

AGAINST WHOSE EXCESS?

John P. Morgan, M.D.



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**D**ON'T MISINTERPRET THE TITLE of Mark Kleiman's big book. You would be right most of the time in assuming that a book about American drug policy called *Against Excess* would be committed to a radical reform of current prohibition. However, this book, at its heart, is a defense of prohibition as a workable policy. It is unusual because most people with prohibition in their hearts do not write books defending it (although they frequently generate quotes for newspapers or book jackets) and unusual because it is, not merely an emotional defense of prohibition, but a text that is informed, often witty and knowledgeable. It is also truly weird. Like most critics of current drug policy, Kleiman understands that the harms of drug policy often outweigh the harms of drugs. However, he believes this is true only because prohibition reduced previous drug harms by decreasing abuse. Thus, although the harms associated with drug prohibition appear to be greater than drug harm itself, *...this situation is a result of the success of prohibition in limiting abuse.* [P. 4].

**F**ORTUNATELY, Kleiman himself (182 pages later) warns us to be wary of vagrant opinions—those without visible means of support. Yet, this pattern of illuminating the follies, failures and general foolishness of prohibition and following up with vagrant opinion favoring drug outlawing is his favorite literary device. Does Kleiman understand drug law abuse? You bet he does.

*Suppressing drug dealing with arrests and punishments...is likely to swallow enforcement resources...in great greedy gulps.* [P. 15]

*But drug law enforcement is as likely to increase predatory crime by dealers and users as to decrease it.* [P. 21]

*To employ the forces of the state to ban voluntary behavior that is not demonstrably harmful is to legitimize the use of democratic policies to wage cultural holy wars.* [P. 59]

*Prohibitions create illicit markets. Illicit market transactions make forbidden goods available and thus partially frustrate the purpose of the Prohibition. The markets also create problems of their own: violence, corruption and disorder.* [P. 104]

*...interdiction—seizures of bulk drugs—is of only limited usefulness since the drugs that are cheap for the government to seize are also cheap for the dealers to replace.* [P. 134]

I'll resist the urge to continue to quote Kleiman's well-formed prose in support of reformist opinion because in the end (and beginning and middle) he is not a reformer. He, like elected drug hawks, wants to send the right message:

*The arrest and punishment of vice producers and consumers reflects and reinforces public disapproval of the activity involved.* [P. 107]

and;

*Enforcement is also sometimes thought to reduce lawbreaking by reinforcing social disapproval of the acts punished.* [P. 129]

Most important for Kleiman though is his commitment to the idea that prohibition decreases drug abuse and creates a false impression of bad policy outweighing drug harm.

*None of this is to say that drug laws are bad in themselves only that they are likely to replace some of the evils they regulate with evils of their own.* [P. 169]

Having no evidence that current drug prohibition reduced drug-related harm, Kleiman offers instead a set of heavily promoted ideas regarding the positive benefits of historic alcohol prohibition in the USA, written about by his colleague at the Kennedy School, Mark Moore, among others. The gist of their

argument is that prohibition caused a decrease of alcohol consumption which, in turn led to a decrease in the harmful effects of ethanol, particularly hepatic cirrhosis. Neither of these claims is supportable and both are vrant in the extreme. The cirrhosis rate had declined steadily in the United States from 1907 and reached its nadir in 1922, Prohibition, if it accomplished anything, reversed this decline since prevalence of cirrhosis actually increased steadily from 1922 to the end of Prohibition, probably because of the replacement of beer with more potent distilled alcoholic products. An increase in potency always occurs in prohibition – of any and all substances. It is cheaper and easier to smuggle gin than beer; cocaine than coca leaves etc. The impact of the law believed in by Kleiman is so undemonstrable that there was not even an *increase* in consumption at the end of Prohibition until World War II.

Kleiman refers in consecutive footnotes to three recently published studies which have not only questioned the healthful effects of prohibition, but have pointed out the essential error in the work of Moore: attributing to prohibition the decline in consumption and cirrhosis prevalence that actually began 20 years earlier. Kleiman has read these arguments, but they do not seriously engage him and he does not refer to them in the text, and ignores them with his claim,

*...that the ban on selling alcohol actually reduced the volume of alcohol consumed is not open to serious debate. [P. 102]*

The serious debate not opened by Kleiman is that the decrease in total consumption came almost completely in beer and that the rate of potent distilled beverage consumption actually increased. Kleiman thinks that those who criticize Alcohol Prohibition from 1920–1933 are arguing with him about the balance of bad (black market, criminal enterprise, poisoned potent alcohol) versus good. I am not. There was no good. There were no health gains from this misguided morality exercise and Kleiman’s illusory balance of the bad and good of prohibition is the genesis of most problems of this text.

**T**HROUGHOUT the book, Kleiman has an evidentiary blindness regarding the harm that drug regulation generates. This blindness to drug policy harm and to the stunning failure of prohibition to accomplish any of its goal leads him to

support continued prohibition in some areas, to support stunning layering-on of regulation in others, and to plan for new prohibitions (of tobacco) as soon as regulation drives down abuse sufficiently.

Kleiman is a supporter of the 21 drinking age—a prohibition of legal alcohol to those who once could legally consume alcoholic beverages at 18. He accepts uncritically that these laws have been responsible for a recent decrease in alcohol-related youthful vehicular fatalities. He examines none of the evidence which disputes that point including the decline of fatal accidents in drivers of all ages. He also ignores the laws’ harms including again the inexorable effect of prohibition on potency of the illicit product. On college campuses, the keg party is now illegal, so users consume smuggled distilled beverages and the incidence of alcohol-related intoxication, vandalism, and emergency room visits near colleges have increased as a result. So, the familiar impact of the new prohibition is the absence of documentation of benefits, the increase of potency-driven toxicity and, oh yes, the absence of efficacy—18–21 year olds still drink. Prohibition for 18–21 year olds is nothing more than a cultural holy war.

Kleiman has obtained favorable mention in some reformist views because he favors the use of smoked marijuana in medical circumstances. He also recognizes the continued attempt by anti-reformists to cast marijuana as a particular toxic agent.

*The research results on the the adverse behavioral and health consequences of casual marijuana use are unimpressive, given the commitment of research funds to the effort to discover dangers and the effort by...drug education agencies to publicize what negative findings there are...[P. 255]*

Despite this understanding and a clear understanding of the harm generated by criminal justice involvement in marijuana regulation, Kleiman remains ambivalent about marijuana legalization. After a lengthy discussion of the possible impacts of marijuana decriminalization and legalization, he ultimately waffles. In fact one can read pages 266–280 and be unsure of his decision except that he is surely reticent to act. He most favors a peculiar licensing system which strikes me as an administrative nightmare. It grants to employers and others the right to know who possesses a marijuana use license and assumes that employers could require employees in

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*Again,  
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some categories not to be licensed. His proposal also includes the release of license information to insurance underwriters to that they could surcharge licensed marijuana users. Throughout, Kleiman seems absolutely entranced with legislative regulation. He can write enthusiastically and endlessly about regulatory nuance and marijuana license application, requiring a call to your marijuana outlet 24 hours in advance, and employing a central agency linked to credit card numbers to audit the quantity purchased by individuals and on and on. Why other than sheer administrative joy and excitement would he want such foolishness in place? Because he still fears the explosion of marijuana use after the "restraint" of law goes away. Again, we note the favorite Kleimanesque theme—indeed the center of his argument, philosophy and being: prohibition significantly decreases use and abuse and if we stop it because of its harm and idiocy, we face expanded abuse. Here, evidentiary failure is most profound. There is ample evidence that the reforms of the 1970s, including the application of decriminalization to one third of the U.S. population, caused no increase of use and in fact the greatest expansion of use occurred in non-decriminalization states. When it comes to the Dutch experiment with de facto legalization, Kleiman both refuses to examine the available data and dismisses the Dutch claims with a decidedly cavalier attitude.

*Even taking at face value reports by Dutch officials that there has been no increase in marijuana use in the wake of this policy, it would be too optimistic to expect the same results if such a policy were put into place in the United States. [P. 285]*

One monograph missed by Kleiman is that of Geoff van de Wijngaart, a Utrecht University Professor (Contemporary Perspectives on Drug Use: The Dutch Experience. Amsterdam, Swets and Zeitlinger, 1991). Marijuana has been sold in amounts up to 30 grams without penalty in Holland since 1976. In 1976, 10 percent of those 17-18 had occasionally used hashish or marijuana. The prevalence in 1985 had declined to 6 percent. A 1991 survey indicated that 12 percent of high school seniors in the Netherlands had ever used cannabis. This compares to a 59 percent prevalence in the U.S. Current use in Dutch high schools is 5.4 percent against 29 percent in the USA where we cannot legalize the drug because of the potential explosion of

use and the effective suppression of abuse by the law (Is my irony showing?).

There is no surprise that Kleiman as a committed regulator favors non-criminal administrative pressures. He likes the idea of inner-city residents copying license plate numbers of those suspected of driving to the neighborhoods to buy drugs. He acknowledges problems of forfeiture, but does not oppose it. He congratulates a Detroit suburb for establishing a traffic check point where drivers were stopped and asked for their license, registration and proof of insurance as a simple matter of harassment. He supports the actions of police selling fake "crack" to drive-through buyers and then without prosecution, seizing their cars under state forfeiture statutes. He encourages evictions by landlords or housing authorities to close down dealing locations. He is wildly enthusiastic for any and all urine testing in the criminal justice system, a maneuver beloved of judges, courts, probation systems, some criminologists and criminal justice administrators. True, it does give them something to do which they can claim relates to treatment and rehabilitation. There is, however, no evidence that testing pre-trial, pre-sentencing, pre-parole or pre-execution ever accomplished any goal having to do remotely with rehabilitation. Despite this, Kleiman would:

*...screen all arrestees for the presence of drugs and assign all drug-involved offenders to mandatory abstinence and testing.... Testing would start out on a random once-per-week basis: each offender would call in once per day to find out whether his term had come. [P.195]*

**I**NCIDENTALLY, Kleiman, like many supporters of criminal-justice and workplace-based testing, has insufficient knowledge of technical issues in testing. He more than once (for example, on page 195) announces that using alcohol tests is not possible because ethanol has no distinct metabolite. This is wrong, ethanol is excreted as ethanol in the urine and can be sought there by a number of tests. He nowhere mentions the information that poppy seed products frequently cause true tests for morphine in the urine and the presence of urinary morphine is accepted as evidence of heroin use. The most creative decision regarding the ingestion of poppy seeds in criminal justice testing is to tell probationers, parolees and those awaiting trial "don't eat poppy seeds."

**A**S A PHARMACOLOGIST writing about drug policy, I have not always been humble about my discourses on broader problems of policy. I recently experienced the proper and sobering experience of having a colleague wag a finger in my face while inquiring where I had been trained in labor economics. It is essential for all who strive in the interdisciplinary sweatshop of policy to remain humble and get someone to explain technical essentials more than once or twice. The problem for non-pharmacologists is often not that they fail to grasp the essence of drug effect on humans and their behavior, but that they fail to grasp the inadequacy of pharmacology as an explanation for drug consumption and behavior. There is a tendency for those involved in drug policy to be *pharmacocentrists*—to overvalue the drug as inducer of violence or more importantly as seducer of the innocent into problematic drug use. Pharmacocentrism focuses on the drug and its characteristics in humans and ignores the issues of cultural, economic and other contextual determinants of outcome from the interaction of humans and drugs. There are great benefits to pharmacocentrism. Addiction-ologists can believe that they are treating drug problems and diseases and until recently have convinced insurance companies invariably to pay them to do so. Post-addicted counselors and anti-drug spokesmen can blame all of their past sins and excesses on the drug and demand that we take them seriously. Reporters can conceptualize urban horror stories as drug-related and politicians can blame drugs for the cause of crime, poverty, violence, child abuse, etc.

Kleiman is a pharmacocentrist. He believes that the lessening of legal pressure on crack would lead to an explosion of use because of its seductiveness. He believes that it cannot be safely consumed by the poor, in particular, because they lack the ability and wherewithal to resist its call. Crack has the power to make the calm violent, the obsessive paranoid, the wealthy destitute and the healthy sick. I do not imply that Kleiman does not know that the set and setting of drug use are critical determinants of outcome and he, of course, often focuses on markets, costs and internal sanctions to modify ingestion. However, he accepts what a number of pharmacological writers believe regarding the power of cocaine and crack to corrupt and

destroy. I am dismayed by Kleiman's heavy reliance on Mark Gold as a source for much of what he believes to be true about cocaine and its volatile format. Not only is Gold careless about his writing and facts, he is a committed propagandist who generates absurd ideas about drugs and is currently subject to criticisms and investigations regarding the standards of diagnosis and admissions at a private chemical-dependency hospital under his direction. The essence of those criticisms, which caused Gold's New Jersey-based operation to close, were that all subjects with 3rd-party insurance somehow needed a 28-day inpatient treatment for any cocaine problem.

**B**ECAUSE volatile cocaine has a rapid onset of effect followed by a rapid declination of concentration and effect, it is to pharmacocentrists damn-near irresistible and crack is the most seductive drug of all time. The dilemma for these theories is that they have no empirical support—just narrative-tale repetition. A series of studies of cocaine users by clinicians based in Amsterdam and Toronto and San Francisco lend no support to cocaine's long-term "addictiveness" and its rate of "continuation" in the High School Senior Survey is not particularly high. Of the approximately 4.8 percent of high school seniors who have smoked crack, less than one-fifth have smoked it in the past month. Crack remains largely confined to impoverished inner-city culture, although committed non-city users will drive there to buy product. The upper west side of Manhattan constitutes an interesting urban laboratory experiment. It is near very large market places for crack and it is populated with many well-to-do adventuresome youths. I can locate *no* (that is *no*) evidence that crack has made the slightest foray into neighborhoods south of 116th Street and west of Central Park despite its high availability and visibility.

The importance of a drug like cocaine (or nicotine or heroin) is that although the quick high followed by a quick low is a somewhat adequate explanation for binging, it is a wholly inadequate explanation for long-term misuse. Although it may cause "acute addiction" it does not cause in a high percentage of users, chronic addiction. Most cocaine users that I know (like most ice-cream eaters I know) have gone on binges. In fact the wear

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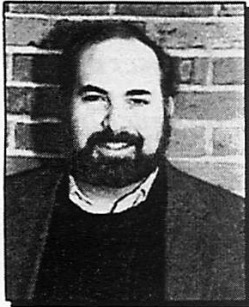
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and tear of a binge may be just what the doctor ordered to remind one of the futility of this as a way of life. So the increased availability of cocaine in a post-prohibition scheme will not lead to 50 million crack heads; in fact the immediate legalization of cocaine and the provision of it in some safer formats (such as beverages) is the right thing to do right now, but I'm just reviewing Professor Kleiman's big policy book, not writing my own.

Kleiman has gotten much credit for being "non-ideological" because he is willing to make marijuana available as a medicine and would consider some regulatory scheme for marijuana to reduce criminalization harm. I congratulate him for this and hope that he continues to be prominently consulted in the halls of power. However, he is ideologically a heartless liberal. He favors both income

redistribution and significant constraints on those whom he believes will not control their behavior or drug use. He is accepting of forced therapy and other coercions. He acknowledges that drug control in a free society is not for the faint of heart, but I believe he thinks he might be just the man to take it on. Actually he is not, in my opinion, ideological enough. It is essential, for any progress, that we accept as a starting point the proposition that government does not have the right to criminally prosecute any individual for the possession and use of any psychoactive substance. If Kleiman, by some Burkean analysis, could convince me that government has the right, he should admit that it has long-since forfeited that right forever by expending it to the benefit of none on moralizing and holy wars. ■



Mark Kleiman, Ph.D.

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**MARK KLEIMAN RESPONDS:**

I AM ALWAYS sorry to disappoint my friend John Morgan, from whom I have learned much, but I am not sorry to have written the book I wrote rather than the one he would have had me write.

"Against Excess" is a work of analysis rather than an essay in persuasion. It takes seriously the risks of excess drug-taking as well as those of excess regulation, and tries to show how policies could be crafted to minimize total harm. Morgan would have preferred a blanket denunciation of all governmental intervention in drug-taking; but why should I try to compete with Thomas Szasz? A world which already has "Ceremonial Chemistry" and "Our Right to Drugs" stands in no need of my services as an anti-prohibition polemicist.

SZASZ, of course, cheerfully acknowledges that drug-taking may do harm to drug-takers and that they may in turn do harm to others, and that some of those harms might increase as a result of repealing all drug laws. He simply denies as a matter of principle that self-harm is ever an appropriate premise for legal restriction, and proposes to limit harms to others by enforcing criminal laws and eliminating

social programs that spread costs rather than by restricting drug-taking itself. Szasz's position does not rest on any claim about the costs and benefits of prohibitions or lesser regulations: for him, any interference with drug-taking is a denial of fundamental rights.

Morgan adds to this normative position a sweeping empirical claim: that drug laws have no benefits, since they never decrease drug abuse and sometimes