Drug Addiction and Public Policy: A Public Health Perspective

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1. INTRODUCTION

1.1 Overview

At the end of the twentieth century, a majority of Americans identified drugs as the nation’s greatest concern, surpassing crime, the environment, taxes, homelessness, education, and the deficit.¹ Today, drugs and drug addiction remain among America’s gravest domestic problems, with overdoses claiming nearly 40,000 lives per year (almost 110 per day) – significantly more than both traffic accidents and firearms.² When the United Nations Single Convention on Narcotic Drugs came into being fifty years ago, policymakers believed that rigid law enforcement action against those involved in drug production, distribution, and use would lead to significant decrease in controlled drugs,³ and the eventual achievement of a drug-free world. However, the global scale of illegal drug markets has grown dramatically over this period. In light of increasing evidence that current policies are not achieving their objectives,⁴ this essay views the global drug problem as a set of interlinked health and social challenges to be managed rather than a war to be won.⁵

1.2 Analytical Method

An increasingly blurred understanding of the distinctive challenges posed to public health by contemporary drug policy suggests a critical need to revisit the nature and harms of drug abuse and addiction in the context of public health, as well as guidelines that ought ideally to frame national and international policy on the subject. To be sure, the issues of immediate import to the conversation over the supreme drug policy vis-à-vis public health in light of changing scientific, medical, and moral traditions are manifold, and any singular analysis of topics, no matter how sweeping, will unavoidably fall short of adequacy. This essay thus endeavors to briefly address but three: the nature of drug abuse and addiction, the harms drug abuse and addiction pose to public health, and the guidelines that ought ideally to inform national and international public policy on drug abuse and addiction. It grounds its arguments in two, straightforward premises: (i) a robust public health exists to the extent that its corresponding public policy adequately

². This startling statistic says nothing of the almost 7,000 additional individuals treated each day by medical facilities for the misuse or abuse of drugs. These sets of data, reported by the Center for Disease Control, appear in Nick Wing, “America, It’s Time For An Intervention: Drug Overdoses Are Killing More People Than Cars, Guns,” in The Huffington Post, 08/30/2013.
³. Such as heroin, cocaine, and cannabis. See Global Commission on Drug Policy, War on Drugs: A Report of the Global Commission on Drug Policy (Global Commission on Drug Policy: June 2011), 1-20; see especially p. 4.
⁴. Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 4.
⁵. This military metaphor has dominated thought about drug policy ever since Richard Nixon became the first president to declare a “war on drugs.” See Husak, Drugs and Rights, 9-19; see especially p. 9.
addresses the ethical issues with which it is confronted; and (ii) among the most debilitating moral issues with which contemporary society is faced, both nationally and internationally, is the ever-growing and complex problem of drug abuse and addiction. Drawing from this syllogism, the aim and proposal of this essay is such: to examine the aforementioned items with the intention of positing the argument that a robust public health ethics exists to the extent that its corresponding public policy adequately addresses the ever-growing and complex problem of drug abuse and addiction.

To secure the justification of this thesis, the essay will move in three parts. First, it will address drugs, drug use, and criminalization, including a specific analysis of the medical and legal definition of drugs, as well as arguments in favor of drug criminalization. Second, it will address drugs and harm as a public health issue, including a specific analysis of drugs and harm to users, as well as drugs and harm to others (i.e., society). Finally, it will address drug addiction and public policy, including a specific analysis of the operative principles that ought ideally to inform drug policy development, as well as pointed recommendations for drug policy revision.

2. DRUGS, DRUG USE, AND CRIMINALIZATION

2.1 Medical and Legal Definitions of Drugs

Labeling a substance a “drug” has extraordinary significance for public health. The notion that a recreational activity involves a drug typically evokes wholly different attitudes and reactions than are thought to be appropriate for those activities that do not. Since a “war on drugs” has been declared, it seems reasonable to believe that at least two conditions have been met. First, the enemy should be clearly identified. Second, the specific significance of the enemy should be demonstrated. Unfortunately, neither condition seems to be satisfied by the contemporary war on drugs. Curiously, policymakers rarely propose a uniform definition of drugs when approaching drug reform. The most frequently cited medical definition of drugs is “any substance other than food that by its chemical nature affects the structure of function of the living organism.” For the purpose of this essay, this vague and imprecise definition, which refers only to the pharmacological effect of the drug in question, will be adopted in absence of a better alternative.

For at least two reasons, “drugs” must not be synonymous with “illegal drugs.” First, it would be a mistake to suppose that a non-drug could become a drug, or that a drug could become a non-drug simply by the stroke of a pen. A legislature can change the legal classification of a substance, but not the nature of the substance itself. Second, a philosophical evaluation the moral rights of drug users surely cannot rely uncritically on the existing legal status of substances insofar as the legitimacy of these determinations remains under investigation. In what follows, therefore, the word “drug” will be used to

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7. Husak, Rights and Drugs, 19-27; see especially p. 20.
8. That is, it has no more power to decide that a substance is a drug than to decide that a substance is a food. See Husak, Rights and Drugs, 19-27; see especially pp. 21-23.
refer to both legal and illegal substances that satisfy the medical definition cited above. This is due in large part to the confusion over the legal definition of “drugs,” which is somewhat more complicated than the aforementioned medical definition. The terms of the Controlled Substances Act, for instance, create the authority to control “drugs or controlled substances,” not “drugs” per se. Thus, a “controlled substance” can refer to either a “drug” or an “other substance,” as long as it is placed on a schedule. The act fails to define “substance,” and it provides no guidance on how to distinguish between substances and non-substances. Nevertheless, it is the personal and social effects of an activity that are important to the case for prohibiting it, not the means by which they result.

2.2 Arguments for Criminalization

Arguments in favor of drug criminalization have become so familiar that it is easy to forget that the burden of proof rests on those who favor the use of criminal penalties. When debating the issue of criminalization, most philosophers begin with a presumption of freedom or liberty, which places the onus of justification on those who would interfere with what an individual wants to do. However, arguments for criminalization are important to review, if only to maintain a Millsian rigor. John Stuart Mill warned that even true opinions become “dead dogma, not living truth,” unless they are “fully, frequently, and fearfully discussed.” In absence of a sophisticated theory to govern the criminalization stance, solutions to most social problems are sought within the criminal justice system. Since an unwillingness to criminalize an activity is misconstrued as a denial of its problematic nature, national and international societies suffer from a crisis of overcriminalization. Drug use has long been cited among the best examples of the detrimental tendency to overutilize a penal approach to social problems.

A respectable defense of criminal legislation should be able to demonstrate that it is needed to prevent harm. All societies agree that citizens lack a moral right to cause unjustified harm, so criminal laws that prohibit such harmful conduct do not violate fundamental human rights. Punishment of individuals who cause harm can be justified by references to the offenders’ desert. But in the absence of harm, criminal sanctions seem both undeserved and unjustified. The least controversial public health rationale in favor of criminalization is that the conduct to be prohibited is harmful to non-using members of society. Many philosophers of law, following Mill, believe that harm to others is a necessary condition of any justifiable criminal law. A more controversial public health rationale in favor of criminalization is that drug use should be prohibited because of the

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9. Husak, Rights and Drugs, 19-27; see especially pp. 21-23.
10. Remarkably, the concept of a drug has no particular significance in this statutory scheme. See Husak, Drugs and Rights, 19-27; see especially p. 25.
11. Husak, Drugs and Rights, 19-27; see especially pp. 20-27.
12. Few commentators have successfully described the conditions that must be satisfied before an activity becomes eligible for punishment. See Husak, Drugs and Rights, 59-70; see especially pp. 59-60.
13. Husak, Drugs and Rights, 59-70; see especially pp. 60-62.
14. Husak, Drugs and Rights, 59-70; see especially pp. 63-64.
harm it poses to users. While many commentators are not persuaded by this rationale, paternalistic arguments in favor of laws against drugs are frequently defended.\textsuperscript{15}

3. DRUGS AND HARM

3.1 Drugs and Harm to Users

Perhaps the most important difference between recreational drug use and other activities with which it is frequently compared is that drugs, unlike nearly all of these others activities, can be addictive. Most theorists indicate that addiction is the crucial factor that undermines the application of the principle of autonomy to drug use and blocks comparisons between the individual risks involved in drug use and the public health risks involved in other recreational activities.\textsuperscript{16} An adequate analysis of this argument must address the nature of addiction itself.\textsuperscript{17} Unfortunately, the nature of addiction is no clearer than that of autonomy, and it raises a web of social, psychological, and pharmacological issues.\textsuperscript{18} Since there is radical disagreement about the nature of addiction, it is best to employ a definition that includes several criteria.\textsuperscript{19} Ultimately, the plea of nonautonomous powerlessness is grounded primarily in the reality of physiological dependency.\textsuperscript{20} Against this idea, some commentators maintain that physiologic dependency in light of withdrawal symptoms does not, ipso facto, entail that drug use is nonautonomous. However, if it can be said that the pain of withdrawal is disproportionately severe, then it would be unreasonable to expect the addict to endure it. It therefore seems plausible to maintain that an addict might indeed be powerless to refrain from using in some instances.\textsuperscript{21}

Prohibitions of addictive substances that give rise to severe withdraw symptoms are not the only instances in which philosophers have argued that protecting autonomy justifies paternalistic interference. Mill denied that a voluntary agreement to sell oneself into slavery should be enforceable, because it would involve the complete relinquishment of autonomy.\textsuperscript{22} However, comparisons between addiction and enslavement become apt only when the horrors of addiction are grossly exaggerated.\textsuperscript{23} For instance, the United

\textsuperscript{15} Husak, \textit{Drugs and Rights}, 59-70; see especially pp. 63-64.
\textsuperscript{16} Husak, \textit{Drugs and Rights}, 100-17; see especially pp. 100-01.
\textsuperscript{17} Husak, \textit{Drugs and Rights}, 100-17; see especially pp. 101-03.
\textsuperscript{18} Husak, \textit{Drugs and Rights}, 100-17; see especially pp. 101-03.
\textsuperscript{19} One such definition describes “the dependency syndrome,” a phrase sometimes used in place of “addiction.” Seven factors compose its description, including (i) subjective awareness of compulsion, (ii) a desire to stop using, (iii) a stereotyped pattern of drug-using behavior, (iv) evidence of neuroadaptation, (v) use to relieve or avoid withdrawal symptoms, (vi) drug-seeking behavior, and (vii) reinstatement of the syndrome following abstinence. See Husak, \textit{Drugs and Rights}, 100-17; see especially p. 105.
\textsuperscript{20} The notion that the addict’s body requires periodic dosages of the drug to maintain physiological homeostasis. See Husak, \textit{Drugs and Rights}, 100-17; see especially p. 108.
\textsuperscript{21} Husak, \textit{Drugs and Rights}, 100-17; see especially pp. 108-09.
\textsuperscript{22} For Mill, the principle of freedom cannot require that one should be free not to be free. See Husak, \textit{Drugs and Rights}, 117-30; see especially pp. 117-18.
\textsuperscript{23} The zombie-like image of an addict has been perpetuated by contemporary government, yet clinical research simply does not support this terrible stereotype. See Husak, \textit{Drugs and Rights}, 117-30; see especially pp. 126-28.
States Department of Labor reports that seventy-seven percent of “serious cocaine users” are employed.\textsuperscript{24} Traditional support for laws against drugs are typically drawn from comparisons between addiction and slavery that depend on controversial empirical assumptions that are seldom articulated and generalized from worst-case scenarios that fail to conform to the reality of typical drug use. Even if the principle of autonomy does not protect an adult’s “freedom to be free,” the attempt to exempt drug use from the scope of autonomy by regarding it a form of slavery seems distorted at best.\textsuperscript{25}

3.2 Drugs and Harm to Others

Since not every harm is a criminal harm, the appropriate legal response to victims whose moral rights are violated by the wrongful acts of recreational drug users is far from clear. In the name of public health, citizens of sound mind and clear conscience frequently demand that “there ought to be a law” against harmful behaviors. Yet these individuals might agree that conduct is harmful and violates the moral rights of a victim while still disagreeing about whether that conduct should be punished.\textsuperscript{26} Conceivably, some or all harms caused to others at the hand of recreational drug use could be treated in the same way. If so, the prevention of these harms would not necessarily require criminal laws against recreational drug use. Surprisingly, no satisfactory foundation has been found to distinguish criminal from civil harms.\textsuperscript{27} Still, the criminalization of recreational drug use simply because it harms others accepts uncritically a number of highly controversial assumptions about the boundaries between criminal and noncriminal liability.\textsuperscript{28}

The national and international correlation between drug use and crime, particularly within inner cities, is frightening. According to one study, a majority of males arrested in each of the largest American cities test positive for one or more illegal drugs.\textsuperscript{29} This correlation fuels arguments from public health that laws against drugs are justified as an anticipatory offense to reduce the incidence of consummate crime. Still, only tentative conclusions can be drawn about whether laws against drugs can be justified as an anticipatory offense. Moreover, a defense of laws against drugs based on data about arrestees may have troubling implications for existing law.\textsuperscript{30} For instance, if the basis for preventing drug use is to reduce the risk of subsequent criminality, there seems to be

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\textsuperscript{24} Husak, \textit{Drugs and Rights}, 117-30; see especially pp. 126-28.
\textsuperscript{25} Husak, \textit{Drugs and Rights}, 117-30; see especially pp. 129-30.
\textsuperscript{26} Hence, it seems that some harms should be redressed by imposing civil rather than criminal liability. See Husak, \textit{Drugs and Rights}, 170-78.
\textsuperscript{27} According to a pragmatic approach, criminal harms are not different in kind from noncriminal harms. According to a principle approach, the nature of criminal harm is conceptually distinct from the nature of noncriminal harm. See Husak, \textit{Drugs and Rights}, 170-78.
\textsuperscript{28} Some acts deemed harmful to others can be conditionally permissible, and many instances of recreational drug use might be among them. See Husak, \textit{Drugs and Rights}, 170-78.
\textsuperscript{29} Husak, \textit{Drugs and Rights}, 195-207; see especially p. 195.
\textsuperscript{30} Arrestees are more likely to test positive for alcohol use than for any illegal drug. In fact, nearly half of all prisoners were under the influence of alcohol when committing their crimes, and the percentage is even higher for violent crimes. See Husak, \textit{Drugs and Rights}, 195-207; see especially pp. 195-97.
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better reason to prohibit alcohol than to prohibit illegal substances.\textsuperscript{31} Hence, claims that criminal legislation against recreational drug use is justified to prevent harm to others is bound to encounter serious difficulties.\textsuperscript{32}

4. DRUG ADDICTION AND PUBLIC POLICY: PRINCIPLES AND RECOMMENDATIONS

4.1 Principles

Four operating principles can guide and transform the national and international drug prohibition regime. First, drug policies ought to be based on solid empirical and scientific evidence.\textsuperscript{33} In the context of public health, the primary measure of success should be the reduction of harm to the health, security, and welfare of individuals and society. Contemporary drug policies are too often driven by ideological perspectives or political convenience, and pay little to no attention to the complexities of drug use and addiction. Second, drug policies must be grounded in human rights and public health principles.\textsuperscript{34} In the context of public health, this includes efforts to end stigmatization and marginalization of individuals who use certain drugs, and treat those dependant on drugs as patients rather than criminals. Several well-established and verifiable health measures can minimize the risk of drug overdose deaths and the transmission of HIV and other blood-borne infections.\textsuperscript{35}

Third, the development and implementation of drug policies should be a shared global responsibility that considers diverse political, social, and cultural realities.\textsuperscript{36} In the context of public health, policies should respect the rights and needs of individuals affected by drug production, trafficking, and consumption.\textsuperscript{37} National governments must therefore be able to exercise the freedom to experiment with responses suited to their idiosyncratic circumstances. Fourth, drug policies ought to be pursued in a comprehensive manner, involving families, schools, public health specialists, developing practitioners, and civil society leaders, in partnership with law enforcement agencies and other relevant governmental bodies.\textsuperscript{38} With their strong focus on law enforcement and punishment, it is unsurprising that the institutions leading the implementation of drug control systems are the police, border control, and military authorities. However, now that the nature of drug policy challenge has changed, global drug policy should be created from the shared strategies of all interested multilateral agencies.\textsuperscript{39}

\textsuperscript{31} There are, no doubt, reasonable grounds not to introduce the prohibition of alcohol, but evidence about the prevalence of alcohol use among arrestees is not among them. See Husak, Drugs and Rights, 195-207; see especially p. 197.
\textsuperscript{32} Husak, Drugs and Rights, 195-207; see especially p. 207.
\textsuperscript{33} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 5.
\textsuperscript{34} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 5.
\textsuperscript{35} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 5.
\textsuperscript{36} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 8.
\textsuperscript{37} The notion that the international drug control system is static, and that any amendment, however reasonable or slight, is threat to the integrity of the system as a whole, is shortsighted. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 9.
\textsuperscript{38} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 9.
\textsuperscript{39} Global Commission on Drug Policy, War on Drugs, 1-20; see especially p. 9.
4.2 Recommendations

Four recommendations can guide and transform the national and international drug prohibition regime. First, the criminalization and punishment of drug users should be replaced with offers of health and treatment services to those who need them. A key idea of the “war on drugs” approach is that the threat of arrest and harsh punishment would deter people from using drugs. However, countries with harsh drug laws have higher levels of drug use and related problems than those with more tolerant approaches. Second, public policy ought to challenge, rather than reinforce, common misconceptions about drug use and addiction. Too many policymakers reinforce the mistaken idea all drug users are amoral addicts, and all those involved in drug markets are ruthless criminals. The reality is much more complex. A more mature and balanced public policy can increase public health awareness and understanding.

Third, countries investing in law enforcement approaches should to focus their repressive actions on violent organized crime and drug traffickers in order to reduce harms associated with the illicit drug market. Law enforcement resources can more effectively target the organized crime groups whose power and reach continue to expand. In many parts of the world, the violence, intimidation, and corruption perpetuated by these groups is a tangible threat to individual and national security. Fourth, a wide and accessible range of options for treatment and care for drug dependence must be offered. This care should include substitution and heroin-assisted treatment, and attribute special attention to high-risk populations, including those in prisons and other custodial settings. Preventing and treating drug dependence is a vital responsibility of governments, and a valuable public health investment inasmuch as effective treatment offers significant reductions in crime and improvements in social functioning.

40. The Global Commission on Drug Policy offers a total of eleven recommendations, of which this essay will draw on four. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 10-17.
41. Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 10-11.
42. Hence, the foreseen correlation between decriminalization and increased drug use seems to be a myth. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 10-11.
43. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 13-14.
44. It is neither possible nor morally permissible to frighten or punish someone “out of” drug dependence. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 13-14.
45. In particular, providing a voice to represent farmers, users, families, and other communities affected by drug use and dependence can help to counter myths and misunderstandings. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 13-14.
46. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 14-15.
47. Hence, governmental efforts to curb their activities remain essential to public health. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 14-15.
48. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 16-17.
49. See Global Commission on Drug Policy, War on Drugs, 1-20; see especially pp. 16-17.
5. CONCLUSION

The aim and proposal of this essay has been to examine the nature of drug abuse and addiction, the harms drug abuse and addiction pose to public health, and the guidelines that ought ideally to inform national and international public policy on drug abuse and addiction with the intention of positing the argument that a robust public health ethics exists to the extent that its corresponding public policy adequately addresses the ever-growing and complex problem of drug abuse and addiction. To secure the justification of this thesis, it has drawn from the twofold premises that (i) a robust public health exists to the extent that its corresponding public policy adequately addresses the ethical issues with which it is confronted, and (ii) among the most debilitating moral issues with which contemporary society is faced, both nationally and internationally, is the ever-growing and complex problem of drug abuse and addiction. To this syllogistic end, the present essay has been successful.

REFERENCES

