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Walter E. Block

Alan G. Futerman

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THE HARMFUL ADDICTION TO THE WAR ON DRUGS

*Walter E. Block** and Alan G. Futerman**

ABSTRACT:

Most modern societies prohibit the use of addictive drugs such as cocaine and heroin. We contend this is a mistake. They should all be legalized, forthwith, since their usage constitutes a victimless crime. But more, we also maintain that these jurisdictions are actually addicted to these unjust and harmful laws since, no matter what the logic or the evidence about the perniciousness of this legislation, it still remains on the books.

Keywords:

Legalization; addiction; victimless crimes; drugs

** Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics Loyola University New Orleans. 6363 St. Charles Avenue, Box 15, Miller Hall 318, New Orleans LA 70118. wblock@loyno.edu. tel: (504) 864-7934.

* University of the Latin American Educational Center. Av. Pellegrini 1332, (S2000BUN) Rosario, Argentina. alanfuterman@catalactica.com.ar.

THE HARMFUL ADDICTION TO THE WAR ON DRUGS

“*Vices are not Crimes.*”¹

I. INTRODUCTION

In the last years, we have seen the tragedy of at least 42,000 dead in Mexico,² more than 61,000 vanished,³ and the futility of hundreds of billions of taxpayer dollars spent by governments, with an economic loss of \$88 billion per year to the USA,⁴ because of the War on Drugs started by Richard Nixon in 1971 (although prohibition policies began many decades before).⁵ Because of this, many world leaders have asked for the decriminalization of production, distribution, and consumption of drugs.⁶ The important question is not only if this war is a monumental failure,⁷ but why. How is it that a cause that is

¹ Lysander Spooner, *Vices are Not Crimes: A Vindication of Moral Liberty*, in 5 THE COLLECTED WORKS OF LYSANDER SPOONER (1834-1886), IN 5 VOLS. 1 (2010).

² Ted Galen Carpenter, *Undermining Mexico’s Dangerous Drug Cartels*, CATO INST. (Nov. 15, 2011), <https://www.cato.org/publications/policy-analysis/undermining-mexicos-dangerous-drug-cartels>.

³ Paulina Villegas, *A New Toll in Mexico’s Drug War: More Than 61,000 Vanished*, N.Y. TIMES (Jan. 6, 2020), <https://www.nytimes.com/2020/01/06/world/americas/mexico-drug-war-death-toll.html>.

⁴ Jeffrey Miron & Katherine Waldo, *The Budgetary Impact of Ending Drug Prohibition*, CATO INST., 2010, at 12.

⁵ According to the Drug Policy Alliance: “The first anti-opium laws in the 1870s were directed at Chinese immigrants. The first anti-cocaine laws in the early 1900s were directed at black men in the South. The first anti-marijuana laws, in the Midwest and the Southwest in the 1910s and 20s, were directed at Mexican migrants and Mexican Americans.” *A Brief History of the Drug War*, DRUG POL’Y ALL., <https://www.drugpolicy.org/issues/brief-history-drug-war> (last visited July 15, 2020).

⁶ Catherine Boyle, *World Leaders Slam War on Drugs as ‘a Disaster’*, CNBC, <https://www.cnbc.com/2014/01/23/why-world-leaders-think-drugs-should-be-decriminalized.html> (Jan. 23, 2014, 12:57 PM).

⁷ For the claim that this is indeed true, see Walter E. Block, *Drug Prohibition: A Legal and Economic Analysis*, 12 J. BUS. ETHICS 689 (1993); Walter E. Block, *Drug Prohibition and Individual Virtue*, 8 REV. POL. ECON. 433 (1996), <http://www.tandfonline.com/doi/abs/10.1080/09538259600000077>; Walter E.

supposed to be moral and practical, and supported by billions of taxpayer dollars has failed so dramatically? The answer is simple: *it is neither moral nor practical.*

II. GOVERNMENT LEGISLATING MORALITY?

The proper function of government⁸ is to protect individual rights, which means to protect the freedom of the individual from

Block, *Is Ross Ulbricht of Silk Road a Libertarian Hero?*, 3 J. ECON. SOC. THOUGHT 327 (2016), <http://www.kspjournals.org/index.php/JEST/article/view/909>; Walter E. Block et al., *Re-Evaluating America's Failing Drug Control Laws: A Legal, Philosophical, and Economic Proposal*, 28 OKLA. CITY L. REV. 119 (2003); Meaghan Cussen & Walter E. Block, *Legalize Drugs Now! An Analysis of the Benefits of Legalized Drugs*, 59 AM. J. ECON. & SOCIO. 525 (2000); Milton Friedman, *The Drug War as a Socialist Enterprise*, in MILTON FRIEDMAN & THOMAS S. SZASZ, ON LIBERTY AND DRUGS (Arnold S. Trebach & Kevin B. Zeese eds., 1992), <http://www.druglibrary.org/special/friedman/socialist.htm>; Steve H. Hanke & Stephan J. K. Walters, *One Year After: Freddie Gray and 'Structural Statism'*, CATO INST. (April 22, 2016), <http://www.cato.org/publications/commentary/one-year-after-freddie-gray-structural-statism>; Walter E. Block & Violet Obioha, *War on Black Men: Arguments for the Legalization of Drugs*, 31 CRIM. JUST. ETHICS 106 (2012), <http://www.tandfonline.com/doi/pdf/10.1080/0731129X.2012.719671>; THOMAS SZASZ, CEREMONIAL CHEMISTRY: THE RITUAL PERSECUTION OF DRUGS, ADDICTS, AND PUSHERS (1985); THOMAS SZASZ, OUR RIGHT TO DRUGS: THE CASE FOR A FREE MARKET (1992) (hereinafter OUR RIGHT TO DRUGS); MARK THORNTON, THE ECONOMICS OF PROHIBITION (1991); LAURENCE M. VANCE, THE WAR ON DRUGS IS A WAR ON FREEDOM (2012); Luke L. Whalin & Walter E. Block, *Racial Discrepancies in the Participation Between Alcohol Prohibition and the Drug War*, 3 ACTA ECON. ET TURISTICA 119 (2017), <https://content.sciendo.com/view/journals/aet/3/2/article-p119.xml>.

⁸ If it has any function at all. For the view that it does not, see Terry Anderson & P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not so Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979), http://mises.org/journals/jls/3_1/3_1_2.pdf; Bruce L. Benson, *Enforcement of Private Property Rights in Primitive Societies: Law Without Government*, 9 J. LIBERTARIAN STUD. 1 (1989), http://mises.org/journals/jls/9_1/9_1_1.pdf; Bruce L. Benson, *Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order without State Coercion*, 9 J. LIBERTARIAN STUD. 25 (1990), http://mises.org/journals/jls/9_2/9_2_2.pdf; Walter E. Block, *Anarchism and Minarchism; No Rapprochement Possible: Reply to Tibor Machan*, 22 J. LIBERTARIAN STUD. 741 (2011), http://mises.org/journals/jls/22_1/22_1_37.pdf; John Hasnas, *The Myth of the Rule of Law*, WIS. L. REV. 199 (1995); Hans-Hermann Hoppe, *Reflections on the Origin and the Stability of the State*, LEW ROCKWELL (June 23, 2008), <http://www.lewrockwell.com/hoppe/hoppe18.html>; MURRAY N. ROTHBARD, FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO (1973); MURRAY N. ROTHBARD, THE ETHICS OF LIBERTY (New York University Press 2nd ed. 1998) (1982); EDWARD P.

force. This means that the state should not pass laws on morality, since not only is it not its function but also because morality is voluntary. Therefore, individuals should be free to act as they choose as long as they do not violate other people's rights. Since in this view, each individual has property over his own body, we should all be able to choose what to do with it. Whether an individual wants to eat unhealthy food or consume drugs, it must not be a concern of the government, which is entitled to act only if individual rights are violated. With regard to drugs, this has been the policy since consumption began near 2,000 BCE until the twentieth century came.

An objection to the foregoing is that taking heroin, for example, is indeed a rights violation since the individual who does so will not be able to fulfill his obligations to others, for example, his wife and small children. But, if this is a rights violation, so would be getting drunk, being lazy, not being a good parent or an attentive husband, etc. What about running a marathon race and then being too tired to perform one's usual duties? How about reading into all hours of the night and then oversleeping? Here, too, dependents can suffer. If any of these flaws could land people in jail, it would be the rare person still free. Naturally, these examples would not be as remotely as harmful as drug addiction, but they are a *reductio ad absurdum* to prove our point. Crime, properly understood, requires a perpetrator and a direct victim, not an indirect one such as a family dependent. Murder, rape, kidnapping, car-jacking are all real crimes. Possibly ruining your body with addictive drugs is something entirely different, whatever its painful consequences to you and those close to you may be. It is a categorical mistake to conflate them.

III. SAME STORY, SAME RESULTS

The same logic affected Prohibition, which took place from 1920 to 1933,⁹ and the same results appeared. Actually, the drug

STRINGHAM, ANARCHY AND THE LAW: THE POLITICAL ECONOMY OF CHOICE (2007); LINDA TANNEHILL & MORRIS TANNEHILL, THE MARKET FOR LIBERTY (Laissez Faire Books 1984) (1970); Patrick Tinsley, *With Liberty and Justice for All: A Case for Private Police*, 14 J. LIBERTARIAN STUD. 95 (1999), http://www.mises.org/journals/jls/14_1/14_1_5.pdf.

⁹ Mark Thornton, *Alcohol Prohibition was a Failure*, CATO INST. (July 17, 1991), <https://www.cato.org/policy-analysis/alcohol-prohibition-was-failure>.

business was taken by the Mafia when they realized that since alcohol became a subject of entrepreneurs in the market, they had to find some new profitable trade.¹⁰ The economics of the matter is clear. The fact that drugs are being sold in black markets increases risks, and therefore prices, which makes other drugs profitable (such as synthetic ones, which are worse than natural and therefore create much more harm). The illegal commerce of drugs does not allow consumers to be protected by courts and doctors if they are victims of fraud and also makes consumers into criminals, even in cases where they are consuming for medical purposes¹¹ because they still have to engage in an illegal transaction.

The analogy between addictive drugs and addictive alcohol is a strong one. Both are harmful. When the latter was prohibited by law, there was the phenomenon of “bathtub gin:” poisoned liquor. When legalized, that rarely, if ever, occurs. Similarly, before the advent of laws prohibiting drugs, this too was a rare occurrence. We refer here to the lack of information of how illegal drugs are made and what ingredients they actually contain. For instance, in the case of synthetic drugs.

Also, under alcohol prohibition, people were shooting each other over turf. In the modern era, this industry is normalized; no violence is associated with its provision. In like manner, drug production and distribution are now a very violent enterprise; but not before, when it was legal.

Money laundering is closely linked to drugs, thus making part of the financial system a partner in the business. In order to avoid legal consequences, the system begins to be corrupted in every corner: politicians who maintain the prohibition and therefore safeguard the business of the cartels¹² (although many do it because they actually believe the war works), the police by looking aside (sometimes being themselves part of the business), and many others, such as the military, the

¹⁰ For an attempt to explain why young Italian men, not blacks, were involved in the illegal trade of booze during Prohibition, and their positions are now to a great degree but not entirely reversed with regard to drugs, see Whalin & Block, *supra* note 7.

¹¹ See OUR RIGHT TO DRUGS, *supra* note 7.

¹² South of the Rio Grande River, these organizations fight the military of many of those nations almost on an even basis, in terms of power. See Ioan Grillo, *How the Sinaloa Cartel Bested the Mexican Army*, TIME (Oct. 18, 2019, 7:39 PM), <https://time.com/5705358/sinaloa-cartel-mexico-culiacan/>.

courts, etc.¹³ As the war increases, violence rises, the drug dealers expand their networks to places where prohibition is less effective, and therefore drug production and consumption expand exponentially.

IV. PRIVATE PROPERTY UNDER RISK, LIFE UNDER RISK

The intrusion by government into private property is a necessity under the war since the entire market works in the shadows. Therefore, governments must look into bank accounts and phone conversations, imprison innocents, and intrude much more into private lives and properties, thus using valuable taxpayer resources in order to persecute innocent individuals exercising the right to the property of their bodies and not to persecute true criminals.¹⁴

Criminals involved in the business do not participate because drugs are necessarily a criminals' market but *because drugs are illegal, and criminals work in illegal markets* (such as what happened during Prohibition). The same happens with consumption: *the relevant point is not how many criminals are drug addicts, but how many drug addicts are criminals*. And in any case, criminals under the influence of drugs should be penalized harder because they are willingly under drugs while knowing they will not be fully conscious and therefore become much more harmful than otherwise under the same circumstances (in a robbery or other crimes).

At the time of this writing, the Black Lives Matter movement is properly vitriolic about the needless and senseless death of Breonna Taylor.¹⁵ How did she die? She was shot. Who killed her? The police. Why did they do so? They had a “no knock” warrant; they broke into her house without announcing themselves as police. Her boyfriend

¹³ Christopher J. Coyne & Abigail R. Hall, *Four Decades and Counting: The Continued Failure of the War on Drugs*, CATO INST. (Apr. 12, 2017), https://www.cato.org/policy-analysis/four-decades-counting-continued-failure-war-drugs#_idTextAnchor012.

¹⁴ Just like with any other tax, these are resources driven out of the economic system, and therefore, production, growth, and capital formation are decreased, thus generating a negative impact on incomes, wages, savings, and investments.

¹⁵ See Alisha Haridasani Gupta, *Why Aren't We All Talking About Breonna Taylor?* N.Y. TIMES, <https://www.nytimes.com/2020/06/04/us/breonna-taylor-black-lives-matter-women.html> (Oct. 30, 2020); see also BLACK LIVES MATTER, *Happy Birthday, Breonna* (June 5, 2020), <https://blacklivesmatter.com/happy-birthday-breonna/>; see also Anna North & Fabiola Cineas, *The Police Shooting Death of Breonna Taylor, Explained*, VOX, <https://www.vox.com/2020/5/13/21257457/breonna-taylor-louisville-shooting-ahmaud-arbery-justiceforbreonna> (July 13, 2020, 12:36 PM).

shot at the police. Breonna, an entirely innocent young woman, was killed. Why did the police have a “no knock” warrant which they mistakenly used at her home? They were seeking drug law violators.¹⁶ The point is, if drugs were legal, all of them without exception, this young woman would still be alive today. Strangely, given that all lives matter, most certainly including black ones, there is little or no call on the part of protestors to legalize drugs. Instead, they focus on defunding the police.¹⁷

V. POVERTY IS NOT THE PROBLEM

Drug addiction must not be blamed on poverty; economic position is irrelevant to the consumption of these addictive substances. Yes, addicts tend to be poor (and their drug addiction indeed exacerbates their situation). But at least part of the reason is that what they consume is so expensive. And why, in turn, are these products so pricey? It is due to the fact that they are illegal. In addition to the ordinary costs of bringing them to market, the risks undertaken mainly on the supply side drive their prices through the roof. If they were legal, they would be far less expensive.¹⁸ Even if some addicts keep spending all their money on these substances, at least they would be able to get higher quality drugs, which are ultimately less harmful. For instance, the use of “crack” became widespread because other drugs, such as cocaine, were more expensive. And the former is much more harmful than the latter.

Does this mean the entire society would become addicts? It all depends upon the elasticity of the demand curve. What empirical evidence we have mitigates against this possibility. Before drug prohibition, when drugs were relatively inexpensive, not everyone used them.

¹⁶ Gupta, *supra* note 15; North & Cineas, *supra* note 15.

¹⁷ Sam Levin, *Movement to Defund Police Gains 'Unprecedented' Support Across US*, GUARDIAN (June 4, 2020, 6:00 PM), <https://www.theguardian.com/us-news/2020/jun/04/defund-the-police-us-george-floyd-budgets>.

Limited government libertarians are ambivalent about this. On the one hand, the police are absolutely necessary to prevent mayhem, shootings, rapes, etc. On the other hand, they contribute to the mayhem they are supposedly created to reduce by pursuing victimless criminals such as drug dealers and users. Naturally, if the latter also engage in other crimes (such as Cartels, which are truly evil organizations), involving victims, that is another issue altogether. But that is not our point.

¹⁸ Many of them grow like weeds, need little care, etc., and would be very cheap if legal.

Marijuana is now legal in Canada and in several U.S. states, not only for medicinal purposes but also for recreation, and we do not find massive numbers of people consuming them on a daily basis.

VI. THE MORAL IS THE PRACTICAL

We must take into account that decriminalizing only *consumption* is not the solution since this would increase demand, but not supply, therefore increasing prices and profits for the cartels. The solution is to decriminalize *both production and consumption*, which would take criminals out of the market and therefore turn drugs into an ordinary good or service in the market:¹⁹ entrepreneurs competing for the favor of the consumer by developing much safer and cheaper drugs, thus potentially saving millions of lives (of the drug addicts themselves and of everyone affected by the war). The entire society is corrupted by this drug prohibition. It not only increases the extent and profits of the suppliers but also is responsible for causing all the boomerang effects: the needless deaths. The destruction of Mafia networks, their link with terrorist organizations,²⁰ the reduction of drug abuse and more, are going to be achieved when drugs are legalized and considered a good like shoes and t-shirts. The same thing would happen if shoes were banned to the public; criminals would take over the market and soon we would have a *War on Shoes*.

The known cases of decriminalization show mixed results, although many are successful beyond any doubt like the case of Portugal, which after 2001 decriminalized all drugs.²¹ As a result, drug usage rates remained the same or slightly decreased compared to other European Union countries, but drug-related pathologies declined significantly.²² Thus, we are able to see that negative results, where they appear, are due to wrong policies, such as those experienced in the Netherlands where syringes were being given out for free to drug

¹⁹ James Ostrowski, *Thinking About Drug Legalization*, CATO INST. (May 25, 1989).

²⁰ Terrorist organizations are often involved in the drug business because of its big profits that help to finance their operations. John Fernandez, *The DEA's Targeting of Hezbollah's Global Criminal Support Network*, WASH. INST. (Jan. 10, 2020), <https://www.washingtoninstitute.org/policy-analysis/deas-targeting-hezbollahs-global-criminal-support-network>.

²¹ Although only consumption was legalized in Portugal. Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*, CATO INST., April 2, 2009.

²² *Id.*

addicts.²³ Government should not interfere, neither *prohibiting nor subsidizing drug consumption*, in the same way as it should not interfere with or subsidize the consumption of tomatoes.

VII. CONCLUSION

Although drugs are obviously bad for a person's organism²⁴ and psyche, it is not the morality of the consumption that is under debate in this War but the *morality of individual rights*, specifically, the morality of *the right of the individual to his own body*. Even taking into account the positive results of decriminalization, the main reason for decriminalization of production, distribution, and consumption of drugs remains the same: *vices are not crimes, and the government should fight crime, not vices*.

²³ Alberto Benegas-Lynch, *Thirty-two Reflections to Free the Drugs*, LIBERTAD DIGIT., <https://www.clublibertaddigital.com/ilustracion-liberal/43/treinta-y-dos-reflexiones-para-liberar-las-drogas-alberto-benegas-lynch-h.html> (last visited Feb. 9, 2021).

²⁴ Eating too much chocolate and ice cream is also harmful; it leads to obesity. It is no longer possible to limit ourselves to theoretical *reductio ad absurdum*. When he was mayor of New York City, Mike Bloomberg actually prohibited the sale of soft drinks greater than sixteen ounces. See Rachel Weiner, *The New York City Soda Ban Explained*, WASH. POST. (Mar. 11, 2013, 5:19 PM), <https://www.washingtonpost.com/news/the-fix/wp/2013/03/11/the-new-york-city-soda-ban-explained/>; see also *Here He Goes Again: Bloomberg Set To Ban All Sugary Drinks Over 16 Ounces*, CBS (May 30, 2012, 11:59 PM), <https://newyork.cbslocal.com/2012/05/30/here-he-goes-again-bloomberg-set-to-ban-all-sugary-drinks-over-16-ounces/>; see also Sondra Clark, *Michael Bloomberg's Ban on Soda: Where Will the Regulation Stop?*, MY HERITAGE, <https://www.myheritage.org/news/michael-bloombergs-ban-on-soda-where-will-the-regulation-stop/> (last visited Jan. 27, 2021).