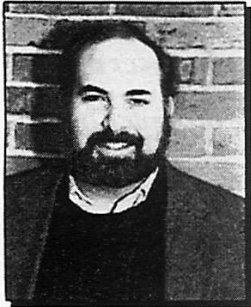


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and tear of a binge may be just what the doctor ordered to remind one of the futility of this as a way of life. So the increased availability of cocaine in a post-prohibition scheme will not lead to 50 million crack heads; in fact the immediate legalization 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.

"Against Excess" is a work of analysis rather than an essay in persuasion.

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

increase it. Thus he asserts that repealing the current cocaine laws would not lead to an increase in cocaine abuse. I doubt it.

I base this doubt not on pharmacology, a field in which, as Morgan notes, I am an amateur subject to correction by professionals, but on economics, the field in which I have most of my formal training. The best-established proposition in economics is that prices matter: when something costs more, people use less of it.

Black-market cocaine costs twenty times its free-market price. Snorting or smoking it is therefore an expensive pastime; if it were cheaper, more people would do it more often. Running out of cocaine or the money to buy it is reportedly a frequent cause of ending a cocaine binge; if it were cheaper, people would not run out as quickly. Thus I conclude that repealing the cocaine laws would lead to a substantial (perhaps severalfold) increase in consumption.

SOME OF THIS INCREASE, as Morgan points out, would be in casual, recreational, controlled use; the proportion of all cocaine users who are problem users might actually fall as the total number of users rose. (The opposite, of course, is also possible, insofar as the high price of illicit cocaine serves as an aid to moderation.) But the large number of casual users of any drug use only a modest proportion of the total drug supply: half of all alcohol is used by only 10% of all drinkers. An additional ten million five-rock-per-week crack smokers — surely the upper limit of casual use by the most generous definition — could account for no more than a 50% increase in the physical volume of cocaine consumed. Therefore, if cocaine consumption rises substantially, there must be more frequent, high-volume users, or the existing heavy users must be increasing their frequency or dose.

It is reasonable to argue that the surge in cocaine use consequent to legalization would be temporary and self-correcting; after all, the gin craze of 18th-century England largely died out after sixty years or so, partly due to Methodism and the Temperance movement, both of which it helped to create. It is reasonable to argue that the damage consequent to increased

use would be less than the damage now consequent to prohibition, though I have not seen that argument made in detail. It is reasonable to try to invent regulatory controls short of prohibition, in order to have less black-market crime than we have now and less cocaine abuse than we would have under full legalization. (My reasons for believing that such attempts are likely to fail are laid out in the book, and in my subsequent essay in the issue of "Political Pharmacology" issue of *Daedalus* from last summer, under the title "Neither Prohibition nor Legalization: Grudging Toleration in Drug Control Policy.") But it is not reasonable to deny that a substantial increase in heavy cocaine use will occur.

The Prohibition experience is only tangentially relevant here, since Prohibition was never able to curtail the availability, or increase the price, of alcohol nearly as effectively as the cocaine laws and their enforcement have restricted the supply of cocaine. The failure of Repeal to engender a workable set of alcohol controls is, I submit, much more instructive. The one substantial piece of restriction still in place — the ban on sales to minors — is, as Morgan notes, massively evaded. Morgan's answer: repeal the age restriction! This is surely a more intellectually honest answer than that of the run of anti-prohibitionists, who pretend that we can legalize cocaine for adults but ban it for minors, "just as we do with alcohol." But is Morgan truly convinced that allowing teenagers to buy twenty-five-cent rocks of crack in convenience stores will not get some of them into trouble?

IF WE PUT ASIDE the fantasy of repealing all of the drug laws and having nothing bad happen as a result, we are left with the question of what to put in their place. Answering that question involves a complicated juggling act, weighing the damage done by abuse, the costs of alternative controls, their administrative feasibility, and the likely extent and forms of evasion.

I am not, in fact, obsessively fascinated with Rube Goldberg regulation devices; laws, like theories, should be as simple as possible, but no simpler. However, designing a policy to keep

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alcohol away from drunken drivers and drunken assailants and simultaneously make it conveniently available to the tens of millions who enjoy it and use it safely is not a problem with a simple answer. It is not surprising that some of the results seem, to Morgan and others, "weird." I don't much like them myself, except compared to the current situation, in which freely available alcohol accounts for more ill health, more deaths, more crime, and more arrests than all of the illicit drugs combined. The book's proposal for a marijuana-licensing scheme represents an attempt to end marijuana prohibition without creating a marijuana problem that resembles the current alcohol problem.

The only serious competitor to alcohol as America's #1 drug problem is tobacco, which kills even more users but accounts for much less dangerous behavior. Morgan is alone among the reviewers of *Against Excess* in noticing its proposal to make this killer drug, in its most dangerous form as cigarettes, unavailable to all but current addicts. The book argues in detail why neither taxation nor limits on promotion can do enough to reduce the cigarette death toll, about 400,000 Americans per year at most recent count. If Morgan or anyone else has a better alternative, I'm all ears, but I'm not willing to settle for the status quo.

Morgan accuses me of "pharmacocentrism": attributing to drugs irresistible powers of seduction. I deny it. The complex of drug, user, and circumstance is capable of yielding a wide variety of responses. Most users of every drug except nicotine in the form of cigarettes — including volatile cocaine — control their drug-taking without much effort, and most of those who develop bad habits break them off after a while without formal help. But some don't, and there is no good way to tell in advance who the vulnerable ones will be; almost certainly, they won't be the same for every drug.

The questions to ask about any drug/population combination are:

- What is the probability that someone who never becomes a "problem user" will nonetheless hurt herself or someone else as a result of using the drug? How serious are those injuries? (Many kids who kill themselves and others while

driving drunk are not "problem drinkers," just a combination of unwise and unlucky.)

- What proportion of users develop problem use patterns (i.e., bad habits)?
- What is the rate of spontaneous recovery? What if any residual damage is left after such recovery? What is the rate of damage to those who develop more-than-transient bad habits, how long do those habits last, and how hard are they to break?

THE COSTS of long-term bad drug habits are high enough so that even a small probability constitutes a serious worry. Five out of six persons who play Russian Roulette once emerge without injury, and perhaps with an enhanced appreciation of the joys of being alive. With a twenty-chambered revolver, the odds of injury would fall to one in twenty, roughly the odds of someone who drinks becoming a chronic drunk; I doubt that the ratio would be lower for free-market cocaine. Those seem to me like lousy odds, and I'm willing to incur some costs to reduce the number of people exposed to them.

Morgan has my gratitude for attacking me as the tough-minded (not, I hope, "heartless") liberal that I am; the bizarre comedy of being mistaken for a reactionary quickly wears thin. Every liberal needs a guardian libertarian and a guardian conservative to keep him honest, and I appreciate Morgan's willingness to fill the libertarian role for me. But libertarianism, like everything else, is best if it stays within the bounds set by moderation, and if it walks humbly with the facts. ■

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For readers interested in purchasing a copy of "Against Excess", contact Botec Analysis at (800) 536-1277.