

Objections to Courtwright's Anti-legalization Arguments

In a recent debate on the merits of legalization, David Courtwright¹ presents a number of undesirable effects of legalization and complications from its implementation. We argue here that the negative effects are either exaggerated or a necessary evil, and that the potential complications should not be enough to doom legalization efforts. Often, we discuss cigarettes and alcohol as stand-ins for legalized drugs. We do this for two reasons. First, as researchers suggest², despite current federal law, alcohol and nicotine are relatively dangerous substances, being classified by independent researchers and doctors as more harmful than, for example, marijuana. Thus, not only is a parallel appropriate, but it can even overstate the harmfulness of a legalized drug. Second, an experiment at legalization should be taken in earnest, with no stigma as to the previous history of a drug. Part of the aim is to place legalized drugs on the same level as other legal, but potentially abused substances. Thus we freely make these comparisons. Courtwright presents a remarkably balanced case for the positive effects of legalization which include a reduction in the massive amounts of illegal, untaxed money returning to criminals, a decrease in health risks and the renormalization of international relations. We agree with this analysis and will address that author's presentation of the negative aspects here.

Courtwright argues that legalization would result in a significant increase of drug users, and makes parallels to a number of historical cases. Iran and Thailand both have a severe drug addiction problem, and the introduction of opium into China by Imperial powers caused a major social disaster. The author hints that a similar thing can happen here. This is something of a scare tactic. As the author himself argues in another work³, the European

¹David T. Courtwright, "ShouldWeLegalizeDrugs?".AmericanHeritage.FebMar.1993: pp.4254

²David Nutt, Leslie A King, William Saulsbury and Colin Blakemore, "Development of a rational scale to assess the harm of drugs of potential misuse".

³David T. Courtwright, "Puzzle of Distribution", 54-56

colonists responsible for the United States' sober heritage were wary of hard drugs. We should not assume that once legalization becomes the status quo, Americans will interact with a marijuana joint in a significantly different way than they do with a cigar. Nicotine has a complicated and significant effect along many pathways of the body, yet the substance is sold legally in whatever quantity desirable, and society has not yet collapsed as a result. Perhaps safer replacements to alcohol will become a new social lubricant. There are severe and important issues in society caused by alcohol and tobacco abuse that need to be addressed, but none of them begin to approach the effect of the war on drugs on our city streets, crime rates and prison population. Most Americans drink in moderation or smoke at one point or another and for the most part the country continues to remain competitive internationally. In an environment where hard drug use is the social norm, the effects of legalization could be disastrous. But this is not that environment. The cultural, institutional and social differences in drug use between the examples the author brings up and American society are important to understand. One needs only look our interaction with alcohol to see that the nation will not turn into a holding pen of raving addicts.

Another main point made by the author concerns the ambiguity and potential pitfalls implementing "controlled legislation". Most drug users are young, and since many sensible legalization schemes would prohibit selling to the young, a criminal market would arise in order to distribute drugs to these users. Certainly, legalized marijuana (for example) should be kept away from those under the age of 18. But so should alcohol, nicotine, firearms, some over the counter medications, and other substances which are dangerous when not in the hands of an adult. Failure to enforce a ban to sell to minors stems from matters of substance control and education, not crime. In other words, this is a problem with how youths behave in society rather than with drugs. To put conversely, we should not restart Prohibition because of the drinking habits of nineteen year old college students; we should suggest better policing of college campus parties. Courtwright extends this argument to

members of society among whom drug use would have particularly bad circumstances for other people. For example, selling drugs to triage nurses, pilots, soldiers and so forth should be prohibited. In most cases, this problem is self-correcting, as it is with substances legal now. The jobs that Courtwright mentions are ones that typically require careful concentration and specialized skill on the job. It is precisely these jobs that can self-police the easiest. The pilot who walks into work still hungover will quickly be noticed. The triage nurse who can't concentrate or shows bad judgment will be quickly replaced. In addition, the legalization of drugs allows some of the inhibitions of seeking treatment or calling for help to disappear. In general, we believe that turning private problems into public ones always benefits the addict. Courtwright's broader point is a straw man argument. Yes, as long as a good is restricted in any way, there will always be unsavory market opportunities involving it. This only underlines that maximal prohibition results in maximal criminalization. Legalizing drugs will not fix society's problems. But it will allow society to

The author turns to history and claims that over the past century, while the number of drug users in this country has decreased, the intensity of drug use has increased among that demographic. That is, while in the past there have been tens of millions of casual addicts, the present contains several hundred thousand extreme users. Courtwright discusses how this effect affects potential legalization. Finding the drugs now fully accessible and legal, he claims that most of these users would become even more dependent on them. Then being unable to work a steady job due to continuous intoxication, they would turn to crime to finance their habit. This is explicitly at odds with the first point the author makes above, that legalization will spread out drug use as opposed to consolidate it. In any case the comparative situation under prohibition is always worse. The difference between a criminal who steals and keeps cash and one who steals and purchases drugs is that the latter must deal with an additional criminalized system. Under legalization, the intensity of the situation relaxes. e.g. Alcoholics are not known for being good workers, but they can at least get jobs.

Of course, the legal system will still feel the burden from those who break the law to support their addiction. But this is a phenomenal improvement over the injustices of prohibition in many states, under which even casual users of “soft” drugs can serve prison sentences. Millions of taxpayer dollars, billions of legal man-hours and thousands of otherwise ordinary citizens behind bars can be a think of the past. The money liberated from decriminalization can then be redirected to address the problems Courtwright brings up.

Courtwright then turns to cigarettes to illustrate an excellent point. Because of the peculiar federal organization of this country, state, local and federal taxes for legalized drugs could be different enough that the price varies greatly across the nation. Naturally, every time there is a price differential, an opportunity for arbitrage follows. This situation creates an opportunity for smugglers and bootleggers who can make a profit by moving large quantities of legalized drugs around the country. As with similar markets, when disputes can no longer be settled through legal mechanisms, the whole enterprise becomes criminalized, and much of the profit will flow back into the arms of the organized crime that runs it. There are two saving graces. Legalization can make the drug market a free market. As soon as customers have information about brands and access to choice, producers lose their edge and the price pushes down. If taxes are too high, low demand and lobbying by businesses will pressure the state to drive them down. If they are too low, profit-maximizing producers will respond and make up the difference. Second, as long as any tax is being paid on a regulated drug, this is much better than no tax at all, and the revenue gained can be spent fighting attempts to skirt the system. Critically, elevating drugs from a no-information black market to a legitimate one allows disputes about price and quality play out within the framework of supply and demand and the court system. The choice is a matter of degree: marijuana smuggler-entrepreneurs along the eastern seaboard are surely better than Latin American paramilitaries.

Courtwright’s last major pitfall is uneven *legalization*, a more severe disparity than sim-

ply uneven taxation. This phenomenon is a more serious reality that should be addressed. A nightmare scenario could play out as follows: a small state with large borders such as Montana or Colorado fully legalizes marijuana, which is illegal to possess in neighboring states. The demand from wealthy California and Texas surges. Instead of worrying about illegal drugs entering from Mexico, law enforcement agents must now contend with a larger and more porous set of borders, where the potential smugglers are more likely to be American citizens and friends rather than foreigners. Even foreign smugglers gain a haven, a Trojan horse beyond country lines. A single instance of criminalization and violence anywhere along the chain criminalizes the whole enterprise. The drama between producing countries in the Middle East and U.S. hawkish foreign policy could play out on a smaller scale within U.S. borders. There is no magical solution. Rather than attempt to overcome this unfortunate effect, this failure mode simply stresses the need for a unified, national approach to sensible domestic drug policy. Inconsistencies in taxes and prices can be fixed with dollars, but inconsistencies in the law must be fixed with weapons. There are a few legal courses available. If demand is so high that the state's citizens are going across the borders for drugs, perhaps this fact can sway state legislatures who would rather tax drug revenues and suppress criminalized smuggling enterprise. To this end, legalization is an all-or-nothing approach. If any part of the production, distribution and consumption chain is against the law, the associated steps will likewise suffer. Legalization advocates must heed this reality.

One of the points we have stressed above is that by decriminalizing drugs, law enforcement and treatment efforts can frame problems in society as problems with people instead of problems with substances. Even without the positive effects of legalization above (cleaner drugs, lower prices, less concentrated drugs, etc.), simply the fact that possession is no longer a serious crime dramatically ameliorates the situation. Criminalizing an addictive substance that people will use regardless of its legal status only shifts focus from problems of poverty, domestic or physical abuse, homelessness and mental instability to a hard and

fast rule about drug use. Another theme is roughly, but not entirely, “Drugs do not damage society, drug users damage society”. Instead of punishing the symptom, society can attempt to repair the disease. Legalization should not be treated as a magical, idealistic solution. Advocates must be realistic and honest about the rise in casual drug use and striking change in attitude towards drugs. Many of the points that Courtwright brings up are valid, and there are serious technical and legal challenges to a sensible legalization program. But the net effects are positive. Legalize soft drugs in a national referendum. The war on drugs will metamorphose from an ignorant and shrill moralizing campaign of no tolerance and no mercy to an intelligent attempt to address society’s real problems. Society and the market will can help solve problems of drug use. Ostracizing users into the shadows, criminalizing the market and never looking more deeply than the crime, on the other hand, cannot.