

Drugs, Morality and the Law

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ABSTRACT *Arguments for and against the legal prohibition of drugs are surveyed. Various kinds of argument are identified and analysed: arguments against prohibition from a moral right to personal liberty; utilitarian and contractualist arguments for a right to personal liberty; arguments for prohibition from liberty-limiting principles (the harm principle, legal paternalism, legal moralism, Kantian duties to oneself, legal perfectionism, traditional conservatism, and communitarianism); utilitarian argument for prohibition; utilitarian argument against prohibition. It is concluded that none of the arguments for drug prohibition is convincing.*

Introduction

The justifiability or otherwise of the drug laws in many countries is a highly controversial issue of practical concern to which applied philosophy can contribute clarification of the public debate by sorting out the different kinds of argument, analysing them, thus disclosing their underlying principles, and critically assessing them. This paper offers a broad survey and critical analysis of the arguments for and against drug prohibition.

Is the nonmedical use of illegal drugs (ecstasy, cocaine, heroin, etc.), for pleasure or escapism, morally permissible or morally wrong? If it is morally wrong, should it be legally prohibited? Or should drugs that are now illegal be legalized [1]?

Legalization of illegal drugs has been advocated by some philosophers on grounds of liberty rights [2], by some economists who advocate free markets [3], and by some journalists on consequentialist grounds of harm-minimization [4]. Even some senior police officers and judges have floated the idea [5]. But governments refuse to entertain the idea.

In order to sort out and analyse the various arguments that are deployed in the debate over drug prohibition, I shall consider, first, in a necessarily condensed way, arguments over whether or not adults have a moral right to use dangerous drugs and, second, utilitarian arguments over whether legalization has, or prohibition would have, the better consequences, in terms of minimizing drug-related harm, for all affected.

I. Do Adults Have a Moral Right to the Freedom to Use Dangerous Drugs?

A. For a Right to the Freedom to Use Dangerous Drugs

In liberal societies, there is a general presumption that adults have a right to “live as seems good to themselves” [6], provided that they do not violate the rights of others, and, in particular, that they have a right to do what they choose to their own bodies and minds, including unhealthy and dangerous things, provided they endanger only

themselves. Adults are assumed to have a right to do risky things such as smoke cigarettes or engage in dangerous sports (e.g., mountaineering, boxing, motor sports, air sports, horse riding, skiing). If the law prohibited such dangerous activities, it would be widely seen as a violation of individual rights, an intolerable infringement of liberty. So it is claimed that the right to take dangerous drugs is just another application of this right to do unhealthy or dangerous things to oneself. Appeal may be made to Mill's view that the only justification for coercion is to prevent harm to others, not harm to self, and that "over himself, over his own body and mind, the individual is sovereign" [7].

The idea of a right to the freedom to use dangerous drugs is liable to misunderstanding. It does not mean a right to harm others (e.g., by driving under the influence) or to offend others (e.g., by being intoxicated in public). Advocacy of such a right does not mean advocacy of drug use: advocates may think that use of dangerous drugs is unwise or immature but think that adults have a right to make unwise or immature choices. And the idea of a moral right to use drugs does not mean the idea that drug use is morally right. One can have the moral right to do something that is morally wrong (e.g., waste one's time or money, never give to charity). It is coherent to say that adults have a moral right to use dangerous drugs, but it is morally wrong for them to do so.

The argument for a right to the freedom to use drugs might be summarized thus:

Adults have a right to the freedom to live as seems good to themselves (within the limits of others' rights).

So, adults have a right to do dangerous things (provided they endanger only themselves).

Drug use endangers only the user.

Therefore, adults have a right to the freedom to use drugs.

One response to this argument would be to question its first premise. Although there may be, in liberal societies, a widespread belief in the moral right to the liberty to live as seems good to oneself, of which drug use is a controversial application, what arguments are there for this belief? One argument is Mill's utilitarian claim that liberty maximizes happiness: individual freedom is a principal ingredient of individual happiness, and we all benefit from others' freedom such that allowing each adult "to live as seems good to themselves" serves the interests of humankind [8]. Mill's two reasons for this liberty apply to drug use: freedom allows individuals to satisfy their own wants (provided they are informed about the dangers) and it allows experimentation in ways of living from which everyone can learn. However, this utilitarian argument justifies liberty only if and insofar as it maximizes happiness.

Another argument for the liberty to live as seems good to oneself (within the limits of others' rights) is contractualist. People disagree over what is a good way to live, because of their different beliefs and values. This disagreement is reasonable and inevitable. Given disagreement over what is a good way to live, people can nevertheless agree on the principle of liberty to live according to one's own self-regarding judgements of what is good, and toleration of others' different judgements and consequent different ways of life. People could not agree to compulsion to live according to others' beliefs and values, nor to prohibition against living according to one's own. The primary example of this general contractualist argument is conflicting religious beliefs. No-one could agree to being compelled to live according to religious beliefs that are not their own, nor to their own religion being prohibited, but people with different religious beliefs can agree

on principles of religious liberty and toleration. The argument has been extended to different sexual preferences [9]. No-one could accept being compelled to live according to sexual preferences that are not their own, nor prohibition of their consensual sexual preferences, but people with different sexual preferences can agree on a principle of sexual freedom and toleration among consenting adults. Similarly, people disagree over whether use of any particular drug is good or bad. Being forced (by prohibition or compulsion) to live according to another's drug preferences is unacceptable but people with different drug preferences could agree to a right to the freedom to use drugs. As with sexual preferences, it can be agreed that what consenting adults do in private is no business of the law.

Competing general conceptions of the implications of individual rights apply to the right to the freedom to use dangerous drugs. The libertarian view that individual rights require free markets and a minimal state, applied to drugs, implies free markets in drugs with little or no legal regulation (perhaps laws on a minimum age and on driving under the influence) and no state-provided drugs education, health-care or treatment. On this view, adults have the right to take dangerous drugs but, if they choose to do so, they must accept the consequences with no right to public help. The liberal view, in contrast, that individual rights require government-regulated markets and a welfare state, applied to drugs, implies government-regulated drug markets, like those for alcohol and tobacco (e.g., regulation of quality, strength, price, labelling and advertising), and state provision of education about drugs and of health-care and treatment for drug users.

The great value that most people in liberal societies attach to their personal liberty perhaps implies the presumption of liberty such that the burden of proof falls on prohibitionists — it is prohibition, not liberty, which needs to be justified. So, let's turn to the arguments against the idea of a moral right to use drugs, and thus for prohibition.

B. Arguments Against a Right to the Freedom to Use Drugs

Many reasons are given against the idea of a right to the freedom to use drugs. Feinberg's analysis of liberty-limiting principles [10], that is, principles claimed to justify laws that restrict individuals' liberty, enables the sorting, analysis, clarification and assessment of the arguments.

1. Drug use harms others (appeal to the harm principle)

Everyone (except some anarchists) accepts that it is legitimate for the criminal law to prohibit some serious harm to others. Drug use harms not only the user but, indirectly, others too. By harming their own health and personality, drug users make themselves less good family-members or parents than they would otherwise be, so they harm their families. They make themselves less productive employees than they would otherwise be, so harm their employers and the economy. They impose health-care costs on, and so harm, society generally. So, in various ways, drug users indirectly harm others and so the law should prohibit drug use. This argument might be summarized thus:

The law should prohibit harming others (an unqualified harm principle).

By harming themselves, drug users indirectly harm others (family, economy, society).

Therefore, the law should prohibit drug use.

At first glance, appeal to the harm principle might seem a strong argument for prohibition. However, its major premise needs to be qualified. Not all harm to others is wrong (e.g., justified punishment, legitimate competition), and not all wrongful harm is criminal (e.g., adultery). As for making oneself less healthy, less productive, or a less good parent than one might otherwise be, even if it could be established that these actions are morally wrong, they are not criminal. If the law should prohibit such indirect harm to others, that would include not only illegal drug use but also use of alcohol and tobacco and other unhealthy lifestyles and diets, and dangerous sports. People risk indirect harm to their family and others in these ways, but few think such indirect harm should be illegal. The harm principle must be qualified by individual liberty rights.

Violence is another kind of harm that is invoked to justify prohibition. It is claimed that illegal drug use causes violence. However, many illegal drugs (opiates, cannabis, ecstasy) reduce aggression. Cocaine *may* cause or increase aggression, but the drug most strongly linked to violence is alcohol. So, if a link to violence is a reason for prohibition, alcohol should be prohibited. However, even most drug prohibitionists think it right that adults should be free to use alcohol and that only aggression, under its influence or otherwise, should be illegal.

2. *Drug use harms oneself (appeal to legal paternalism)*

The most common justification of prohibition refers to the harm that drug users do to themselves and thus appeals to legal paternalism. The argument may be stated thus:

- The law should prohibit voluntary self-harm (legal paternalism).
- Drug use risks self-harm.
- Therefore, the law should prohibit drug use.

The main reply to this argument is that paternalism is objectionable. While children may be unable to be the best judge of their own interests and so may justifiably be protected from their own unwise choices, when the state prohibits adults from voluntarily risking harm to themselves, it treats them as children. Anti-paternalists insist that adults have the right to the liberty to live according to their own values, judgements and choices, including those that risk harm to themselves (through dangerous sports, unhealthy lifestyles or dangerous drugs).

A second objection, to the second premise in this argument, is that although illegal drug use is harmful, some illegal drug use is less harmful than legal drug use. The paternalist should consider the comparative harms of prohibited and legal drugs:

Table 1: *Number of deaths, p.a., UK*

All illegal drugs	1805
Alcohol	33,000
Tobacco	120,000

(Sources: UK Government White Paper (1998) *Tackling Drugs to Build a Better Britain: The Government's ten-year strategy for tackling drugs misuse* (Cm3945) (London, Stationery Office); Alcohol Concern (1997) *Measures for Measures: A framework for alcohol policy* (UK, Alcohol Concern); Department of Health (1998) *Report of the Scientific Committee on Tobacco and Health* (London, Stationery Office).)

Certainly the number of deaths from illegal drugs constitutes a great deal of harm to those individuals and their families, but the legal drugs account for almost 99% of drug-related deaths. However, the fact that legal drugs are more widely used must be taken into account:

Table 2: Drug deaths in relation to number of users

Deaths p.a. per 10,000 weekly users, USA:	
Cannabis	0
Alcohol	21
Cocaine	29
Tobacco	83

(Source: D. Husak, *Drugs and Rights*, p. 95)

The figures in Table 2 need to be qualified by the fact that illegal drugs often kill young people while tobacco takes many years to kill many of its users. (Although a slow and painful death from the effects of tobacco is a greater self-harm in those respects than a sudden death from a heroin overdose.)

Risk of death is not the only self-harm of drug use. The risk of addiction must also be considered:

Table 3: Risk of addiction

Proportion of users who are addicted (USA):	
Cocaine, heroin, alcohol	approx. 10%
Nicotine	approx. 90%

(Source: D. Husak, *Drugs and Rights*, pp. 124f)

The principle of legal paternalism, if applied consistently, would criminalize tobacco use. If those who advocate drug prohibition on paternalist grounds find this implication oppressive and repressive, this should cause them to question their paternalism and its application to those who choose other dangerous drugs.

3. Drug use is immoral even if harmless (appeal to legal moralism)

It might be claimed that drug use is immoral irrespective of any harmful effects and this justifies its prohibition. This argument can be stated thus:

The law should prohibit harmless immorality (legal moralism).

Drug use, even if harmless, is immoral.

Therefore, the law should prohibit drug use.

A reply to legal moralism is to say that 'harmless immorality' is oxymoronic: If no-one is harmed then no-one is wronged, so harmlessness is sufficient for moral permissibility. However, this reply may be too quick because it can be argued that there can be harmless immorality. The next three kinds of argument against the permissibility of drug use do not appeal to harm (to self or others).

4. *Argument from Kantian duties to oneself*

Kant argued that how one treats oneself is as much a moral question as how one treats others. His second formulation of the Categorical Imperative states the duty to respect not only other people's humanity, their rationality and autonomy, but also one's own. Drug use undermines one's rationality and autonomy, thus disrespects oneself, thus violates a duty to oneself. This argument might be summarized thus:

One has a duty to respect one's own rationality and autonomy.

Drug use undermines one's rationality and autonomy.

Therefore, drug use is morally wrong.

Although this argument is more convincing than those previously considered, there are several problems with it. First, the idea of duties to oneself may be questioned. Second, and more tellingly, the argument applies to legal as well as illegal drugs. Rationality may be hard to define but we know it dissolves in alcohol. And tobacco, being so addictive (see Table 3), undermines autonomy in the sense that many addicts say they want to give up but can't. So, this argument does not justify the differentiation between the legal and the illegal drugs. A third problem is that, despite Kant, one can, without self-contradiction, rationally and autonomously choose to do something that reduces or even ends one's rationality and autonomy: Kant himself concedes that medicinal use of opium and moderate use of alcohol are permissible [11] and he observes that, in extreme circumstances, our reason and autonomy entail a duty to choose death rather than serious wrongdoing [12]. A fourth problem is that even if the virtue of autonomy supports the immorality of (especially addictive) drug use, it opposes its illegality [13].

Arguing from the Kantian duty to respect one's humanity, Samuel Freeman denies that liberalism excludes *all* prohibition of voluntary self-destructive conduct. It permits restrictions against conduct that permanently destroys one's capacities for rational agency and moral responsibility. Any activity that destroys those capacities is, he claims, impermissible. Existing drugs may not do this but any that did would be justifiably prohibitable. He thus clarifies the *limits* of a right to use drugs [14]. However, since existing drugs do not destroy those capacities, this argument does not justify existing drug laws, and could possibly justify prohibition not of any potentially destructive substance (e.g., alcohol) but only of self-destructive *use* of it.

5. *Argument from an ideal of human excellence (appeal to legal perfectionism)*

Another kind of argument for drug prohibition appeals to perfectionist ideals of human excellence and the idea that government should improve the character of its subjects. This kind of argument might be stated thus:

The law should promote virtue, prohibit vice (legal perfectionism).

Drug use is stupefying, dehumanizing, degrading, a vice, a character defect, not a good life.

Therefore, the law should prohibit drug use.

The first reply to legal perfectionism is the observation that there is reasonable disagreement about ideals of human excellence and of the good life, from which liberals infer that the state should not enforce any one, which would be oppressive, but allow individuals to pursue "our own good in our own way" [15]. A second reply is that even if there were agreement that drug use is not a good life, that it is a vice, this would be

an argument for its immorality but not its illegality because the criminal law enforces minimum standards of behaviour, not ideal or virtuous behaviour [16].

6. Argument from the community's traditional way of life and/or the majority's values (traditional conservatism, communitarianism)

Traditional conservatives and communitarians argue, respectively, that government has a duty to maintain the community's traditional way of life and to enforce the majority's values. Although these are two distinct claims, the arguments and the replies run parallel so can be put together, thus:

The state should maintain the community's traditional way of life and/or enforce the majority's values.

Drug use deviates from the traditional way of life and/or from the majority's values.

Therefore, the state should prohibit drug use.

Either of the principles appealed to here is question-begging: It presupposes the rightness of the tradition and/or the majority's values, i.e., presupposes what is in question. Its practical implication, the legal enforcement of a way of life on individuals who reject it, is oppressive (because it does not allow individuals to live according to their own values), futile (because belief is unenforceable), and self-condemnatory (because if a tradition is valuable, it needs no coercion to gain adherents and if it needs coercion, it is not valuable).

An interim conclusion is that none of the arguments from liberty-limiting principles justify legal prohibition of adult drug use.

II. How to Minimize Drug-related Harm?

A second kind of debate about our drug laws, and the one that prevails in politics and the media, is concerned not with the liberty rights of the individual but with the welfare of society as a whole. The focus of controversy thus shifts from ethical principles to factual claims — to the question of which policy, prohibition or legalization, will, in fact, have the better consequences. Both sides to this debate thus implicitly presuppose the utilitarian principle that policy ought to maximize benefits and minimize harms to all affected. Given this principle, which policy, prohibition or legalization, is more likely to minimize drug-related harm?

A. A Utilitarian Argument for Prohibition

It is argued that prohibition minimizes drug use, by various means. Although illegal drugs are widely available, they are less available than they would be were they legal. Many people are deterred by their illegality, because they don't want to break the law or fear the consequences of doing so. Compared to legal trade, prohibition increases the price of drugs (because of the high profits necessary as a sufficient incentive to bear the risks of illegal production and commerce), and thus reduces demand. And prohibition denounces drug use unambiguously, while legalization would undermine drugs education and encourage drug use. In reply to this last point, it can be said that legally permitting

something does not mean encouraging or advocating it (e.g., adultery, attempted suicide, smoking). However, the rejoinder from prohibitionism is that legalization would *appear* to condone drug use and would thus give the wrong signal, especially to young people, and would undermine efforts to discourage drug use. So, it is argued, through those four mechanisms (availability, deterrence, price and denunciation), prohibition minimizes drug use. It thus minimizes its associated harms — stupefaction, ill-health, addiction, death, child neglect and abuse, property crime and violence. So, it is concluded, it is the policy with the best consequences for the welfare of society as a whole and thus the right policy [17]. The argument might be summarized thus:

1. The policy that minimizes the harms of drug use is the right policy.
2. Prohibition minimizes drug use:
 - a. it reduces drug availability
 - b. it deters many people
 - c. it increases the price of drugs
 - d. it denounces drug use.

Reply: Allowing \neq advocating.

Rejoinder: Allowing *appears* to condone.

3. By minimizing drug use, prohibition minimizes the associated harms.
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4. Therefore, prohibition, by minimizing the harms of drug use, is the right policy.

Even if premises (1) and (2) are accepted, it does not follow that minimizing drug use minimizes drug-related harm. The utilitarian counter-argument is that legalization, even if it increased drug use, would reduce drug-related harm. Let's turn to that argument.

B. A Utilitarian Argument Against Prohibition

The utilitarian case against prohibition shares the premise that the policy that minimizes the harms of drug use is the right policy. However, it is argued that prohibition causes or increases the harms associated with drugs [18], in a number of ways.

The prohibitionist claim that legalization would greatly increase drug use presupposes that many people would want to take drugs and be willing to take the risks. Prohibition thus frustrates satisfaction of those wants, which, provided they would be well informed, is a harm to welfare.

By associating drug use with rebellion, daring, and being outside the law, prohibition may make drugs more attractive, especially to young people, as 'forbidden fruit', and thus increase drug use. Evidence for this claim is that, prior to prohibition, drug consumption was no greater, and less problematic, than it is now [19] and that decriminalization of cannabis in the Netherlands and in some US states did not result in increased use [20]. However, while illegality may be attractive to some people, it probably deters more.

A third harm of prohibition is that it is futile and thus brings the law into disrepute. People have experimented with drugs for millennia and, despite decades of prohibition, large numbers of people continue to use illegal drugs, despite their illegality and the risk of criminal conviction and imprisonment and despite the risks of addiction, overdose and death. Despite the world-wide efforts of police, customs officers, the secret intelligence services and, in some countries, the armed forces, and despite increasingly harsh penalties including, in some countries, the death penalty, the supply of illegal drugs

continues and they have become increasingly widely available, cheaper and purer, showing that there is no shortage of supply. And the numbers of people using illegal drugs has steadily increased over the decades. So, it is claimed, prohibition is futile and brings the law, the police and government into disrepute. Yet the more prohibition fails, the more governments advocate it, citing the evidence of its failure as reason to redouble efforts once again.

As with prohibition of other goods and services for which there is a demand (alcohol, pornography, prostitution, gambling, and abortion), prohibition of drugs, in effect, invites organised crime to supply a lucrative market. By making illegal trade so lucrative relative to legal occupations, prohibition encourages others into criminal activity. Interpol estimated the international illegal drug trade to be worth £500 bn per year, over £1bn per day, the UN estimated it at £250bn per year [21]. Prohibition cannot prevent a market in drugs — the question is whether it should be a legal market or an illegal market supplied by criminals.

Supply by criminals greatly increases the harms associated with drugs in several ways. It results in drugs being supplied in their most concentrated and addictive forms [22], in drugs being adulterated, sometimes with more toxic substances, and thus made more dangerous, and in supply of drugs of unknown and variable strength, making them more dangerous, and leading to deaths from overdoses when a batch is unusually pure. Illegality thus makes dangerous drugs much more dangerous. (This is also true of illicit alcohol.) Even heroin and cocaine, when supplied unadulterated and of known strength, can be taken for many years with little physical harm but become much more dangerous when supplied illegally. Supply by criminals, which prohibition creates, also promotes continual expansion of the drug market. Ruthless criminals have a lucrative incentive to create new users by offering or giving away drugs to create new users dependent on them, targeting ever-younger people. In contrast, legalization could create licensed suppliers who would be more restrained in order to keep their licence. Criminal supply also results in violence, both gang warfare between rival suppliers and the settling of debts between illegal traders. The huge profits from the illegal trade also leads to widespread bribery and corruption of police and customs officers, bankers, and politicians. [23]

Prohibition greatly increases the price of drugs, which leads many habitual users to fund their drug use through theft, burglary and robbery. The Home Office estimates that the 130,000 ‘problem drug users’ in Britain need to steal £7million of goods each day to pay for their drugs and several studies have estimated that between a third and a half of all property crime in Britain is drug-related [24]. This represents enormous harm to the victims of crime which is a consequence of prohibition, not of the drugs themselves. Legal supply to dependent users reduces their property crime. Legalization would reduce the price of drugs and so reduce the tendency of drug users to steal to pay for drugs.

Another way habitual users fund their drug use is by recruiting new users to sell to. Prohibition creates ‘pyramid selling’ where drug users sell to new users who in turn recruit further users and sellers. This is another reason an illegal market has a greater tendency to expand than a legal one, and thus to spread to ever-younger people. Legalization would eliminate the tendency of drug users to sell drugs to pay for them.

Prohibition pushes many drug users into a chaotic lifestyle, which undermines their employability and their family life, and in which many become trapped. When drug

dependants are legally supplied, they can be employed and maintain a family life, despite addiction, and living a fuller life makes it more likely that they will give up drugs.

The enforcement of prohibition adds further harms. Prohibition criminalizes many otherwise law-abiding people, undermining respect for the law, police and courts. Punishment of victimless drug offenders inflicts enormous non-retributive harm on them and their families. Expenditure on enforcement (customs, police, courts, and prisons) could be better spent, perhaps on drugs education and treatment services for dependent users. Enforcing the drug laws leads to many innocent people being subject to stop and search by police and customs officers and raids on pubs and clubs. Enforcement falls on blacks and whites unequally and on rich and poor unequally. The presumption of innocence has been compromised as convicted drug dealers can have their assets seized unless they can prove that they are not from dealing. The privacy of bank accounts has been compromised, as banks are legally required to report suspicious accounts. Sentences for drug offences have become increasingly harsh. Employers have introduced compulsory drug tests, not always to test fitness to do the job but to check on employees' leisure activities. The author of a book on how to grow cannabis was jailed for a year for incitement, and people who bought the book were raided by the police [25]. So, in various ways, enforcement of drug laws harms civil liberties.

Prohibition gives criminals control of the quality, purity, price and proceeds of drugs. They give no information about how to use with least risk. In a legal market, like those for alcohol and tobacco, government could license sellers in order to enforce regulations on the quality and purity of drugs, to prevent adulteration with more harmful substances, on compulsory labelling, so users know the strength of a drug, instead of the unknown and variable strength of illegal drugs, and on compulsory health warnings and advice on least harmful use (e.g., safe dose, avoid alcohol), as with medicines. Government could also tax the drugs trade and divert into public funds the billions of pounds now going to gangsters. Through taxation, government could control the price of drugs, and thus influence overall levels of consumption (as with alcohol and tobacco). Because licensed sellers are less likely to sell to children than illegal sellers are, legalization may reduce the availability of drugs to children.

Prohibition distorts drugs education. Exaggeration (of the dangers, of addictiveness, of the difficulty of giving up) and falsehoods are counter-productive because people know from their own experience they are false and disbelieve them, but may disregard the real dangers of drug use. Legalization would allow better drugs education, based on facts not myths, about how to minimize the dangers of drug use (e.g., avoiding mixing drugs, alcohol and overdosing).

So, for all these reasons, anti-prohibitionists argue that prohibition causes or increases the harms associated with drug use, and legalization would reduce those harms. This argument may be summarized thus:

1. The policy that minimizes the harms of drug use is the right policy.
2. Prohibition causes or increases the harms associated with drugs:
 - a. Prohibition presupposes people want drugs and frustrates those wants.
 - b. Prohibition may make drugs more attractive.
Reply: More people deterred than attracted by illegality.
 - c. Prohibition inevitably fails to suppress drug use, brings the law into disrepute.

- d. Prohibition creates lucrative criminal opportunities and invites organised crime to supply the market.
Criminal supply results in:
 - (i) drugs supplied in their most concentrated and addictive forms;
 - (ii) drugs adulterated — more dangerous;
 - (iii) drugs of unknown and variable strength — more dangerous;
 - (iv) ruthless expansion of market to ever-younger people;
 - (v) violence — debt-settling and gang-warfare;
 - (vi) bribery and corruption.
 - e. Prohibition increases price, turns many drug-users into thieves.
 - f. Prohibition increases price, turns many drug-users into suppliers.
 - g. Prohibition produces a lifestyle that undermines some users' employment and family life.
 - h. Enforcement of prohibition:
 - (i) criminalizes many, undermines respect for the law;
 - (ii) punishes victimless offenders;
 - (iii) takes resources from drugs education and treatment;
 - (iv) harms civil liberties.
 - i. Prohibition gives criminals control of quality, purity, price, and proceeds. Legalization allows government control, through licensing, of quality, purity, labelling, proceeds, price, availability, and advertising.
 - j. Prohibition distorts drugs education.
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3. Therefore, prohibition causes or increases the harms associated with drug use, so is the wrong policy.

In reply, prohibitionists say that legalization would be a dangerous gamble. It might reduce the harm associated with drug use but it might lead to many more people using drugs, with more harm resulting. And it would be very difficult to reverse legalization if legalized drugs became widely used. A utilitarian anti-prohibitionist rejoinder would be that the risks of legalization could be controlled by gradual legalization, starting with the least dangerous drugs.

Conclusion

This review of the arguments about our drug laws suggests that the liberty-limiting arguments are unconvincing and that drug prohibition probably causes more harm than it prevents. So, it is hard to avoid the conclusion that, whether the question is approached in terms of individual liberty rights or in utilitarian terms, those laws are unjustified.

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NOTES

- [1] Although the terms are often not distinguished, legalization, that is, allowing currently illegal drugs to be legally produced, sold, possessed and consumed by adults, perhaps with regulations similar to those that

- apply to alcohol and tobacco, is distinct from decriminalization, that is, treating possession of small amounts of an illegal drug for personal use as a minor offence (like a parking offence), or not enforcing the law, but keeping severe penalties for dealing or importing.
- [2] E.g., D. RICHARDS (1982) *Sex, Drugs, Death and the Law* (Totowa, NJ, Rowman and Littlefield), D. HUSAK (1992) *Drugs and Rights* (Cambridge, Cambridge University Press) and T. SZASZ (1996) *Our Right to Drugs: The Case for a Free Market* (Syracuse, NY, Syracuse University Press). Useful collections are S. LUPER-FOY and C. BROWN (eds.) (1994) *Drugs, Morality, and the Law* (New York, Garland), and P. DE GREIFF (ed.) (1999) *Drugs and the Limits of Liberalism* (Ithaca and London, Cornell University Press).
- [3] E.g., M. FRIEDMAN (1972/2003) Prohibition and drugs in J. Rachels (ed.) *The Right Thing to Do* (3rd edn.) (New York, McGraw-Hill). R. STEVENSON (1990) Can markets cope with drugs? *The Journal of Drug Issues*, 20, 4, argued for a free market in drugs, with no regulations governing labelling, advertising, sales to children, etc., believing that drug firms would behave responsibly out of self-interest. However, R. STEVENSON (1994) *Winning the War on Drugs: To Legalise or Not?* (London, Institute of Economic Affairs) calls for a regulated market, with regulations requiring health warnings and prohibiting sale to children, although only because it is politically more realistic.
- [4] An early example, *The Economist*, 2/9/89 prompted the first version of this piece.
- [5] See. e.g., *The Guardian*, 21/11/01, 7/11/01, 10/6/00, 17/2/00, 6/8/94, 14/5/93.
- [6] J. S. MILL (1859) *On Liberty*, various editions, ch. 1, paragraph 13.
- [7] J. S. Mill op. cit., ch. 1, paragraph 9.
- [8] J. S. Mill op. cit., ch. 1, paragraphs 11, 13, ch. 3, paragraph 1.
- [9] B. BARRY (1995) *Justice as Impartiality* (Oxford, Clarendon Press), pp. 83–84.
- [10] J. FEINBERG (1984–88) *The Moral Limits of the Criminal Law*, 4 Volumes, (Oxford, Oxford University Press): Vol. 1 (1984) *Harm to Others*, Vol. 2 (1985) *Offense to Others*, Vol. 3 (1986) *Harm to Self*, Vol. 4 (1988) *Harmless Wrongdoing*.
- [11] I. KANT (1797/1996) *The Metaphysics of Morals* (ed. and trans. M. Gregor) (Cambridge, Cambridge University Press), pp. 180f.
- [12] I. KANT (1788/1993) *Critique of Practical Reason* (ed. and trans. L. Beck) (New Jersey, Prentice Hall), p. 30 (Book 1, Chapter 1, s. 6, Remark).
- [13] An example of this position is J. REIMAN (1994) Drug addiction, liberal virtue, and moral responsibility in S. Luper-Foy and C. Brown (eds.) (1994) op. cit., revised as ch. 3 in J. REIMAN (1997) *Critical Moral Liberalism* (London, Rowman and Littlefield).
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