscience, reflecting not puritanism but rather an increased awareness of what economists call the “externalities” of human affairs—the many ways in which our private conduct can impose costs on others. The recent focus on the health harms of passive smoking is a prominent instance.

That claim in itself might appear to meet the Mill/Feinberg harm criterion decisively, and indeed we think it almost certainly does. But there are several complications. First, Husak (1992), in a particularly sophisticated defense of a right to use drugs, argued that most of the harms drug use poses to others are not “wrongful” or “criminal” harms subject to the Mill/Feinberg criterion, because they do not violate others’ moral rights. Husak was most persuasive in arguing that any increase in drug use under legalization would not in itself violate anyone’s rights; we surely have no right that others not use drugs. Husak is less convincing in his challenge to “a moral right that the drug user be an attentive parent, a good neighbor, a proficient student, a reliable employee” (p. 166). As stated, this seems compelling, but Husak’s way of framing the issue set up a straw man. The roles of parent, neighbor, student, and employee are too heterogeneous to form a meaningful set; the risks and responsibilities that accompany parenthood are entirely different from (and more compelling than) those that accompany the roles of student or employee. And even though most readers will share Husak’s rejection of government-mandated productivity, that isn’t what prohibitors are demanding—criminalizing reckless or irresponsible role conduct is surely very different from mandating exemplary conduct. At any rate, the question isn’t whether all or even most forms of disutility caused by drug use violate moral rights—some of them do; the question is whether they are sufficient to justify drug prohibition.

Second, not every incident of drug use harms others; in fact, the vast majority do not. Indeed, though this is difficult to quantify with existing data, it is likely that many if not most drug users *never* do wrongful harm to others as a result of their using careers—bearing in mind that the majority of these careers are limited in duration and intensity. Rather, each incident of drug use is accompanied by a *risk* that others will be harmed; some users, substances, settings, and modalities of use are riskier than others, but in no case is the risk zero. Drug use is not distinct in this regard; many prohibited acts are associated with harm only probabilistically—running red lights, driving under the influence, and so on. Of course, this is true to some degree of most licit human activities. Unfortunately, there is no obvious threshold probability of harm to others beyond which activities should be legally prohibited. For example, alcohol consumption poses greater risks to nonusers (through violence, accidents, and neonatal effects) than marijuana does, yet the former is legal and the latter is not.

Finally, for a Millian policy analysis, establishing that drugs harm nonusers does not settle the question. Prohibiting drugs is costly, in direct expenditures, in foregone benefits, and in the opportunity costs of diverting resources and attention from other government activities. A policy that costs society more than the harms it mitigates is difficult to justify from a consequentialist perspective. A final complication is that drug prohibition may itself be the *cause* of many of these harms to others; consider, for example, the violence associated with illicit drug markets. This raises two questions regarding Feinberg's statement of the harm principle. First, is drug prohibition "effective in preventing (eliminating, reducing) harm to persons other than the actor" (1988, p. xix)? If prohibition is itself a source of harm to others, then one must ask whether its *net* effect is to reduce such harms. Second, is there "no other means that is equally effective at no greater cost to other values"?

Table 2.1 Major philosophical positions on prohibition

	<i>Relevant criteria for prohibition?</i>	
	<i>Net reduction in harm to others</i>	<i>Net reduction in harm to users</i>
Legal moralism	Not relevant	Not relevant
Strict libertarianism	Not relevant	Not relevant
Millian liberalism	Necessary	Not relevant
Soft paternalism	Sufficient, but not necessary	Sufficient if legal minor or judgmentally impaired
Hard paternalism	Sufficient, but not necessary	Sufficient

ALTERNATIVES TO LIBERALISM

Legal Paternalism

Table 2.1 compares the Mill position to other major alternatives. Perhaps the major contemporary alternative is *legal paternalism*, which Feinberg defines as the belief that “[It] is always a good reason in support of a prohibition that it is necessary to prevent harm (physical, psychological, or economic) to the actor himself” (1988, p. xix).⁴ That drug use is potentially harmful to the user is beyond dispute; the risks include addiction (e.g., the suffering caused by withdrawal and craving), drug overdose, disease, drug-related accidents, criminal victimization, economic hardships, and social isolation. Note that these risks are considerably greater for some drugs (cocaine, PCP) than for others (marijuana, psilocybin) (Gable, 1993; Goldstein, 1994; Julien, 1995). But a coherent paternalism must surely weight the extent to which

4. A related but distinct notion is *legal perfectionism*, the belief that laws can and should play a role in positively shaping citizens for their individual benefit. Though liberal theorists (e.g., Rawls, 1971) are generally “antiperfectionist” in this sense, and leading perfectionists are nonliberals (George, 1993), there are some notable perfectionist liberals (e.g., Raz, 1986).

prohibition and its enforcement creates, enables, or augments these harms. As with harms to others, the key policy questions are whether prohibition produces a *net* reduction in harms to users themselves, and whether alternative policy regimes would more effectively reduce harms to users. . . . [W]e attribute primary causation for each of some fifty different harms to either drug use or drug laws and their enforcement. Many of these harms are primarily borne by users, and prohibition bears the primary (but not sole) responsibility for most of these harms. Nevertheless, many of the risks drugs pose to the user are psychopharmacological effects of drug use itself—exposure to external risks produced by diminished mental capacity and psychomotor coordination during intoxication and the more direct risks of addiction and other physical and psychological harms.

Mill himself recognized a paternalistic exception to the harm principle for children and the mentally disabled:

It is perhaps necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. . . . Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury (1859/1947, p. 145).

This position is sometimes known as *soft paternalism*; Feinberg (1986) questioned whether it is truly an exception to the harm principle. Moore (1991) argues that Mill's paternalistic exception "offers substantial room for justifying the use of state authority to regulate drug use." Mill's notion of mature faculties can be read as requiring at least some *minimal* capacity for rational choice. This minimal requirement is clearly met for adults who contemplate drug use for the first time, except perhaps those with severe retardation or mental illness. But the threshold won't be met if judgment is impaired by either intoxication or the "weaknesses of will" caused by addiction (Kleiman, 1992a). There is a growing recognition, as well as laboratory evidence, that under the right conditions, most of us can get

trapped in choices that we ourselves, if viewing the situation with no new information but a different perspective, would judge to be against our best interests (see Loewenstein & Elster, 1992; Loewenstein, 1996).⁵ The argument from addiction applies with varying force across psychoactive substances; it is more compelling for drugs that produce withdrawal symptoms, obsessive craving, and/or compulsive behavior (like heroin and cocaine) than for drugs with minimal addictive potential (like psilocybin).

A vexing complication for consequentialists (e.g., Millian liberals and legal paternalists) is that a change in drug laws might have different effects at the micro level (average harm to the individual user) and the macro level (aggregate harm across drug users). Imagine, for example, that a change in drug laws reduces average harm per user (e.g., through the regulation of production, purity, and labeling) but increases total aggregate harm to users (e.g., due to substantial increases in the quantity of use and/or the number of users).⁶ A “macro” consequentialist should accept whichever regime minimizes *total* harm (to others, to users, or both, depending on one’s views on paternalism). On the other hand, a “micro” consequentialist might accept a regime that minimizes *average* harm (to others, to users, or both), even if some alternative regime better reduces total harm (e.g., by successfully restricting total use). For the micro consequentialist, total harm is irrelevant as long as individual acts of drug use are made safe enough. This micro consequentialist view might seem implau-

5. An alternative perspective is Gary Becker’s argument that addiction can be characterized as rational behavior given appropriate external conditions (e.g., Becker & Murphy, 1988). Becker’s model is an intellectual *tour de force* of unknown relevance to the phenomenon of real-world addiction.

6. Note that average and total drug harm can diverge for reasons similar to the cases where average and total utility diverge. For the latter case, philosophers usually cite examples where the population size in question changes. In a related vein, average and total drug harm can diverge when the “population” of drug incidents changes—either because each user uses more or because there are more users than before. If use remained constant, average and total harm would always move in the same direction.

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sible, but note that this is in fact how many activities are implicitly treated—sports, driving, and so on. Regulation generally aims at the average safety per incident of these activities (and perhaps, the worst possible harm per incident) rather than the number of incidents or the level of total participation. Increases in participation may increase total harm enough to trigger stricter regulation, but that regulation usually targets harm levels, not participation levels.

Legal Moralism

Criminalized vices are often labeled *mala prohibita* (wrong because they are illegal), as distinct from crimes that are *mala in se* (evil in themselves). Crimes in the latter category, such as homicide, rape, and armed robbery, are generally considered evil because the offenders intentionally cause wrongful harm to others. Drug use is clearly qualitatively different from such offenses. Yet many defenders of prohibition discuss drug use in terms that suggest they find it intrinsically immoral. The label *legal moralism* characterizes the belief that “it can be morally legitimate to prohibit conduct on the ground that it is inherently immoral, even though it causes neither harm nor offense to the actor or to others” (Feinberg, 1988, pp. xix–xx).

In practice, it is difficult to distinguish legal moralism from other justifications for drug prohibition. Skolnick (1992) and Husak (1992) argued that prominent drug prohibitionists view drug use in deontological terms, as *malum in se* or morally repugnant in and of itself. The earlier quote from James Q. Wilson seems to support this thesis. But as noted at the outset, deontology is a characteristic of arguments, not people. A closer examination suggests that prominent prohibitionists ultimately define the immorality of drug use in consequentialist terms. Authors like James Q. Wilson and William Bennett described drug use as immoral, but they made their case with references to harms to self and others. For example, in the same essay,

Wilson (1990) established the consequentialist basis for his moral repugnance:

The notion that abusing drugs such as cocaine is “a victimless crime” is not only absurd but dangerous. Even ignoring the fetal drug syndrome, crack-dependent people are, like heroin addicts, individuals who regularly victimize their children by neglect, their spouses by improvidence, their employers by lethargy, and their coworkers by carelessness.

Similarly, in his introduction to the first *National Drug Control Strategy*, William Bennett (1989) argued that “drug use degrades human character.” But in the next sentence, he offered a clearly consequentialist rationale: “Drug users make inattentive parents, bad neighbors, poor students, and unreliable employees—quite apart from their common involvement in criminal activity.”

Still, even though prohibitionists cite consequentialist arguments—the coin of the realm in contemporary U.S. policy debates—it does seem plausible that legal moralist sentiments run deep in American opposition to drug law reform. Legal moralism is difficult to defend from a Western (classical) liberal perspective, but it is consistent with what cognitive anthropologists (Haidt, Koller, & Dias, 1993; Shweder et al., 1997) have identified as an *ethics of community* (codes that dictate one’s social roles and duties) and an *ethics of divinity* (codes that dictate physical purity). Some will endorse a legal moralist position on drugs because the escapist aspect conflicts with their ethic of community; others, because the chemical aspect conflicts with their ethic of divinity. But these reactions are likely to be vague, intuitive, and difficult to articulate.

The Benefits of Drug Use

Largely absent from this discussion has been any analysis of the benefits of drug use and their role in the moral assessment of drug prohibition. Indeed, the notion that the currently illicit drugs have

benefits is almost completely ignored in the policy analytic literature on drug control (Gable, 1997). Arguing from the so-called *revealed preference* principle, many economists argue that the fact that individuals choose to use such drugs establishes de facto that they have benefit (see Becker & Murphy, 1988). Many will reflexively reject this notion. One sophisticated argument for rejecting it is Mark Kleiman's (1992a) observation that many of these drugs instigate neurological and psychological processes that motivate compulsive use, even among those who freely acknowledge they would prefer to stop using. As Kleiman would no doubt agree, this argument has more force for highly addictive drugs like nicotine, cocaine, and heroin than for cannabis or the psychedelics.

Rather than inferring the benefits of a drug by its consumption, one might explicitly identify properties of the drug experience and argue for their benefits empirically or philosophically. Interestingly, the least addictive illicit drugs—cannabis and the psychedelics—have generated the largest endorsement literature. The psychedelics in particular have been defended (subject to various caveats about safe modalities of use) by respected ethnobotanists and pharmacologists (e.g., Schultes & Hoffman, 1992), religious scholars (see Forte, 1997), literary figures (see Strausbaugh & Blaise, 1991), and psychiatrists (e.g., Bravo & Grob, 1996; Strassman, 1995). Indeed, the latter authors are conducting federally approved controlled trials to examine the safety of methylenedioxymethamphetamine (MDMA) and other psychedelics with a hope of eventually testing their psychotherapeutic potential. Many such claims may eventually fail the tests of science or cultural experience—witness Freud's notorious endorsement of cocaine—but others may well be substantiated in time.

In the end, it is no more important for consequentialists to agree on the benefits of drug use than it is to agree on the relative importance of its harms, or the harms of prohibition. Just as readers will differ in the weight they place on the freedom to use drugs, or the

immorality of drug taking, it is likely that they will differ in their willingness to place positive value on the drug-taking experience.

IMPLICATIONS

This chapter has attempted to articulate the major theoretical positions on the legislation of morality. . . . The examination of these moral models is intended to identify underlying points of contention in the policy debate and places where empirical research and analysis might have leverage in shifting people's views. . . .

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The American Ambivalence: Liberty vs. Utopia

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Mississippi will drink wet and vote dry so long as any citizen can stagger to the polls.

—Will Rogers¹

Ever since Colonial times, the American people have displayed two powerful but contradictory existential dispositions: They looked inward, seeking to perfect the self through a struggle for self-discipline; and outward, seeking to perfect the world through the conquest of nature and the moral reform of others. The result has been an unusually intense ambivalence about a host of pleasure-producing acts (drug use being but one) and an equally intense reluctance to confront this ambivalence, embracing simultaneously both a magical-religious and rational-scientific outlook on life. In his important work on the intellectual origins of the Constitution, Forrest McDonald notes that the colonists displayed a Puritan devotion to so-called sumptuary legislation, that is, to laws prohibiting “excessive indulgence” in frivolous pleasures, such as gambling. Yet the Framers also

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1. Rogers, W., quoted in P. Yapp, ed., *The Traveller's Dictionary of Quotations* (London and New York: Routledge & Kegan Paul, 1983), p. 919.

believed “that the protection of property was a fundamental purpose for submitting to the authority of government.”² McDonald does not acknowledge that these beliefs are mutually irreconcilable.

As the nation grew more populous and powerful, this peculiar national heritage of unresolved ambivalence became a veritable national treasure. Combined with our historically unparalleled diversity as a people, the mixture—not surprisingly—yields a uniquely vague and uncertain national identity. What makes a person an American? Or, to put it in more precise political-philosophical terms: What is the basis for our union as a people? It cannot be the English language, because too many Americans do not speak the language or speak it very badly, and because too many non-Americans speak (more or less) the same language. It cannot be the Constitution, because too many Americans do not know what it says and, if they did, would repudiate it. I submit that, lacking the usual grounds on which people congregate as a nation, we habitually fall back on the most primitive yet most enduring basis for group cohesion, namely, scapegoating.³ Hence the American passion for moral crusades, which, thanks to the modern medicalization of morals, now appear as crusades against disease. This is why so many Americans believe there is no real difference between the effort required to combat the devastation caused by polio and that caused by heroin.⁴

In short, we must not underestimate the demagogic appeal that the prospect of stamping out evil by suitably dramatic means has always exercised, and will continue to exercise, on the minds of men

2. McDonald, F., *Novus Ordo Seclorum* (Lawrence: University Press of Kansas, 1985), pp. 10 and 16.

3. See Burke, K., “Interaction: III. Dramatism,” in D. L. Sils, ed., *International Encyclopedia of the Social Sciences*, vol. 7 (New York: Macmillan and Free Press, 1968), p. 450.

4. Although the similarity between these two problems is based on nothing more than a strategic analogy, it is now commonly misunderstood as a literal equivalence; see, for example, Schrage, M., “Vaccine to fight drug addiction is needed,” *Los Angeles Times*, March 1, 1990.

and women. The Romans, barbarians that they were, had circuses where they watched gladiators kill one another. Our circuses—splashed across the front pages of newspapers and magazines, and flashed unceasingly on television screens—entertain us with our own civilized, and of course scientific, spectacles. We are shown how “bad” illicit drugs injure and kill their victims, and how “good” psychiatric drugs cure them of their nonexistent mental illnesses.

MAKING THE WORLD SAFE FROM SIN

If a person prefers not to question a phenomenon, it is futile to answer his nonexistent query. Such, precisely, is our situation today with respect to drugs. Instead of pondering the so-called drug problem, people know—as Josh Billings would say—“everything that ain’t so” about it.⁵ Accordingly, they flit from one absurd explanation to another, without ever stopping long enough to hear what they are saying and then, appalled, stop talking and start thinking.

Former First Lady Nancy Reagan: “Any user of illicit drugs is an accomplice to murder.”⁶

Former drug czar William Bennett: “It [drug abuse] is a product of the Great Deceiver. . . . We need to bring to these people in need the God who heals.”⁷

New York State Governor Mario Cuomo, described while visiting a school: “Pupils and teachers waving banners gathered at the school’s entrance and the band played the national anthem as Governor Cuomo walked through the door. Cuomo praised the children for taking a stand against drugs, which he called ‘the devil.’ . . .

5. “It is better to know nothing than to know what ain’t so.” Shaw, H. W. (“Josh Billings”), quoted in J. Bartlett, *Familiar Quotations*, 12th ed. (Boston: Little, Brown, 1951), p. 518.

6. Reagan, N., quoted in S. V. Roberts, “Mrs. Reagan assails drug users,” *New York Times*, March 1, 1988.

7. Bennett, W., quoted in “In the news,” *Syracuse Herald-Journal*, June 13, 1990.

‘Thank you from the bottom of my heart,’ Cuomo said. . . . ‘Anybody who does not believe in the devil, think about drugs.’”⁸

These remarks can easily be multiplied. I choose them because they exemplify the nature of public discourse about drugs in the United States today. Looking at the contemporary American drug scene, it is difficult to escape the conclusion that, notwithstanding the contrary evidence of impressive scientific and technological achievements, we stand once again knee-deep in a popular delusion and crowd madness: the Great American Drugcraze. As in the persecutory movements that preceded it, harmless persons and inanimate objects are once again demonized as the enemy, invested with magically dangerous powers, and thus turned into scapegoats whose denunciation and destruction become self-evident civic duty.⁹ During the Middle Ages, Nancy Reagan’s “drug users” and Mario Cuomo’s “devils” were witches and Jews—the former typically accused of abusing children; the latter, of poisoning wells.

America: Redeemer Nation

To understand America’s protracted struggle against drugs, we must situate the current anti-drug hysteria in the context of this nation’s historical penchant for waging moral crusades. Since Colonial times, the New World was perceived—by settlers and foreign observers alike—as a New Promised Land, a place where man, corrupted in the Old World, was reborn, uncorrupted. This vision inspired the colonists, informed the Founders, burned brightly in the nineteenth century, was clearly exhibited during the earlier decades of this century—first in a great war to make the world safe for democracy, then

8. Nelis, K., “Cuomo applauds students for taking on ‘the devil,’” *Post Standard*, Syracuse, NY, January 28, 1988.

9. See Mackay, C., *Extraordinary Popular Delusions and the Madness of Crowds*, 1841, 1852, reprint (New York: Noonday Press, 1962); and Moore, R. I., *The Formation of a Persecuting Society* (Oxford, England: Basil Blackwell, 1987).

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in an even greater war to make it safe from German and Japanese nationalism—and is now plainly manifest in the war to make the world safe from dangerous drugs.¹⁰ Perhaps more than any recent president, George Bush embodies our self-contradictory quest for a free society *and* a utopian moral order. Giving his inaugural address in January 1989, Bush stressed two themes: the free market—and the war against it. “We know,” declared the president, “how to secure a more just and prosperous life for man on earth: through free markets . . . and the exercise of free will unhampered by the state.” Then, hardly pausing, he declared drugs to be the nation’s chief domestic problem, and pledged, “This scourge will stop.”¹¹

Formerly, the conviction that America’s manifest destiny was the moral reformation of the world was couched in clerical terms, as a fight against sin (drinking as “intemperance”); now, it is couched in clinical terms, as a fight against disease (drug use as “chemical dependency”). The medieval well-poisoning imagery, brought up to date, remains irresistible: General Manuel Noriega is a “narco-terrorist” who sends us cocaine to infect our children; we, in turn, launch Operation Just Cause, invade Panama, kidnap its head of state, and bring him to the United States for a fair trial. Although in his magisterial work, *Redeemer Nation*, Ernest Lee Tuveson does not mention drugs or drug controls, his book can be read as a sustained historical critique that pulls the rug of rationalizations from under the feet of the drug warriors. “To assume,” Tuveson cautioned, “that what is good for America is good for the world, that saving the United States is saving mankind, is to open up a large area of temptation. . . . The danger in all this is evident.”¹²

10. See Tuveson, E. L., *Redeemer Nation* (Chicago: University of Chicago Press, 1968).

11. Bush, G., “Transcript of Bush’s Inaugural Address,” *New York Times*, January 21, 1989.

12. Tuveson, *Redeemer Nation*, p. 132.

COMSTOCKERY: SETTING THE
STAGE FOR THE WAR ON DRUGS

There was a time, not long ago, when America was at peace with drugs—when the trade in drugs was as unregulated as the trade in diet books is today; when people did not view drugs as presenting the sort of danger that required the protection of the national government; and when, although virtually all of the drugs of which we are now deathly afraid were freely available, there was nothing even remotely resembling a “drug problem.” It would be a mistake to assume, however, that in those good old days Americans minded their own business. Far from it. Then they hounded themselves and their fellows with the fear of another dangerous pollutant threatening the nation, namely, pornographic books, magazines, and pictures. Inasmuch as the turn-of-the-century war on obscenity preceded, and in part paved the way for, the twentieth-century War on Drugs, let us begin by taking a brief look at print controls or media censorship.

Censorship—that is, the prohibition of uttering or publishing “dangerous,” “heretical,” “subversive,” or “obscene” ideas or images—is an age-old social custom. In fact, appreciation of the moral merit of the free trade in ideas and images is a very recent historical acquisition, limited to secular societies that place a high value on individual liberty and private property. In many parts of the world today, there is no press freedom and the very idea of opposing the right of the church or of the state to control information is considered to be subversive.

The reason for censorship is as obvious as the maxims celebrating the power of ideas are numerous. If the pen is mightier than the sword, we can expect sword-holders to want to sheath their adversaries’ swords. As Justice Oliver Wendell Holmes, Jr., put it, censorship rests on the realization that “every idea is an incitement.”¹³ Perhaps

13. “Censorship,” in the *Encyclopaedia Britannica* vol. 5 (Chicago: Encyclopaedia Britannica, 1973), p. 161.

he should have specified “every interesting idea,” for a dull idea is not. By the same token, every interesting drug is an incitement. And so is everything else that people find interesting, whether it be dance, music, gambling, or sport. For a number of reasons, among them an increasing tempo of immigration and population growth, in the 1880s Americans began to feel besieged by a pitiless enemy determined to destroy the very soul of their nation. The scriptural serpent surfaced once again, put on the mask called “obscenity and pornography,” and suddenly books like *Fanny Hill* and pictures of seminude women became dire threats to the welfare of the nation. So the country declared war on obscenity and soon had a censorship czar committed to stamping out smut. That czar was Anthony Comstock, whose heroic exploits so amused George Bernard Shaw that he made the czar’s last name a part of the vocabulary of American English. A “comstock,” according to *Webster’s*, “is a ludicrous prude, esp. in matters relating to morality in art,” and “comstockery [is] prudery; *specif.*: prudish concern in hunting down immorality, esp. in books, papers, and pictures.”¹⁴

I am not going to dwell on Comstock’s amazing achievements. The following episode should suffice to illustrate the power he wielded and the similarities between the war on obscenity at the beginning of this century and the War on Drugs at the end of it. As William Bennett’s efforts were hampered by drug pushers, Anthony Comstock’s were hampered by smut pushers, among them Margaret Sanger, the pioneer feminist and birth control advocate. Clearly, Comstock’s anti-obscenity crusade and Sanger’s right-to-sex-information crusade were on a collision course.

To provide women with what we now call sex education, Sanger wrote a series of articles for the socialist newspaper *Call*. The publication was stopped, however, when Comstock “announced that an

14. *Webster’s Third New International Dictionary*, unabridged (Springfield, MA: G&C Merriam, 1961), p. 468.

article on gonorrhoea violated the bounds of public taste.”¹⁵ This further inflamed Sanger, who decided to confront Comstock by publishing all the then available contraceptive information in a magazine appropriately titled *The Woman Rebel*. Comstock was ready. The magazine was banned by the Post Office and, on August 25, 1914, Sanger “was indicted by the federal government on nine counts that could bring a jail sentence of 45 years.”¹⁶ Her lawyers wanted to get her off on a technicality, but Sanger refused, preferring to flee to England. In 1915 Comstock died, and the following year the government dropped its charges against Mrs. Sanger.

Margaret Sanger had money, fame, and power, and survived the war on obscenity essentially unscathed. Others were not so lucky. In 1913, two years before his death, Comstock offered this catalog of his exploits: “In the forty-one years I have been here, I have convicted persons enough to fill a passenger train of sixty-one coaches, sixty coaches containing sixty passengers each and the sixty-first almost full. I have destroyed 160 tons of obscene literature.”¹⁷

Deplorable though they were, the Comstockian anti-obscenity statutes were intended to protect the public only from the (ostensibly) harmful acts of others. The extension of the reach of the interventionist state from protecting people from *moral self-harm* or *vice* (by means of print censorship) to protecting them from *medical self-harm* or *illness* (by means of drug censorship) is a momentous transformation that has not received the critical scrutiny it deserves. On the contrary, academics and intellectuals now speak and write as if providing such protection has always been within the province of state intervention. Drug prohibitionists thus proudly proclaim that protecting people from themselves is just as legitimate a goal for criminal

15. Lader, L., “Margaret Sanger: Militant, pragmatist, visionary,” *On the Issues* 14 (1990): 10–12, 14, 30–35; quote at p. 30.

16. *Ibid.*

17. Broun, H., and Leech, M., *Anthony Comstock* (New York: Literary Guild of America, 1927), pp. 15–16.

as well as civil law as protecting people from others. Accordingly, trying to save people from their own drug-using proclivities is considered to be ample warrant for depriving individuals of life, liberty, property, and any or all constitutional protections that obstruct this lofty goal. . . .

THE WAR ON DRUGS

After the turn of the century, having enjoyed the blessings of two centuries of free trade in medical care, America succumbed to the lure of European “progress,” a/k/a government regulation.²¹ Ever since then, the United States has waged a War on Drugs. The hostilities began with minor skirmishes before World War I, grew into guerrilla warfare after it, and now affect the daily lives of people not only in the United States but in foreign countries as well. . . .

THE MIRAGE OF A HOLY/HEALTHY UTOPIA

The War on Drugs is a moral crusade wearing a medical mask. Our previous moral crusades targeted people who were giving themselves sexual relief and pleasure (the drives against pornography and masturbation). Our current moral crusade targets people who are giving themselves pharmaceutical relief and pleasure (the drive against illicit drugs and self-medication). Although the term *drug abuse* is vague and its definition variable, by and large it is the name we give to self-medication with virtually any interesting and socially disapproved substance. Why is self-medication a problem? Because, for the reasons discussed above, we view it as both immoral and unhealthy.

And so we arrive back at our point of departure: the essentially religious, redemptive nature of the American dream of a world free from dangerous drugs. This aspiration arose, as Tuveson suggested,

21. See Shryock, R. H., *Medical Licensing in America, 1650–1965* (Baltimore: Johns Hopkins University Press, 1967).

from a peculiarly American mix of devotion to both religious and secular utopianism.

The real importance of the elements of secular progress is that they have stirred up and made possible the militancy of Christianity *in this world*, which is to produce the *holy utopia*. . . . The new “benevolent and reformatory” movements [are] designed to bring human conduct and institutions into conformity with the *idea of right*.⁷⁵

It is this longing for a holy utopia that leads to the fateful obliteration of the distinction between vice and crime, and the tragic transformation of the virtue of temperance into the vice of prohibition. In a society such as ours—religious by tradition, secular by law, and forever striving toward a free political order—this is a terrible folly, for reasons Lysander Spooner articulated perhaps better than anyone else:

[E]verybody wishes to be protected, in his person and property, against the aggressions of other men. But nobody *wishes* to be protected, either in his person or property, against himself; because it is contrary to the fundamental laws of human nature itself, that any one should wish to harm himself. He only wishes to promote his own happiness, and to be his own judge as to what will promote, and does promote, his own happiness. This is what every one wants, and has a right to, as a human being.⁷⁶

However, what Tuveson termed our collective striving for a “holy utopia” is the superglue that reconciles and unites in an intoxicating embrace of intolerance the diverse personalities and politics of Nancy Reagan and Jesse Jackson, George Bush and Charles Rangel, William Bennett and Ralph Nader. If our love of the Constitution and gratitude for our heritage cannot keep us united as a nation, then hatred of “dangerous drugs” must do the job.

75. Tuveson, *Redeemer Nation*, pp. 73–74; emphasis added.

76. Spooner, *Vices Are Not Crimes*, pp. 12–13.

Hidden Paradigms of Morality in Debates about Drugs: Historical and Policy Shifts in British and American Drug Policies

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A comparison of British and American drug policies over the past century-and-a-half reveals certain hidden moral paradigms that have governed public policy approaches toward drugs, either singly or jointly. These moral paradigms include commercial morality prohibition-criminalization, vice regulation, public health and rehabilitation. Both Britain and the United States were dominated by the commercial paradigm in the nineteenth century. International opium conventions (1912–1913) greatly restricted the commercial morality and developed a successful public health approach to opiates. The United States shifted toward a prohibition-criminalization approach for drug addicts, whereas Britain maintained a public health approach.

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INTRODUCTION

Moral standards guide personal conduct in many spheres of behavior, particularly drug use. Moral standards adopted by society may become “invisible clothing” and an integral part of the self. Other standards of morality do not seem possible or worthy and are essentially hidden from public view and discussion. Old moral standards are forgotten; only current standards can be continuously reaffirmed. The current debate about drug legalization falls squarely in this tradition.

Imagine living in Britain or America a century ago and living within the morality of that period. In 1890 most pharmacies and/or other stores sold opium pills, pure morphine, opium for smoking, coca leaf products, pure cocaine, cocaine cigarettes (like crack today), a variety of beverages containing either alcohol plus opiates or alcohol plus cocaine, and patent medicines whose effective ingredients were opiates. A new soft drink contained coca leaf extract in its contents and name: Coca-Cola. People could purchase these commodities at a low price (even at 1890 wages) and use them with less stigma than drinking alcohol or smoking tobacco. Those who used large quantities of these substances or who overindulged might be thought of as having a bad habit, but would not likely commit crimes to obtain their drug(s) of choice. Opium smoking was a vice peculiar to the Chinese people, and perhaps a few criminals in America. A few British citizens who supported missionaries in China were proclaiming the almost absurd notion that the Indo-Chinese opium (smoking) trade was morally indefensible and should be stopped immediately. Furthermore, they proclaimed that opiates should be provided only by doctors for medical reasons, thus depriving the average citizens of their favorite patent medicines or opium pills or opiate wines. Surely such reasons were not sufficient either to restrict profits of merchants or to prevent the populace from using their favorite remedies for most maladies. Virtually no one (including the proponents of such restric-

tions) mentioned, much less advocated, criminal penalties and actually confining persons in jail or prison for opiate use or sales. Only in China had the barbaric practice of strangling opium smokers occurred—and that was more than 150 years ago (1830–1850).

In fact, the isolation of morphine from the poppy and cocaine from coca plants, and the invention of the hypodermic needle in the latter half of the nineteenth century, were major advances in alleviating pain and suffering from a multitude of diseases that had long plagued mankind. New professions had emerged since 1850: scientific chemists were replacing alchemists; physicians had training and skills that doctors and medicine men did not; pharmacists were replacing the friendly patent medicine salesmen. In Vienna, young Sigmund Freud had published some laudatory essays about a newly discovered drug, cocaine, to alleviate morbid depression. In short, physicians, doctors, pharmacists, entrepreneurs, and ordinary shopkeepers could sell their patients and customers the best that modern medicine had to offer which would actually alleviate (but not cure) the pain and suffering of many dreaded diseases. If a few persons overindulged and had an opium or morphine habit, this was a minor problem, not nearly as “morally wrong” as being a drunkard, or smoking pipes, or chewing snuff. Why should the average citizen either be concerned about the Chinese problem or restrict the income of doctors or businessmen? In 1890, the reasons were insufficient. But this changed rapidly in the next 40 years. . . .

PROMOTING MORALITY

Morality has its origins in religion and history and defines various behaviors as moral, or right, and immoral in various degrees (other terms include: vice, deviance, crime). Compared with definitions of normal physical health, much less agreement exists about appropriate moral behavior of citizens, and much disagreement exists within the

polity about appropriate definitions for the degree and seriousness of behavior defined as immoral.

A major function of government is the promotion of moral behavior and good health practices among its citizens. So many exceptions from approved practices occur, however, that all governments have established laws. Legislators must socially construct definitions of the disapproved or questionable behaviors, define laws that provide a framework for enforcement, and establish and fund bureaucracies responsible for issuing regulations and enforcing them. The process by which such laws are passed has been well documented elsewhere (Mauss, 1975; Spector and Kitsuse, 1977). Usually, relatively small interest groups (especially business groups, and wealthy or influential persons) get their definitions passed into law, legislation, and regulations. The poor and disadvantaged have limited or little access to the legislative process, and their behaviors are frequently the object of the laws.

But generally, after several years of vigorous enforcement, most citizens come to accept legal definitions as the basis for their personal behavior. Such standards of moral behavior and good health become the “invisible clothing” that the vast majority of people in society “wear” in their personal conduct. Such “invisible clothing” (standards of appropriate behavior) may become reified into absolute right and wrong. The average conventional person can hardly conceive that anyone might engage in or enjoy such wrong behavior, or that such behavior might be defined and treated in a very different way in another society or culture. Most citizens are quite clear about their standards for right and wrong behavior, but are aware that much similar behavior by others might also be in an ambiguous zone.

Behaviors involving the consumption of drugs or nonfood psychoactive substances have always been at the crossroads where health and morality intersect, and where government efforts to promote good health and prevent practices deemed harmful by the majority collide with the rights of the minority, who enjoy and practice such behav-

iors. In fact, the implicit assumptions about correct behavior made by almost everyone in society consistently confound health and moral considerations, so that policy deliberations, debates, legislation, funding, and enforcement practices regarding drugs frequently contain conflicting purposes.

PARADIGMS OF MORALITY

Paradigms contain all major elements that define a theoretical model being examined. Max Weber (1947) used the term “ideal type” to provide nearly perfect definitions of the phenomena, even though such pure examples are rarely found in reality. But such ideal types or paradigms have heuristic value by making important conceptual distinctions between elements that may be otherwise confounded in reality and policy making. The following five paradigms are defined according to relatively pure ideal types; contrasts with similar paradigms are provided.

Commercial Morality

The commercial paradigm holds that the economic value and returns from a commodity are the most important criteria by which to assess a drug. Thus, if sales of a given drug can earn good profits for the seller, the drug should be made available to those who wish to buy it, and its consumption considered appropriately moral. Most persons consuming the drug are presumed to maintain normal health and to be otherwise moral persons.

Persons with a commercial interest may promote the drug as beneficial to health and as morally correct. Such proponents ignore or refute competing paradigms, which may claim that the drug is harmful or bad for health, or that consuming behavior is immoral or a vice. Proponents can be expected to advertise their product to as many potential customers as possible, and take actions which maxi-

mize profits. Historically, commercial interests have sought or used governmental laws or regulations such as patents, taxation policies, restriction of competition, lawsuits, limitations of imports, and even warfare to maximize profits. For example, coffee, tea, and several soft drinks (e.g., Coca-Cola) contain a stimulant (caffeine), but are sold without restrictions as to location, time, place, cost, labeling requirements, or advertising content. Manufacturers and sellers are not required to list the active ingredient, caffeine, nor state the amount of caffeine in a typical dosage unit.

Public Health Morality

The public health paradigm is designed to promote good (normal) health practices and to discourage or restrict practices that might harm health. Public health authorities tend to ignore morality claims and remain very skeptical of claims for product effectiveness issued by those having a commercial interest in a product. Public health practitioners are eager to restore physical health to immoral persons as well as good citizens.

Public health regulations permit purified caffeine to be legally sold in several over-the-counter drugs (e.g., No-Doz). The quantity of caffeine in a dosage unit may be listed on the label, and written directions provided about the number of pills to be taken and the frequency of consumption.

As shown below, opiates were a primary concern as public health practices and regulations were debated and institutionalized during the past two centuries. Authorities issue warnings, teach medical practitioners, and otherwise prevent users from consuming dosages that are too large or that extend for very long periods. Such authorities are also empowered to restrict the actions and profits of manufacturers and sellers of drugs in many ways: requiring labels stating contents and dosages; limiting the number of dosage units in retail packages;

regulating pricing practices, advertising content, and targets; and proving that drugs are both safe and effective.

Vice Regulation Morality

The vice regulation morality is quite unfamiliar to most Americans because prohibition-criminalization has dominated in the twentieth century. This paradigm represents an explicit recognition of conflicting moral standards of right and wrong. The vast majority of citizens have clear moral standards that define certain behaviors as immoral and unacceptable; but a sizable minority enjoy and wish to participate in and/or pay for that behavior. The vice regulation paradigm provides for laws and regulations that permit the immoral behavior to occur, but generally remain unobserved by publics whose morals would be offended.

In much of Western Europe, for example, prostitution and pornography are legal but highly regulated. In London, prostitutes cannot solicit on the streets or in bars, but may advertise in sex magazines and via discreet announcements in shop windows. Shops selling pornography are permitted no public displays that might offend the average citizen, but can sell any kind of sexually explicit material to adults who enter the premises.

Prohibition-Criminalization Morality

The prohibition-criminalization paradigm represents a collective judgment that a particular behavior is wrong and immoral and should be prohibited by law. Usually, violations of the law are punished by criminal penalties. The prohibition morality may emphasize the “symbolic crusade” (Gusfield, 1963) aspect in which a moral belief of a powerful group is enacted into law, and frequently directed against persons perceived as immoral or disreputable.

While prohibitionist sentiment enacts laws, criminalization

occurs when a specific behavior is defined as illegal by criminal law, and specific sentences in jail or prison are provided for convicted violators. Police and various enforcement agencies are created and mobilized to detect and arrest persons committing the illegal act. The types of persons targeted for enforcement of criminal laws, and the severity and certainty of detection, prosecution, and punishment, are critical.

Laws against heroin in the last half of the twentieth century in America have been based on a strongly held prohibitionist sentiment, and criminal penalties have been vigorously enforced against heroin users and user-dealers by many police and special narcotics units.

Rehabilitation Morality

The rehabilitation paradigm is concerned primarily with restoring to normal social behavior persons who are labeled by authorities or themselves as deviant, criminal, or immoral on some behavioral dimension. The major effort is to eliminate or greatly reduce the undesirable behavior as well as to teach or model appropriate behavior.

During the 1970s and 1980s, therapeutic communities have developed a strong philosophy and treatment regime that attempt to eliminate the use of all illicit drugs and alcohol, stress elimination of any negative behavior including lying and deceit, and impose activities that promote conventional behavior upon participants. In the United States, therapeutic communities have become popular and widespread because the total rehabilitation of addicts is congruent with the strong moral censure against addiction in American society.

Each of these paradigms of morality exerts considerable influence on public policies toward drugs. Each paradigm has had various constituencies promoting their morality interests to government agencies. Moreover, some of these paradigms have become the fundamental

operating assumptions of government policies and laws in various historical periods and for different cultures.

Several major themes emerge in the historical record. The commercial morality dominated in the early nineteenth century and reached its zenith in the 1880s. The prohibitionist morality (against opium smoking) and public health morality (to restrict opiates for medical purposes) emerged at the end of the nineteenth century. The prohibitionist and criminalization approach toward opiates (especially heroin) was ascendant in America during the first quarter of the twentieth century and has remained dominant ever since. British policy remained firmly committed to a public health morality for the first two-thirds of the twentieth century, but has shown a shift toward prohibition-criminalization in the 1980s.

Of even greater importance is the fact that drugs, especially opiates, have had a primary role in generating political conflict among competing commercial and morality interests, which has, in turn, forced a clarification of roles among the medical, public health, and pharmaceutical professions.

The public health paradigm ascended after World War I, when the International Opium Conventions were adopted and institutionalized by almost all major nations. Opiates were legally confined to legitimated medical practices, and this worked well through the 1950s. The revival of black markets in heroin after World War II led to further restrictions on medical opiates, and vast expansion of the prohibitionist-criminalization morality (and imprisonment of addicts by the thousands) in America. But the tide of heroin abuse and cocaine/crack addiction in the last half of the 1980s was so great that prisons were not enough. The rehabilitation morality gained proponents, and funding began in the 1960s and has grown steadily ever since. . . .

CONCLUSION

A socio-historical review of drug policies in Britain and the United States shows that both countries in the nineteenth century were dominated by a commercial morality toward opiates. Strong dissatisfaction with opium cultivation, opium smoking in China and the United States, and patent medicines led to international opium conventions, which institutionalized the public health morality regarding legitimate medical uses. Starting with the Harrison Narcotic Act of 1914, the United States rapidly shifted toward a prohibitionist-criminalization paradigm toward opiate and heroin users and prevented opiate maintenance until methadone became available in the 1960s. In the 1920s, Britain rejected the criminalization approach and defined a public health morality, which worked effectively until the 1960s. This approach has remained the core of British policy to the present time. The 1980s, however, have seen the growth of a black market in heroin, a shift away from long-term maintenance of opiate addicts in Britain, and the criminalization of many heroin user-dealers.

While British policy toward opiate addicts allows them to legally obtain opiates from government clinics or their general practitioners, physicians have chosen to greatly restrict opiate maintenance. In the United States the highly moralistic prohibitionist, law enforcement approach to narcotic drugs has become increasingly stronger. . . .

“Invisible Clothing” Revisited

The “invisible clothing” of the average British and American citizen of 1890 took for granted that the commercial morality for opiates was appropriate, although heated political debate about morality toward alcohol was raging in that era. They would be astonished to learn that opiate users in the 1990s are not only routinely denied very small quantities (by 1890 measures), but routinely arrested and incarcerated

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for several years for possession or sale of small quantities of these drugs.

In 1990 government agencies, the press, and most people routinely reinforce the beliefs that most Americans take for granted: heroin and crack/cocaine are among the worst evils and greatest vices in the society. Persons who use these drugs become fiends who rob and steal; and society must get tough (and imprison) those who will not volunteer for rehabilitation. Indeed, average Americans in 1990 are so comfortable with prohibition-criminalization that they are surprised and unsettled to discover that not only were such drugs legal and cheap in the past, but also that very different moral standards may exist in other countries. British drug treatment personnel, operating safely within the protective public health morality of the Rolleston Committee (1926), are aware of the power of moral crusades and prohibitionist sentiment in America and its impact on British citizens. They do not want to reproduce America's drug problem.

What will be the moral standards of British and American citizens toward opiates in the future? Prognostications are not possible, but the five paradigms of morality toward opiates suggest possibilities that are not being seriously considered. Perhaps future scientists will invent drugs that are not addictive and do not have other harmful properties and which will be defined as morally correct to consume and sell, so drug users will switch away from heroin and cocaine voluntarily. Perhaps the prohibitionist-criminalization approach will succeed in stopping the growth of opiates and cocaine or their illegal import so addicts cannot get their drugs. But these optimistic scenarios appear improbable in 1990.

It is more likely that the prohibitionist-criminalization sentiment will spread, at least in the near term, thus labeling hundreds of thousands more people as criminals.

Perhaps the current, mainly academic, debate about drug legalization will achieve results as impressive as the British anti-opium movement of the 1890s (Johnson, 1975b) and bring about a willing-

ness to discard prohibitions and criminal penalties against opiate users and sellers, as happened with alcohol in 1935 (Nadelmann, 1989). If this willingness emerges, the precise nature of any legalization will necessitate major changes in international agreements.

Each paradigm of morality offers different possibilities for legal drugs. The commercial paradigm suggests that opiates could be made available at considerably below black market costs to stop the illegal trade; subsequently, taxes could be raised to restrict use. Models borrowed from the nineteenth century and other societies could provide plausible scenarios.

The vice regulation paradigm suggests that opiates and cocaine could be provided commercially to addicts and abusers, but that the sellers would be required to maintain controls over abusers and keep them out of view and concern by straight citizens. Variations of the Dutch willingness to let users purchase and consume marijuana in coffee shops, but repress street sales and consumption in public places, appears possible.

The public health morality suggests that drug dispensing clinics and pharmacies could provide drugs legally to heroin and cocaine abusers, but attempt to constrain and lower dosages, potencies, and frequency of consumption by committed abusers. They could provide other services (counseling, rehabilitation referral, needles, etc.) in continuing efforts to contain the problem and normalize (rather than stigmatize) the user life-style, as part of a harm reduction policy. They could also engage in sustained research to develop safe drug substitutes, rehabilitation therapies, and other ways to both improve the public health and undermine the financial structures of the current black market.

The rehabilitation paradigm suggests that future improvements could be made in creating more programs and placements for drug abusers to enter treatment and attempt to normalize their lives.

In 1990 none of the above scenarios, other than an extension of the prohibitionist-criminalization morality (and many more prison-

ers), appears even remotely possible in the highly moralized political atmosphere of America. Changes in drug policies are most likely to emerge in Europe, where the public health and vice regulation moralities have been institutionalized for decades. Regardless of the political fate of any particular proposals for changing policies toward opiates and cocaine, policymakers and citizens must become aware of how their personal moral standards affect political life and policy choices toward heroin and cocaine abusers.

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