The Great Legalization Debate and the Repercussions of Past Policies:
A Review of the Current Literature
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Abstract
This review sifts through the current literature on the popular and controversial topic of how the United States should deal with controlled substances. There is as great of a cry as ever for the United States to reform the legality and approach to controlled substances. The US government has been involved in a “War on Drugs” since the Nixon Administration of the 1970’s and has been resistant to loosening or reforming stiff drug laws that were set under the Controlled Substance Act during this era. These laws have been criticized harshly by a variety of different people including politicians, academics, and activists. These critics come at current policy from a variety of different angles but agree that current policy is harming our society and societies close to ours. A large part of the pro-legalization argument is based on the United States’ tenure with alcohol prohibition, which showed how much less harmful alcohol is to society when legalized and regulated. Arguments for legalization include the discussion of social, health, criminal, racial and economic aspects that could be improved in society if prohibition were to be ended. After taking in the pro-legalization arguments, it is clear that drug reform seems imminent in the U.S.’s future.

Introducing Controlled Substances in the United States
In recent years, one of the hottest arguments in the United States has been what action our government should take towards current illicit drug laws and policies. With our current laws and policies having caused over 1.8 million nonviolent drug arrests in 2007 as well as 16.5 billion dollars in federal spending, it is a topic that every U.S. citizen should be concerned with (Miron and Waldock 3-7). The legalization debate pins those who believe our current "War on Drugs" and drug laws are our best possible option against those who think the U.S. and its citizens would benefit more from legalization and regulation of these now illegal substances.

At first glance, the idea of the legalization of street drugs such as marijuana, cocaine, heroin, and others may seem rash, but those in favor of legalization have created clear, hard-hitting arguments that the United States’ government would be ignorant to overlook. These arguments attack prohibition with a range of reasoning: from economic benefits due to taxation of narcotics, crime reduction and elimination of the black market, increased overall public health and less death, to even social and racial improvement (Duke; Nadelmann; Miron and Waldock; McWhorter). This review focuses purely on arguments that are based within our borders. There is simply not enough room to delve into arguments dealing with the benefits legalization would have on Central and South American, Middle Eastern, and European nations. In his scholarly article End the Drug War, activist and scholar Steven Duke sums up the main goal behind pro-legalization with the excerpt:

What principle ought to drive drug policy and what changes should we make in current policy consistent with that principle? We should strive to achieve the greatest good for the greatest number. If that is our goal, we should end drug prohibition in this country and then regulate drugs rationally, the way we deal with legal drugs, food, health care, and automobiles. (875)

Proposed legalization such as this may one day play a big role in United States’ government if legalization activists are successful. Understanding the literature and considering the viewpoints of those who call for this radical change is necessary for us to make the most educated decision.
Understanding Prohibition

Before wading through arguments against criminalization of narcotics, it is important to have a background on the prohibition and “drug war” that the literature is fighting. Our current policy with drugs was formulated in 1970 under the Nixon Administration under the title of The Controlled Substance Act. The CSA (Controlled Substance Act) regulates the manufacturing, distributing, possession, and importation of the substances included in the Act. The CSA is broken up into five “Schedules”, starting with Schedule I, which includes the substances that legislature considers the most dangerous, most unsafe, and that hold the least amount of medical properties. Drugs in this Schedule include 2 of the 3 main drugs focused upon in this review, Marijuana and Diacetylmorphine (heroin). The third drug of focus in this review is Cocaine, which is under Schedule II because of its medical use as a topical anesthetic. The CSA basically provides legal backbone for law enforcement to arrest, prosecute, and jail those who use, possess, and sell substances that are included in this act (Drug Enforcement Administration).

This is only part of drug prohibition, however, shortly after Nixon drew up the CSA, he created the DEA (Drug Enforcement Administration) in 1973 and declared “an all-out global war on the drug menace” (Suddath). The “War” has been ongoing since then, using ad campaigns, smuggling busts, and increased drug incarcerations to fight substance abuse. It is estimated that in the past 40 years, the U.S. has spent close to 2.5 trillion dollars in their attempt to remove drugs from society. Despite these laws and efforts, illicit drug user rates in the U.S. have increased to 19.9 million Americans (Suddath). Despite the subpar results and constant criticism, the federal government stands by their actions and laws, defending them on websites such as the DEA’s. The CSA and “War on Drugs” make up the entity that is American drug prohibition, and are what the following articles are arguing to eliminate.

Arguments for Legalization

Crime and Society

Drug use increases crime. It is an easy concept to comprehend. However, anti-prohibitionists use this phenomenon to their advantage in their arguments. They do this by explaining that it is not the drugs nor intoxication they cause that raises the crime spikes, but the legal stature of them (Cole; Duke; Law Enforcement Against Prohibition; Nadelmann).

As seen with alcohol prohibition in the 1920’s and 30’s, prohibiting a substance creates what is known as a “black market” for the substance, allowing for it to be traded illegally without being regulated or taxed (Duke 875). Steven Duke argues in his scholarly article “End the Drug War” that just as alcohol prohibition created a black market run by dangerous criminals, prohibiting drugs has done the same. He explains how black markets are breeding grounds for violent crimes as a large portion of this illegal drug market is made up of inner city gangs who are willing to commit whatever act may be necessary to steadily make drug profits. Duke explains how black markets, and especially the drug market, are so violent in the passage:

Our crime rates have fallen dramatically in the last decade, but they are still among the highest in the world, as is our per capita prison population. These rates are probably doubled by drug prohibition. We encourage violent crime by creating the black market that depends on violence for enforcing contacts, protecting territory, and preventing arrest and conviction. (878)

Jack A. Cole, retired DEA agent and anti-prohibitionist, agrees fully with Duke that drug prohibition has created a crime oriented black market culture. Through his years working undercover in major drug stings and busts, Cole witnessed countless robberies, assaults and other violent crimes that occurred solely because of black market drug sales. In this process, Cole says, countless innocent bystanders, including police officers, can be victims in drug violence. Duke adds that with drug markets driving up prices to profit, which increases the likelihood addicts would have to steal or rob to support their habits. With legalization, they both argue the
black market will be eliminated taking a chunk out of the US’s crime rate caused by them (Cole 5-7; Duke 875-878).

As well as causing the rise of drug black markets, Duke and Cole also discuss drug prohibition causing a dilution of US law enforcement resources in relation to other crimes. Duke uses a sarcastic yet relevant statement in his article to illustrate this, as he proclaims, “Instead of targeting sex offenders and wife beaters, we chase potheads... The more we clog our courts and prisons with drug cases, the less room—and the fewer resources—we have to process other criminal cases or to punish other criminals” (878). And according to Cole’s sponsoring group LEAP (Law Enforcement Against Prohibition), “chasing potheads” has not showed any effect in reducing drugs in the U.S, even though they are “demand reduction” (meant to reduce demand) laws (Cole 8). These disgruntled officers of law use their experience to state that they believe their resources would be put better use when focusing on crimes such as child abuse, aggravated assault, rape and murder (LEAP). Cole explains LEAP’s idea in his article with what he learned during his part in the War on Drugs:

I realized long ago that when uniformed officers arrested a robber or rapist the number of rapes and robberies declines. They took someone off the streets that made our communities safer for everyone. But when I arrested a drug dealer the number of drug sales didn’t change at all. I was simply creating a job opening for a long line of people more than willing to risk arrest for those obscene profits. It was actually worse than that. I wasn’t just creating a job opening; I was creating a safe job opening because it they tried to get the job while the dealer was still on the corner he would probably shoot them. I would suggest to you that whole armies of police cannot stop drug trafficking when the profits are this immense. (8)

This statement indicates how deep the black market runs, and how attractive it is for future drug dealers to enter. With respected law enforcement officers such as Cole and his partners in LEAP claiming drug arrests are nearly useless, it is surprising to see they have drastically increased in recent years (Figure 1). The U.S. is also incarcerating a record number of these crimes, as Ethan Nadelmann includes in his essay, that the US ranking first in per capita incarceration. If only he and his peers were allowed to focus this much attention on these other crimes without the distractions of drug laws, Cole says, then there will finally be a crime reduction in the U.S. (8). The only way to move law enforcement into this avenue, of course, would be to end prohibition. The statistics are stacking up against these “demand reduction” laws, and a change does not seem far off.

Harm Reduction

None of the anti-prohibition articles I researched claimed that psychotropic drugs, ones they are attempting to legalize, are not harmful to people’s health. Duke understands they are very harmful, but goes on to point out that two of the most harmful psychotropics, alcohol and tobacco, are already legal (875). Duke argues that ending prohibition and following the “harm reduction” trail of tobacco and alcohol will prevent
deaths and improve public health. “Harm Reduction” is summed up by Ethan Nadelmann:

With respect to legal drugs, such as alcohol and cigarettes, harm reduction means promoting responsible drinking and designated drivers, or persuading people to switch to nicotine patches, chewing gums, and smokeless tobacco. With respect to illegal drugs, it means reducing the transmission of infectious disease through syringe-exchange programs, reducing overdose fatalities by making antidotes readily available, and allowing people addicted to heroin and other illegal opiates to obtain methadone from doctors and even pharmaceutical heroin from clinics.

Cole and Duke agree with Nadelmann’s ideology, and both promote “harm reduction” policies over useless “demand reduction” laws. Cole throws in a shocking statistic in promotion of harm reduction through legalization, quoting that “Heroin users are four times more likely to die of an overdose today than they were in 1979” (4). Regulation would lower that rate drastically, as would the proposed antidotes says Cole. The arguably largest name in public health, the Red Cross, adds to the health benefit argument of legalization. They explain, in a recent article, in a how much of a difference legalizing drugs would make with transmissions of AIDS, Hepatitis, and other diseases spread through intravenous drug use. They conclude the article with a clear-cut opinion: “Injecting drug use is a health issue. It is an issue of human rights. It cannot be condoned, but neither should it be criminalized” (Goguadze). They also list several of the same “harm reduction” methods as Nadelmann like needle exchange programs, antidotes, and pharmaceutical assistance. Legalization would have a way of paying for “harm reduction” itself, Nadelmann offers, as current spending on enforcing drug laws (“demand reduction” laws) could instead go straight into the programs listed above. Changing funding from enforcement to aid would be a huge change, but one that could potentially help millions.

*Racial Implications and Impact*

In the past century, our country has grown exponentially with racial equality. However, with regards to drug prohibition this growth is not as present. In his article “Getting Darnell Off the Corners: Why America Should Ride the Anti-Drug-War Wave,” John McWhorter focuses his anti-prohibition argument on how it would affect Black America. He explains how the inner city drug market has become a vortex of poor black adolescents, with gangs using the potential huge profits made off drug dealing to attract underprivileged youths. He understands legalization would not be a total solution to crime in inner city ghettos, but he believes the majority of crimes can be attributed to prohibition. He concludes his racially focused piece with a clear message: “And this is a prime reason the War on Drugs must end. It tears poor black communities to pieces. Not only by flooding them with police—but by encouraging bright young black people to work the black market and lending it an air of heroism.”

Along with tearing black communities apart, drug prohibition allows law enforcement to express racism and back it up with law. McWhorter describes how modern day law enforcement “prowl” through black communities on drug suspicion alone. Cole adds statistics to show the racial inequality prohibition brings. Two statistics that may show this problem the clearest relate to convicted drug law violators: 33% of white convicts receive prison sentences while a staggering 51% of blacks in the same situation end up with sentences. These inequalities lead to blacks distrusting both police officers and whites in general (McWhorter; Cole 8-10). Ending prohibition would bring these numbers and races much closer to a level playing field (Cole 8).

**Conclusion**

There is no way to predict how ending prohibition would actually turn out. The arguments included in this review are merely predictions and opinions of the positive changes legalization would make in our country. One of the most prevalent topics anti-prohibitions arguments is the economic gain the US would
make off of regulated drugs, and taxing them. One of the two reasons that the economic argument could not be included in this review is that it is completely speculative; much more so than predicted social changes. Miron and Waldock, in their journal The Budgetary Impact of Ending Drug Prohibition, estimate that the US would be saving over 40 billion in government spending as well as yielding an additional 46.7 billion in revenue from taxes if prohibition was ended. They disclose that this prediction, as well as all others of its type, should be taken very lightly. This is exactly why I did not include it in my review. The second reason it could not be included is that the economic argument stretches deep into the US debt crisis, and to give background and cover current US economy would have lengthened this review tenfold (Miron and Waldock 3-7). Ultimately, it is worth noting, along with the discussed literature, the possible economic benefit decriminalization would bring, as uncertain as it is.

Changes seem imminent in the world of now-illicit drugs. With credible sources such as the Red Cross, and experienced sources such as retired narcotics officer Jack Cole, it is no longer just the "hippies" and "druggies" repeating Peter Tosh's famous line, "Legalize It, Don't Criticize It." Prohibition should be a more publicized topic in education, literature, and the media, as we live in a democratic state and everyone's, user or not, voice should be heard. The laws of Richard Nixon will some day become only history, and awareness and research will determine how fast the term "illicit drugs" fades from American's memory.

Works Cited