

Consequences of Illicit Drug Prohibition are Present in the Pharmaceutical Industry

In “The Economics of Drug Prohibition and Drug Legalization”, Jeffrey Miron describes some economic and social costs of a prohibition policy towards illegal drugs. The author argues that the two major effects of prohibition are a net decline in drug demand coupled with a significant net increase in crime and violence¹. Miron lists other consequences besides the big two, ranging from a disrespect for the law to the corruption and criminalization of drug enforcement agents. We show that these consequences also exist in the context of the pharmaceutical industry and its connection with American legal, political and social institutions. On the surface, a black market for legally prohibited drugs and the quasi-monopolistic pharmaceutical industry appear very different. While big pharma does not suppress demand for prescription drugs or incite violence in the streets, it turns out that many of the secondary characteristics still apply, albeit through a different mechanism. The chief difference is that while in the case of illegal drugs prohibition is responsible for the secondary outcomes, in the pharmaceutical industry it is big pharma and its choices that are responsible. Drawing from several references in the reading, we analyze the secondary consequences listed by Miron and interpret them in the context of pharmaceuticals.

Prohibition results in the degradation of product quality. If drugs are illegal and secretive, consumers in the market have much less information about their origin and purity. In a blind market where buyers and sellers have to risk trusting each other to some extent, the quality or even exact identity can be a roll of the dice. Additionally, as Fitchett and Smith² note, when consumers have no way to ensure what they are receiving, they become resigned to

¹Jeffrey A. Miron, “The Economics of Drug Prohibition and Drug Legalization”

²James A. Fitchett and Andrew Smith, “Consumer behaviour in an unregulated market: The satisfactions and dissatisfactions of illicit drug consumption”

whatever the market is offering. The pharmaceutical industry actively tries to to promote this effect in a modified form. Relman and Angell write that to maximize its profit, big pharma has several ways to promote its products directly and indirectly to consumers³. Because of the recent relaxation in laws against direct-to-consumer advertising, and the industry's courtship of clinical doctors, the reality is that consumers make the decision about prescriptions instead of doctors. In addition, big pharma constantly searches for new products to market, regardless of effectiveness. *Selling sickness* tells the story of Lipitor, a drug which is only dubiously or cosmetically related to low blood pressure that was marketed as the next miracle drug⁴. By creating a monopoly on medical information, pharmaceutical convince customers they have problems and then give them dubious remedies.

Miron argues that in an illegal drug market, consumers and competing producers lose legal mechanisms to resolve their disputes or enforce deals. Corruption of the law enforcement system ensues, and other offices related to the transportation, enforcement and distribution of drugs become subverted. Big pharma operates through exactly this mechanism, by perverting existing institutions. Responding to the threat of harsh and independent regulation, big pharma has opted to, in effect, buy the competition. PhRMA is an opportunistic and prolific organization⁵ designed to circumvent the existing legal and regulation system by rewriting it. It employs a swarm of lobbyists to court House and Senate members of both parties. This same Congress then approves the head of the FDA, responsible for overseeing PhRMA's bankrollers. Even more explicitly, several executive members of the FDA are openly on retainer with one or another of the major pharmaceutical companies⁶. Lacking the free reign to do what the desire, PhRMA uses its influence to pass beneficial legislation such as the Hatch-Waxman Act that forwards its goals. Unable to use ethical methods, big

³Arnold S. Relman and Marcia Angell, "America's Other Drug Problem"

⁴*Selling sickness*, "Selling to everyone", 2-4

⁵Relman and Angell 13-14

⁶*Selling*, 6-7

pharma subverts and alters regulation by using other mechanisms.

In an illegal drug economy, most profits are redistributed to criminals, depriving the government of tax revenue and overseas drug cultivators. This perpetrates a dark cycle: the desperate farmer in a far-away third world country sees no profit, and the drug distributors are rewarded with money, arms and manpower from profits raised by drug users. Big pharma takes steps to ensure that it reaps the majority of profits in the industry, which is one of the highest-profiting industries in America. Additionally, drug prices in America are the highest worldwide⁷, reflecting the muscular and comprehensive marketing departments of most pharma companies. R&D costs are generally only a fraction of a company's operating budget⁸, and the bulk of prescription drug revenue returns to the company for reinvestment. Often the actual developers of the drug (independent research clinics and academic institutions) are paid only a small licensing stipend, while pharmaceutical companies reap the rewards. Customers pay the high prices and developers get a stipend but the money in the industry is redistributed to big pharma.

Prohibition complicates and subverts drug policy-making in related areas such as search and seizure of property, racial profiling and aggressive policing. A normally functioning legal system becomes eccentric and unhealthy as it manifests these symptoms of prohibition policies. Similarly, the pharmaceutical industry's stranglehold on American attitudes perverts the medical arena. For centuries, physicians taking the Hippocratic Oath swore to do no harm and to not burden their patients with needless treatments for diseases they didn't have. Within the last few decades, big pharma has compromised even medical doctors. Physicians are assaulted by advertising mailings, calls and door to door salesmen who pay a healthy sum just to meet for fifteen minutes. Doctors, nurses and medical administrators receive swag (and even samples of name-brand drugs) to give their patients. More sinisterly, con-

⁷Relman and Angell 1

⁸Relman and Angell 2-3

tinuing medical education (CME) programs, formerly critical for keeping doctors up to date on recent advances and developments in disease assessment and treatment, have begun to look like blockbuster drug trade faires⁹. One observer described them as a three-ring circus. The independent physician, an important advocate for the health of the patient, has been bought off and compromised by big pharma.

Miron's fifth point is that illicit drug laws inspire a contempt for the law, especially in the case of "soft", commonly used drugs like marijuana. Users learn that certain laws are pointless, irrational and, more importantly, can be flaunted with minimal consequences. The critical, every day connection between the code of law and moral behavior disappears. The pharmaceutical industry's attitudes towards established law and regulatory bodies like the FDA mirror this disrespect. Many loopholes allow big pharma to retain crucial exclusive patents on brand-name drugs, and the industry constantly takes advantage of them¹⁰. Changing the way a drug is packaged or delivered to the human body can extend the patent for years. Simply initiating a lawsuit against a me-too drug automatically pauses the timer. Even the claim, no matter how nonsensical, that a drug is being tested in use for minors is good for another six months, which can net millions more to big pharma executives. As long as a drug is better than a placebo in a blind test, big pharma will try to earn money with it¹¹. The pharmaceutical industry expertly plays by the *letter* of the law, but has a severe contempt for its spirit. This treatment disrespects and devalues federal regulatory laws established to protect consumers and give companies an incentive to develop more.

The last effect is severe economic strain from the direct costs of enforcing the country's prohibition programs. Multiple tiers of government spend billions of dollars in domestic and international programs. The full economic extent of the war on drugs ranges from funding conflict in different hemispheres, national and state anti-drug initiatives, treatment and

⁹*The Body Hunters*, "Growing the Pharma Monolith", 56

¹⁰Relman and Angel 10-11

¹¹*Hunters* 45

rehabilitation programs, and the bills required to keep the court and jail systems running under an influx of drug users. Prohibition carries a hefty price tag. Similarly, society pays the deep financial burden caused by the pharmaceutical industry and related markets. Americans are by far the richest drug consumers, and big pharma is a billion dollar industry. It employs an army of lobbyists, marketing executives, drug salesmen who pitch to doctors, clinical testers and other services figure into this cost. In addition, the FDA, the courts and the American legal system must deal with an avalanche of patents, lawsuits, countersuits and arguments to keep the exclusive patent system running. As public healthcare plans attempt to cover more and more expensive prescription medication, healthy citizens begin to subsidize the drug users and thus, big pharma itself. In the end, pharmaceutical drug consumers and the American public shoulder this immense cost, while big pharma profits.

On the surface, illicit drug markets and monopolized pharmaceutical markets are different economic phenomena. The former is shrouded in a criminal apparatus dedicated to supplying addicts through violence and corruption, while the latter keeps a tight control on the industry to ensure that profits are high. Yet their side effects on American law, society and economy are significant, pronounced and similar. The chief difference is that the consequences Miron describes are the result of U.S. prohibition policy, while big pharma takes steps to actively encourage this kind of situation. In an information-poor environment, big pharma dictates what customers think about its drugs and its development practices are focused on producing something marketable rather than helpful. Big pharma compromises the legal system in Washington, the medical profession and federal agencies and regulations in order to have its way. Prices are high and competition is extremely stifled to create a lot of profit for big pharma. In the end, American legal institutions shoulder the burden while any objective defender of the public interest is bribed away, and consumers pay through the nose. Big pharma, of course, is more than happy to keep the perverse system running.