



# TO END AWAR

A Short History  
of Human Rights,  
the Rule of Law,  
and how Drug Prohibition  
Violates the Bill of Rights

By Roar Mikalsen

# ABOUT THIS BOOK

Half a century after world leaders signed the UN drug convention and committed themselves to the eradication of illicit drugs it has become painfully obvious that things didn't turn out as planned. Not only have the drug laws failed to deliver us from the problems associated with drug use, but as the disastrous consequences of the drug war have become more apparent, the inherently problematic relationship to human rights law has also become more obvious.

This book spells out these problems. The author takes you through the thinking behind our human rights conventions and by means of principled reasoning he details how our drug policies violate fundamental rights.

The book is a must for anyone who wants to understand what the rights-oriented debate is all about, and whether you are a drug user who want to know your rights, a public official who want to know your duties, or a concerned citizen who simply want to learn more about these issues, it will tell you what you need to know.

*“Roar has written a kind of Thomas Paine's Common Sense pamphlet on the war on drugs for our time, which calls for peace and an end to the injustices of the drug war on the basis of principled opposition to unchecked government authority. It's a must consider for anyone interested in what The Declaration of Independence calls, 'natural justice.'”*

— Kenneth M. White, Assistant Professor of Criminal Justice and Political Science,  
Kennesaw State University.

*“Not only do we face a prohibition on drugs, we also face a prohibition on a discussion about it. Roar Mikalsen's book challenges both, and he makes strong points at every turn.”*

—Judge James P. Gray (Ret.) Superior Court, Orange County, California  
Author: *Why Our Drug Laws Have Failed*

*“Roar has done a great job exposing the normative deficiencies in our drug control policies. Of course they violate human rights law, as he demonstrates so persuasively.”*

—Douglas Husak, Professor of Philosophy and Law, Rutgers University.  
Author: *Drugs and Rights*

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This book is also for sale on Amazon.

**TO THE YOUTH  
WHO ALWAYS OUTFRAN  
FAKE AUTHORITY**

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# 1

## AN INTRODUCTION TO THE RULE OF LAW\*

*“Since no man has a natural authority over his fellow, and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men”.*

—Jean-Jacques Rousseau, 1762—

OUR GOVERNMENTS ARE PROUD defenders of a freedom-loving tradition that we trace back to the French Revolution and the American Declaration of Independence. In the late 1700s these events led to the establishment of some important ruling principles. Until then our nations were ruled by all-powerful kings. These kings supposedly had their authority from God, and below them were the nobles, the knights, and the clergy. The individuals in these groups had certain privileges, varying according to their wealth and power, and under them were ordinary

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\* This treatise is put together to provide the reader with a general overview of the issues discussed. The endnotes will go a long way in documenting the assertions made, and if you want a better understanding of these issues, you will find further elaboration in Roar Mikalsen’s book *Reason Is* as well as his December 21, 2012 and October 1, 2014 communications to the UN Human Rights Committee. All these documents can be found online and for an even more definitive argument against the drug war, you can look for the author’s upcoming books *Human Rising* (2016) and *To Right a Wrong* (2015). The former expands on the factual picture from a Western perspective while the latter elaborates on the drug laws’ relationship to the United States Bill of Rights.

people, having no rights at all. The society was in other words a strict hierarchical structure, and most people were at the mercy of their superior's good—or ill—will.

In the late 1700s, however, this system was in for a change. It was a very exciting time in Western history. Today we remember it as the Age of Reason (or the Enlightenment Era), and as people wised up, the pressure for social reform was building. People would no longer accept the strict class distinctions, they were fed up after centuries of increasing exploitation and oppression, and they sought to do something with their disenfranchised societal status. They therefore demanded a certain modicum of dignity and control over their lives, and the result was the emergence of human rights as well as governing doctrines such as the principles of popular sovereignty and separation of powers.

Today, every government with respect for itself (and its people) recognizes these rights and principles and has incorporated them into its Constitution. The first principle states that all power emanates from the people. This means that the State itself has no rights, it's just an organizational body created to assist the people. The State's employees are therefore public servants and, as the title says, their sole duty and responsibility is to serve the people. Consequently the State has no rights as seen in relation to the individuals, and people, in turn, have no obligations towards the State. The only thing they are obligated to is to follow its laws and regulations (which in turn draw their legitimacy from the people), but—and this is important—*only insofar as these laws and regulations are in line with certain guidelines as defined by the human rights conventions.*

These conventions' purpose is to define the boundaries for the State's rightful exercise of power, and they are the result of a historical lesson we would do well to remember. This historical lesson is that those who govern have a tendency to adopt laws that aren't necessarily in the interest of the general public. This may be laws whose purpose it is to restrict people's freedom, i.e. laws that are put in place to gratify the ruling elite's urge for social, political, or economic control. Legislation

directed towards particular religious or ethnic minority groups, moral laws that ban homosexuality, as well as a number of other discriminatory practices, are examples of this. Such laws have no inherent legitimacy as they violate certain overriding legal principles upon which our society is based, and throughout history the brightest among us have been keen to point this out. Aristotle, for instance, said 2500 years ago that “even when laws have been written down, they ought not always to remain unaltered.” Thomas Aquinas said 800 years ago that “Human law is law only by virtue of its accordance with right reason, and by this means it is clear that it flows from Eternal Law. In so far as it deviates from right reason it is called an unjust law; and in such a case it is no law at all, but rather an assertion of violence.” Charles Montesquieu remarked 250 years ago that “there is no crueller tyranny than that which is perpetuated under the shield of law and in the name of justice,” and another genius, Albert Camus, stated in the mid-1900s that “the law’s final justification is the good it does or fails to do in the society of a given place and time.”

At any given time, then, there have been both just and unjust laws among us. To put it simply, the just laws are those whose function and consequence ensure a social dynamic that is beneficial for individuals and society alike, while the unjust are those that inflict upon us a more unfortunate dynamic; they tie us down and limit our potential instead of encourage it and protect us against injustice.

It is not always easy to know what kind of law we are dealing with. No matter how inhumane a law is, there will always be people out there who believe that it is necessary (that without it everything would have been far worse) and no matter how useful it is, there will also be some who think it is objectionable. History itself is full of examples of laws which at one point were accepted as necessary and legitimate, but which later generations found reprehensible and did away with.

That laws have an expiration date may in itself be construed as something of a paradox. As we shall see, the legal principles upon which our laws are based can be said to be both simple and eternal, and so one should think that the laws reflected this fact. This, however, is not the



case, and the reason is that we are born into a world in which the moral climate is so powerful that it ends up blinding us to these principles' eternal light. In fact, you have to be a rather advanced soul to connect with this light, for the delusional waters of our culture muddy our mind and make any principled perspective difficult.

Nonetheless, there have always been people around perceptive enough to access this timeless world of ideas. This will be that percentage of the population who has advanced cognitively to the point where they have left behind the bewildering mists of the collective psyche. They are therefore able to see their age in a historical context, and thanks to their commitment to their fellowmen, the light of these principles is slowly but surely transforming the social fabric, bringing us closer to Utopia\* .

In other words, it is as a result of our increasing wisdom that the ideas upon which Eternal Law is built gradually becomes manifest. I say "Eternal Law", because these ideas are derived from the Wholeness concept, and as cultures everywhere evolve they become more and more inspired by those values, norms, and ideals that mirror this Ultimate Oneness. As we mature we begin to understand that to the degree we take these ideals seriously, they, in turn, have the power to help us out of our misery, and so people eventually see them for what they are: a roadmap that, if followed, will help us reclaim our inherent divinity.

This is something we all intuitively recognize, and so, as humanity has evolved, we see how the laws of the land have progressed, becoming ever more aligned with these principles. Today we feel reasonably confident that we have progressed to the point where disproportional, arbitrary, and discriminatory practices are a thing of the past. Yet nothing does more damage to a society than unjust laws, and wise from injury we

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\*We have already mentioned how the principles of Popular Sovereignty and Separation of Powers have grown forth as a result of this process. We shall have more to say on them and some other principles not yet mentioned, but for the sake of clarity they are called principles of Equality, Proportionality, and Non-Arbitrariness; together they make up the spirit of the human rights conventions and their letter is derived from them.

know that there may come generations after us who see things differently.

These are the insights that have brought about our legal framework, and if our public servants want to ban something they must therefore, before they pass a law, make sure that it will be in accordance with the provisions of the human rights conventions. These conventions represent the epitome of the abovementioned maturation process, and so, since the principles upon which they are built became formally recognized at the end of the 18<sup>th</sup> century, their societal priority and position has become increasingly important. Today, they stand above all other laws, and if the State wants to be seen as a legitimate entity, it must respect the citizens' rights as articulated in the human rights conventions. To the extent the State fails to do this, it is no longer governed by the rule of law—and if it is no longer a rule of law, it's quite simply a police state.

Throughout history, we find many examples where special interest groups have become a little too eager in their pursuit of power and privilege. It is the rule rather than the exception that power is never evenly distributed, and those who have a lot of it exercise a greater influence on the political process than ordinary people. It is therefore important that the Law of the Land recognizes the problem and aims at keeping such would-be usurpers in check. If there isn't, it will lead to a social dynamic in which the distance between those who govern and those who are governed constantly increases, until it becomes obvious that the State is no longer a representative of the people but rather has become a tool for the ruling class, used to keep the rest of the population under control.

History speaks volumes about this, and that is why we have a legal framework in place that recognizes the problem and means to ensure that the citizens' rights are protected. This framework is the human rights conventions and their purpose is to protect the individual against unreasonable and arbitrary interference by the government. They say something about the requirements any legislation must meet to be legitimate; they guarantee to the right-holders (us) a fair trial; and if a

defendant argues that his natural rights have been violated, they also say that he shall have an effective remedy.

This simply means that if you are a Christian (or Muslim, Hindu, whatever) living in a country that has forbidden your religion, you are free to violate the law and practice your religion—and then, if you are arrested for doing so, you can use your rights as a defendant to challenge the law. Every signatory to the UN Conventions has outlawed arbitrary, discriminatory, and disproportional laws, and so, if you tell the judge that the law violates your human rights, he is obligated to let the issue be determined by an independent, impartial, and competent court. You, yourself, must document why you claim to be the victim of a discriminatory, disproportional, and arbitrary practice, but if you do—and the Court finds that you are right—then you are free to practice your religion, and the law must be removed.

It is not often that citizens make use of their right to a fair trial to demand a judicial review on human rights grounds. Few are even aware that they have it, but it is a key aspect of the rule of law and a natural consequence of the principles of popular sovereignty and separation of powers. We have already seen that the first principle implies that the laws shall reflect the power of the people and not the government, and the second principle emphasizes the independence of the courts.

As mentioned, it is because the political process is constantly at risk of being overtaken by power-hungry special interests that we have built a society on these principles. According to the separation of powers, therefore, the government must be separated into three branches; the legislative, the executive, and the judiciary. This separation of powers is a kind of safety valve we have built into the system, and the idea is that the three branches shall control and balance each other so that an unfortunate centralization of power does not occur.

The presence on an independent press shall further minimize the likelihood that special interests become too powerful. However, there still remains a chance that certain power-political groupings become so influential that the political process no longer functions as intended.

History again speaks volumes about this, and one need not look further than the drug laws to find a proper example. As we shall see, it has been well known for several decades that the drug laws are the result of a series of misconceptions; that they were brought into being by a corrupt political process; that prohibitionists misrepresented or ignored the available evidence to have their way; and that voices of reason were either subdued or ignored<sup>1</sup>. While prohibitionists will disagree, the evidence for this is overwhelming. No knowledgeable professional will therefore endorse prohibition, something professors of criminology and sociology John F. Galliher, David P. Keys and Michael Elsner confirm:

*“Since the 1960s, few criminologists or criminal law professors have supported government drug policies. To this day, those setting . . . drug policy continue to ignore expert legal, academic, and medical advice. In the academic community there is now a clear recognition of long-standing patterns of both the ineffectiveness of, and racism inherent in . . . drug law enforcement. Indeed, opposition to contemporary . . . drug control policy has become normative in the academic community.”*<sup>2</sup>

As a matter of fact, the drug laws have survived to this day supported by nothing but the empty rhetoric of self-serving bureaucrats<sup>3</sup>, and the empirical evidence shows that a regime of controlled legalization would be a much more sensible solution<sup>4</sup>. One can easily demonstrate that our public officials should have taken this evidence into consideration long ago, and Kofi Annan, former UN Secretary General, and Louise Arbour, former UN High Commissioner for Human Rights, commented thus on policymakers’ denial of reality and the consequences of their negligence:

*“It might have been understandable that the architects of the system would place faith in the concept of eradicating drug production and use (in the light of the limited evidence*

*available at the time). There is no excuse, however, for ignoring the evidence and experience accumulated since then. . . . There is a temptation to avoid the issue. This is an abdication of policy responsibility—for every year we continue with the current approach, billions of dollars are wasted on ineffective programs, millions of citizens are sent to prison unnecessarily, millions more suffer from the drug dependence of loved ones who cannot access health and social care services, and hundreds of thousands of people die from preventable overdoses and diseases contracted through unsafe drug use.”<sup>5</sup>*

Again, prohibitionists will probably disagree. But while this little summary can only scratch the surface, further proof of our leaders’ negligence is everywhere to be found. An Australian expert group, for instance, concluded that “By maintaining prohibition and suppressing or avoiding debate about its costs and benefits, it can be argued justifiably that our governments and other community leaders are standing idly by while our children are killed and criminalized.”<sup>6</sup> And a European panel of experts concluded thus after reviewing the status quo:

*“Despite the primacy of human rights obligations under the UN Charter, the approach of the UN system and the international community to addressing the tensions between drug control and human rights remains marked by an ambiguity that is inexcusable in the face of the egregious human rights abuses perpetrated in the course of enforcing drug prohibition. . . . It is past time for UN, its individual Members, and its organs, as well as civil society organizations, to ensure that the international drug control system works to respect, protect and fulfill the human rights of people who use drugs and affected communities, and to hold the international drug control entities and UN*

*Members to account for human rights abuses committed in the name of drug control.*<sup>7</sup>

This was six years ago. Since then many more billions of dollars have been wasted on counterproductive policies, more than 10 million people have been wrongfully imprisoned, and more than a million have died as a direct consequence of the war on drugs.<sup>8</sup>

For some reason, however, our leaders have failed to recognize the critique leveled against our drug policies, and they keep at it as if they have learned nothing these past 50 years. This is important, because if we can prove that the drug laws are an arbitrary, discriminatory, and disproportional practice—and if we confront them with this evidence—then politicians are obligated to take this evidence into consideration and to check whether or not it is so. And if the political process for some reason has become so corrupted by special interests that the State apparatus is no longer able to control the quality of the law, then the citizens can go through the judiciary to check whether or not the law is in violation of their catalogue of rights.

The human rights conventions are clear on this, and in the following chapters a proper overview of this and all other matters pertaining to the relationship between the drug laws and the human rights law shall be elaborated on. Before we go on, however, let's summarize the reasoning that underpins our legal order:

- *To begin with, the individual is the alpha and omega:* We are all born free and equal; we all have the same inherent right to pursue our happiness as we deem fit; and we all have the same right to self-determination over our lives and our property—be it our body, our thoughts, or our possessions.
  
- *This is the fundamental premise from which everything follows.* However, we also know that individuals, unfortunately, do not always behave decently towards their fellowmen and that we

sometimes violate others' right to the same liberties as ours; some people infringe on others right to self-determination over their body, thoughts, or possessions and we have therefore created the State, with its monopoly of force, as a necessary arrangement to safeguard individual rights and see to it that the social machinery functions optimally.

- *This is the social contract.* The state apparatus, however, can never be better than the quality of the collective consciousness field allows for. And as mankind is a rather immature entity consisting of individuals who all too often see self-interest and public interest as two different things, the state apparatus, as a result of us living in a class-divided society, has a tendency to become a playground for special interests seeking to advance their own short-sighted agendas rather than the public interest.
- *This is the fundamental problem facing humanity.* To ensure a balance of power, therefore, we have instigated a separation of powers, and with an independent press who keeps an eye on everything, we have laid a groundwork that is supposed to ensure that no single group of people becomes powerful enough to take control of the state apparatus.
- Still, there remains a chance that certain special interests can become so influential that these safety measures aren't enough. And to further limit the possibility that the state apparatus becomes a tool for the ruling class' oppression of the majority, we have established a legal framework in which human rights law rules supreme.
- *This legal framework is available to all people.* The purpose of human rights law is to protect the inherent dignity of the individual by ensuring that the State doesn't unnecessarily and overbroadly

interfere in our everyday lives; it therefore establishes certain criteria that all laws must comply with, and it seeks to ensure us an effective remedy if we have any complaints about undue restrictions.



# 2

## THE PROBLEM WITH THE STATE

*“No government is, or can be, committed to freedom. Only people can be. Government, by its very nature, has a vested interest in enlarging its freedom of action, thereby necessarily reducing the freedom of individuals.”<sup>9</sup>*

—Thomas Szasz, professor of psychiatry—

BEFORE WE HAVE A closer look at the human rights conventions, we need to put the relationship between the individual and the State in its proper context. The purpose of human rights law, after all, is to protect the individual from undue governmental intrusion in his life, and this for a good reason. History speaks volumes about how the greatest threat facing humanity is its rulers; some 200-300 million died last century alone as a result of their power-political ambitions, and looking back we see that a constant variable throughout the last couple of centuries is the government’s increasingly oppressive and omnipresent intervention in what was previously recognized as the individual’s sphere of influence.

Now, our officials are not that keen to admit this, but the proof is in the pudding, and for anyone who cares to think about it, it is obvious that the State’s and the individual’s sphere of influence must be seen as two opposing poles: To the extent that one is reinforced the other will necessarily be reduced, and knowing this a more alert citizenry would have seen the State as a wolf in sheep’s clothing.

This is not to say that our civil servants are evil-minded psychopaths whose overriding ambition is to rein in our freedoms until we’re in the

grip of despotism. Not at all. But any student of organizational theory can tell you that despite each and every official's good intentions, he is part of a larger body, and that this body's primary concern is its own survival. Everyone familiar with the workings of government can testify to this, and no matter how little the interests of society are served by the existence of an organization/agency, it will always seek to justify its existence, finding reasons for claiming bigger budgets and more powers.

Hence, the most noteworthy characteristic of a bureaucracy is its inherent tendency to feed itself. And looking back, we see how this dynamic has made the State increase in scope to an ever more powerful entity, thereby reducing the individual's sphere of influence.

Again, it is not my intention here to badmouth our public officials. But like I said, they are part of a greater organizational apparatus, and this greater apparatus has an inherent tendency to seek to expand its influence, whether it is beneficial or not.

This is an important point to recognize. After all, the bigger the government, the more enslaved a population will necessarily be, and so no matter how much the disciples of Big Government chant on about "freedom" and "human rights" and celebrate this as if the fight for these ideals was something the government spearheads, any thinking person will know that it cannot be so. She will understand that the State cannot possibly be a champion of freedom or civil rights, because the State, by virtue of its very nature, has a vested interest in increasing its sphere of influence—which it can only do at the expense of ours.

In other words, *only individuals* can be freedom fighters and human rights defenders. And that the State, despite our authorities' insurances to the contrary, represents the greatest possible threat to our interests is clearly revealed by history and current conditions. After all, if the concept of freedom is to have any meaning, it must be a measure of the power we have to do with our lives and property as we please. *Only to the degree this is actualized* will the constitutionally established right to life, liberty, and the pursuit of happiness have any meaning, and looking at it that way, we have never been as enslaved as we are today.

The drug laws are a case in point, for until the 20<sup>th</sup> century people around the world took their right to self-medicate for granted. If they were sick, they took responsibility for their own health and the most beneficial medicines were the ones we for some reason have chosen to criminalize. Not even in their wildest dreams could they have imagined that later generations would see things so differently. But, still, here we are, and few citizens reflect upon the fact that the State now brazenly claims the right to control the most intimate aspect of our lives—our very own consciousness.

Our leaders, of course, tend to do everything in their power to ensure that we do not notice or react to this ever-widening gap between theory and practice. By its very nature the system is put together so that only those who float with the current will be promoted, and so, to the degree an official succeeds in helping this force feed itself, he will be rewarded with a career. Generally speaking, therefore, the people at the top are those whom to the greatest extent will have divested themselves of all integrity. They have effectively become system-zombies and will on autopilot argue in favor of whatever serves the power.

I mention this because, speaking of the history and principles of human rights, it is of utmost importance that we understand this mechanism. Human rights law, after all, is put together to protect the individual against unjust interference in his sphere of influence, and so looking back at history it should come as no surprise that the State parties have had a rather ambivalent relationship towards the ideals and principles brought forth by Enlightenment Era thinking and enshrined in our constitutions.

A quick 101 course in history reveals the reasons for this, as all governments can trace their origin back to a band of robbers who joined forces in order to plunder, control, and subjugate the rest of the population. The formation of governments was the natural result of their ambition and the making of laws their method for keeping the people in subjugation. Hence, the discipline of law originated in the desires of one

class of persons to plunder and enslave others and to hold them as property.

I say this because, speaking of the history and principles of human rights, it is also important that we understand the origins of government and the evolution of law. For obvious reasons this is not taught in law school, but as humanity wised up, the old system of law, that without a moral compass which evolved to legitimize the authority of a few to keep the rest as property, had to give way to a more evolved system of law. This is what we know of today as human rights law, and as its purpose is to protect the individual from arbitrary rule and to secure an effective remedy against undue governmental interference, we can see it as the very antithesis to this older system of law.

Small wonder then that the history of human rights reveals a constant battle between those whose primary ambition is to maintain the status quo and those whose motivations are guided by a more profound loyalty to humanity at large. For even if the servants of the status quo come and go, the old system of oppression remains intact to this day, and so we still find an interesting dynamic playing out between those jurists who would prefer their profession to remain devoid of moral and intellectual integrity and those who aspire to represent the *ideal of justice* rather than our rulers' arbitrary, self-serving idea of it.

Now, there are nuances here that we shall not go into, but to simplify the former is represented by the positivists and the latter by the natural law tradition. The positivists tend to focus on the law *as it is* while the naturalists are more concerned with the larger picture and seeing the law *as it should be*. And while the former see the concept of inherent human rights as a highly suspect one, it is the latter tradition that has inspired our conventions and constitutions. David Bergland, former presidential candidate for the United States Libertarian Party, explains the fundamental difference:

*“Under positivism, there logically cannot be, should not be, and are, no limits on government because it is the source of*

*rights and the power to protect those rights. Why do I call it a fallacy? For the reason that acceptance of this view deprives us of any effective defense of the ultimate political value: liberty for ourselves as individuals, while leaving the field open to all forms of dictatorship and slavery. Positivism leads to totalitarianism in practice because it recognizes no logical way to argue against any exercise of government power over the individual. It leads to draconian limits on freedom of speech, press or any kind of dissent, to mass murder of dissidents, and to economic and environmental disaster as demonstrated in Nazi Germany, the former Soviet Union and Eastern Europe.*

*The post-World War II War Crimes trials in Nuremberg illuminate the issue. The Nazi defendants claimed they were merely enforcing the law of the State, just following orders issued from the legitimate heads of the German State. That should be a valid defense in a purely positivist regime, but not one where natural rights views predominate. Indeed, the convictions at Nuremberg could only be sustained on the basis that the individual victims had rights superior to what the Nazi government recognized and that those rights had been violated by the defendants while carrying out the State orders to exterminate them.*

*The consequences of consistently applied positivism in practice are anti-liberty, anti-rights, anti-human and anti-life. Anyone who values liberty and the flourishing of individual human beings in conditions of peace and abundance must begin by rejecting the view that it is morally appropriate for government to act in every situation that displeases us.”<sup>10</sup>*

While this summary serves to point out the danger represented by the positivist tradition, it must be stated that most positivists do recognize

that there are limits to the government's just intrusion in our lives. In fact, human rights law being acknowledged as the supreme law of the land, any decent minded positivist will accept the boundary put upon the State by the International Bill of Human Rights. Nonetheless, there are quite a few lawyers out there who call themselves positivists and who use this term to justify and legitimize any transgression of the State on our catalogue of rights. Such jurists care little about the morality of their actions, for as they see it morality is not their business. Their sole ambition is to serve the status quo, and to make a living of other people's misery.

Looking back at history we find that, in defense against some vaguely defined threat, such jurists have endorsed everything from genocide, slavery, segregation, torture, to drug laws, and while the natural law jurists have had no other ambition than to see the principles of justice rule supreme, these positivists have always opposed having government policies subjected to the test of reason. Not explicitly, of course, for they have usually given lip-service to the very same values, norms, ideals and principles that the rest of us adhere to. Still, nothing has threatened the men of power more than having their practices compared to the standards and principles of human rights law. Such principles as those of equality, proportionality, and non-arbitrariness have the power to expose our rulers' oppression and deceit for what it is. They have the ability to illuminate any distance between theory and practice that our rulers would prefer to keep hidden, and so our authorities have in practice sought to limit the influence of these principles. As a result, their light has never been allowed to fully shine forth, for the men of power have put great effort into maintaining a culture of impunity by seeking to control the institutions that were created in the name of human rights law.

While never officially recognized, this mechanism is no less in effect today than it was 300 years ago. No matter where we look, then, we find our bureaucracies caught in a tug-of-war between those officials who unyieldingly seek to advance the progress of human rights law and those

who are guided by more ignoble incentives. The former have sought an open, enlightened examination of the facts, one that allows the truth to come forth no matter what, while the latter have opposed any such thing. Knowing intuitively, if not intellectually, that their position cannot be rationally defended, they have sought the power to define phenomena; they have relied on misdirection, cover-ups and outright lies in order to avoid unpleasant truths; they have let arrogance, prejudice, and ignorance inform their policies; they have encouraged fallacies and narrow-mindedness in order to promote self-serving agendas; and they have attempted to water-down our catalogue of rights until it is void of all content. Thus they have, for a while, managed to keep the light of reason from interfering with their power games, but even though they may have represented the majority of our officials, others have had truth on their side.

Now truth, as the old saying goes, may live a wretched life, but it always survives a lie and as a result the truth-seekers have steadily gained ground. The history and progress of human rights law is itself a direct result of this, and now that we know better than to leave it to our authorities to protect our catalogue of rights, we shall have a further look at what it entails.

# 3

## THE INTERNATIONAL BILL OF HUMAN RIGHTS AND THE DRUG LAW

*“Ignorance, neglect, or contempt of human rights, are the sole causes of public misfortunes and corruptions of Government.”*

—*Declaration of the Rights of Man and Citizen, 1789*—

IT WAS ONLY AFTER the atrocities of the Second World War, with the formation of the UN, that the issue of human rights was taken seriously and elevated to its proper place by our governments. The concept, however, is not a new one and our human rights conventions are nothing more than the natural result of Enlightenment Era thinking. The French Declaration of the Rights of Man, referred to above, mirrored this. It was among the first of its kind\*, and as “ignorance, neglect, or contempt of human rights” was believed to be “the sole cause of public calamities and corruptions of government”, its authors put together a declaration which intended to remind the government of its duties.

The purpose of the first human rights declaration was thus to establish “the natural, unalienable, and sacred rights of man”. It set a standard the State had to abide by to be considered legitimate, and based

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\* The Virginia Declaration of Rights, the precursor to the American Bill of Rights, was written in 1776 and preceded it.



upon simple and incontestable principles it formulated articles whereby our grievances could be addressed.

Later human rights conventions only elaborate on this thinking. The gist of it is that all people are born equal; that we all share the right to life, liberty, and the pursuit of happiness (which means a right to develop our character, our uniqueness, our skills of reasoning, and our inherent potential) and that we have the same rights and obligations towards each other. Furthermore, the State shall guarantee the protection of our rights. As we saw earlier, it shall serve the public/the greater good and see to it that no group of privileged few interferes with and infringes on the rights of others. It shall ensure the most appropriate distribution of benefits and burdens, and to the extent that our inherent freedoms shall be limited it must be because compelling societal considerations make it necessary.

Our laws, then, shall be a mutual protection against injustice. And, as Rawls's first principle of justice holds, each person is to have an equal right to the most extensive liberty compatible with a similar liberty for others.

In short, this is the essence of the social contract we have made with each other. I say "each other" because in this equation the State is a non-entity. It has no rights of its own, it is only a service apparatus constructed for the purpose of securing our catalogue of rights and ensuring that the machinery of society functions optimally—and that's all. The slogan of the French Revolution "Liberty, Equality, and Fraternity" sums up the essence of the modern project, and it is as a result of this thinking that the human rights conventions have come into being. While some of these conventions, like the European Convention of Human Rights, only apply to the inhabitants of certain nations, citizens of the world are all protected by the United Nations' International Bill of Human Rights. This includes the Universal Declaration of Human Rights, as well as a couple of other conventions

(or Covenants, as they are called)\*, and when we discuss human rights, we refer to a set of standards outlined in this Bill; standards that define certain minimum criteria that all laws must comply with in order to ensure human dignity.

Now, there are a lot of different articles in this Bill of rights, and we shall familiarize ourselves with quite a few of them in chapter 4. These articles, however, are all part of a greater picture, for human rights being indivisible, interrelated, and interdependent, they must be seen as a greater totality seeking to protect us against undue government intrusion in our lives.

As we just saw, the State has an unfortunate tendency to expand its sphere of influence at the expense of ours. Human rights law recognizes this, and so it establishes a set of principles and norms intended to protect the individual against unlawful actions from the State. While these principles can be given different names, such as that of justice, equality, consistency, rationality, proportionality, and non-arbitrariness, they, in turn, are interrelated and interdependent. That means if a law is discriminatory, it is also disproportional, arbitrary, and unjust, and whether or not a law fails the test of reason depends on a certain set of measurable criteria. We shall now see how the drug laws are measured and found wanting when subjected to this test of reason.

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\* In 1966, two International Covenants on Human Rights were completed. These were the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which effectively translated the principles of the Universal Declaration into treaty law. In conjunction with the Universal Declaration of Human Rights, the two Covenants are referred to as the International Bill of Human Rights.

# HOW OUR DRUG LAWS VIOLATE HUMAN RIGHTS LAW

*“As man develops, he places a greater value upon his own rights. Liberty becomes a grander and diviner thing. As he values his own rights, he begins to value the rights of others. And when all men give to all others all the rights they claim for themselves, this world will be civilized.”*

—Robert G. Ingersoll, lawyer—

WHEN IT COMES TO our drug laws’ explanatory problem towards human rights law, a lot can be said. In fact, when we take the evidence into account, we find that they violate a wide range of our rights as set forth in the Bill of Rights, in that they must be said to be incompatible with the very concepts of equality, fairness, proportionality and justice such as we have come to accept the application of these principles and standards in an open and free society.

In the next chapter, we shall see how the different articles of the Bill of Rights are incompatible with prohibition. What we shall do here is say a few words about the criteria that all laws must comply with and then we shall present a case which revolves around the more fundamental principles of human rights law. We just mentioned a test of reason, and to understand how it invalidates the drug law, we must remember that the fundamental premise from which all else follows is that the individual is to have as much freedom, responsibility (these two are deeply entwined), and self-determination as practically possible. In order to justify any limitation on our freedoms, therefore, the State must prove that “just requirements of morality, public order and the general welfare”

necessitate it.

This means that our officials must demonstrate that the law satisfies the tests of legality, necessity, reasonableness and legitimate purpose. To succeed in this endeavor, they must show that the separation between licit and illicit drugs makes sense and that they have good reasons for criminalizing the illicit drug users. The only way they can do this is by first demonstrating in specific fashion the precise nature of the threat (i.e. the illicit drugs). Then they must show that the drug law is necessary to combat this threat; that it is effective in doing so; and that it at the same time preserves the interests of the individual and society.

Among other things, this means that the prohibition not only must be effective in curbing the supply and demand of the illicit drugs, but that it must be *the least intrusive* instrument amongst those which might achieve a protective function. *All these criteria must be met*, for only in doing so can the prohibitionists demonstrate that the law strikes a fair balance between the rights of the individual and the interests of the community.

This is the essence of the test of reason, and if the State fails to show that the drug law meets these criteria, then we are dealing with an arbitrary, disproportionate and discriminatory practice—and we have a clear violation of our catalogue of rights.

That being said, we shall now have a look at two fundamental principles of human rights law, namely those of equality and proportionality. These principles lie at the very heart of our rights as they are articulated in the Bill of Rights; they are either explicitly or implicitly a part of most of the enumerated rights, and we shall now see how they make our drug laws incompatible with human rights law.

*THE EQUALITY (NON-DISCRIMINATION)  
PRINCIPLE AND THE DRUG LAW*

*“To cheapen the lives of any group of men, cheapens the lives of all men, even our own. This is a law of human psychology, or human nature. And it will not be repealed by our wishes, nor will it be merciful to our blindness.”*

—William Pickens, author—

THIS PRINCIPLE IS AMONG other things articulated in ICCPR Articles 2 (1) and 26, and must be said to be one of the great pillars of human rights law<sup>\*</sup>. It is relevant in this situation because (1) we have divided drugs into two separate categories, the legal and the illegal drugs; (2) there isn't any rational or scientific reason that can explain why they are divided this way<sup>11</sup>; and (3) it's a provable fact that in all cases a health-oriented approach towards users of drugs in either category is the most sensible and reasonable one<sup>12</sup>. Still, while we grant the users of tobacco and alcohol such an approach, we have policies in place that deny the same to the users of such drugs as cannabis and cocaine. And this being so, we have a clear violation of Article 26.

That the illegal drugs pose no greater threat to the individual or society than the legal drugs, is a fact that prohibitionists are likely to

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<sup>\*</sup> This principle is a fundamental part of the International Bill of Human Rights. In the Universal Declaration of Human Rights we find it alluded or referred to in articles 1, 2, 3, 6, 7, 8, 10, 21 (2), 23 (2). In the Charter it is found in the preamble, as well as articles 1 (2), 1 (3) and 55. In the ICCPR the same goes for its preamble and articles 1, 2, 3, 14, 16, 24 and 26.

disagree with. In their minds the illegal drugs are seen to be so horrible that every measure should be taken to protect us from them, and they believe the drug laws to be an indispensable tool in this regard.

We shall later see that they greatly overestimate the value these laws have when it comes to stemming the flow of drugs and discourage their use. Here we merely concern ourselves with the qualities of the drugs, and not the drug laws. And even though the prohibitionists are scared senseless by the mere thought of an overall drug policy that doesn't rely on punitive measures, it's nevertheless a fact that their fears are highly misplaced. Indeed, when we compare the legal and illegal drugs we find that our drug policies are as backward as they could possibly be, being that we not only have criminalised the use of certain drugs, but that we have chosen to criminalise *the least dangerous* ones.

That alcohol and tobacco, in each of their own ways, can be said to be the most deadly and dangerous of all drugs is obviously not generally known. We are born into a world where we have normalised relations with the users of these drugs, and even though we know there are serious risks involved with using them, we by no means elevate these dangers to the point where they—in our minds—can compare to those of the illegal drugs. In fact, many people don't even think of alcohol and tobacco as drugs at all. Instead “drugs”, as we have come to think of it, is a catch-all phrase for the illegal ones; the ones our authorities have told us rob us of our senses and condemn us to a life of crime and misery. And while most of us can appreciate that there is a difference between the use and misuse of alcohol and that this substance has the ability to offer us good as well as bad experiences, our authorities will acknowledge no such thing when it comes to the illegal drugs. Instead, as far as they are concerned, *all use* of these substances equals misuse and all illegal drug experiences are bad experiences.

These fundamental truths of prohibitionist drug-lore are an integral part of the propaganda propagated by our authorities in order to win the people's hearts and minds. Many of them probably even believe it themselves, but for those of us with a firmer grip on reality it is easy to

see the delusional nature of their beliefs.

After all, anyone who is somewhat familiar with illegal drugs knows that their addictive nature, as well as every other danger associated with them, is greatly exaggerated. They also know that their effects (like alcohol) vary according to dosage and that, like alcohol drinkers, the overwhelming majority of users are thankful for the experiences associated with them. In fact, like alcohol drinkers, some 90 percent of these drug users<sup>13</sup> never develop a problematic relationship with their drug of choice—and even those who do know that “addiction”, as our authorities prefer to see it, is an oversimplified concept.

Our leaders, for their part, will not admit to any of this. They have been waging a war against drugs (their users) for quite some time now and if the enemy didn’t turn out to be as bad as they originally thought, the righteousness of their crusade would have to be reconsidered. This they will not risk, for after decades of war the system itself has been so corrupted that the costs of admitting defeat (or worse, that the war never was worth fighting) has become too great for the war-profiteers to consider. As previously discussed, all bureaucracies seek to expand their own influence. System-wise, the internal mechanisms therefore see to it that those so-called civil servants whose primary concern is to help this force feed itself (by enlarging his department or organization’s power and budgets vis-à-vis other competing agencies and the population), will be the ones who get promoted.

This easily explains our leaders’ unwillingness to reconsider the appropriateness of their war effort, as well as the system’s way of dealing with the “deserters”. As the American author Upton Sinclair once said “it is difficult for a man to understand something when his salary depends upon his not understanding it.” And so it is that our leaders, for some 50 years now, have outdone each other in the somewhat difficult task of ignoring the steadily increasing amount of evidence that our drug policies are as failed as they could possibly be.

We shall see more of this later. But to preserve the false doctrines they themselves have embraced, they have relied on an outstanding

propaganda machinery to obscure the facts as much as possible<sup>14</sup>. None of the government-funded researchers have, for instance, been allowed to address the most obvious question of all, namely *why* we have laws against some drugs and not others. In fact, any meaningful comparison between the drugs in the different categories has been carefully avoided. And when forced to reflect upon the popularity of some of the illegal drugs, our leaders have explained it away with it being a combination of the drug user's degenerate moral nature and the demonic powers that drugs hold over them.

This being so, it's small wonder that many of us feel pretty confident in our beliefs that no matter how bad the legal drugs are, the illegal ones must be a lot worse. Still, the evidence that they are not is overwhelming, and when we take a look at the few available statistics that compare the harmfulness of the legal and illegal drugs, we find that there are no rational or scientific reasons that can explain *why* some of them are illegal and others not. The most comprehensive study done on the subject is one performed by the Independent Scientific Committee on Drugs (ISCD). And after studying the 20 most commonly used drugs and comparing them to 16 criteria of harm (where 100 was the worst possible outcome, indicating maximum harm, and 0 was the best possible outcome, indicating no harm at all) they came up with a ranking list that looked like this: Alcohol (72), Heroin (55), Crack (54), Methylamphetamine (33), Cocaine (27), Tobacco (26), Amphetamine (23), Cannabis (20), GHB (19), Benzodiazepines (15), Ketamine (15), Methadone (14), Mephedrone (13), Butane (11), Anabolic Steroids (10), Ecstasy (9), Khat (9), LSD (7), Buprenorphine (7), and Psychedelic mushrooms (6)<sup>15</sup>.

As you can see, there is no relation at all between the overall harmfulness of these drugs and their classification. In fact, in most cases the classification is as backwards as it can possibly be, being that many of the least dangerous drugs are classified as the most harmful ones in the UN drug control conventions.

Predictably, many people will strongly disagree with the conclusions



reached by the ISCD. After all, we live in a world where prohibition has messed with our minds to such an extent that most of us simply cannot accept these findings. That for example alcohol could be more dangerous than heroin, and tobacco more dangerous than LSD (which, according to these scientists, is almost harmless) is so contradictory to our common beliefs that most of us would rather discard the ISCD's conclusions than face reality. Still, the evidence is overwhelming. And the consequences it has for policy and society are so enormous that while ordinary citizens may only do a disservice to themselves and their community in ignoring it, our civil servants, in doing so, can be held criminally negligent.

That our civil servants, in continuing to deny the evidence to the extent they have already done, expose themselves to criminal liability is, as we shall see, no exaggeration. The evidence for the case we are about to make has been available for at least 30 years, and they have done their best to suppress it. In fact, it is no coincidence that the study just referred to was done by an independent scientific committee. As already mentioned, most government-funded research has focused on undertakings intended to strengthen the myths of prohibition. And when honest researchers have opposed this biased approach they have frequently been threatened into submission (for example, with threats of budgetary cuts) or, if this didn't work, they've been forced to resign or fired.

Indeed, it was as a result of these practices that the ISCD was created. The leader of this committee, the psychiatrist and neuropsychopharmacologist professor David Nutt, was previously head of ACMD, the British government's advisory council on drug policy. As chair of this body he advocated a more scientific approach. Among other things he criticised the government for ignoring its own advisory council's recommendations, and after also pointing out that cannabis was a less harmful drug than alcohol and that the use of ecstasy was a less dangerous activity than horse riding, he was fired. As a consequence a handful of other ACMD advisors resigned in protest, and not long after, thanks to a wealthy contributor, the ISCD came into being.

This committee has since been an important promoter of evidence-based drug policies, and in 2012 Nutt published a book called *Drugs: Without the Hot Air* that wholly supports the case we are about to make. As Nutt describes his view of current policies: “[I am] critical of the ‘War on drugs’, not just because this set of policies has caused enormous damage to millions of people around the world, but also because the evidence of the harm it has been causing hasn’t led to a change of approach.”<sup>16</sup>

We shall soon see more to the harms prohibition itself has caused. But there is more to say about the meaningless classification system that serves to uphold current policies, and for those who still have difficulty believing that we have legalised the most dangerous drugs, a look at the death statistics will clarify the issue. For as Nutt says: “Each year tobacco kills 5 million people across the world, while alcohol kills 1, 5 million. By comparison, illicit drugs kill around 200,000 people between them. Even taking into account the much smaller populations who use these drugs, in many cases they are considerably less deadly.”<sup>17</sup>

A study by the British medical journal *Lancet* has more to say on this subject, and after looking at the number of users per drug-related death in Britain, it concluded with the following ranking list: Tobacco (87 users per death); Street Methadone (111 users per death); Benzodiazepines/ Valium (246 users per death); Heroin (428 users per death); Solvents (545 users per death); Alcohol (1000 users per death); Cocaine (3644 users per death); Amphetamine (12.285 users per death); Ecstasy (18.518 users per death). You may notice that drugs like cannabis, LSD, ketamine, and khat are missing from this list even though they are relatively popular. The reason is that the numbers of deaths associated with their use are too few to count.

Granted, there are more that can be said about this ranking list, one criticism being that it only refers to British people’s patterns of drug use. Nonetheless, we see that tobacco is by far the leading death-agent, and while the licit drugs combined kill about 155,000 Britons, the illicit drugs taken together kill roughly 1000 a year.

Now, we just saw Nutt attribute some 200,000 deaths worldwide to

the illicit drugs\*. Even if it is a good deal fewer than the approximately 300,000 which each year, according to American doctors<sup>18</sup>, are caused by prescription drugs in the U.S. alone, this is indeed quite a lot. Still, it is important to understand that most of these 200,000 deaths are not attributable to the inherent qualities of the drugs themselves, but to prohibition. For instance, when we take a closer look at the 25,000 deaths that the National Institute of Drug Abuse (NIDA) lists as a result of illicit drug abuse in the U.S., we find that some 14,300 are due to hepatitis and AIDS, diseases that are not caused by illicit drugs, but by the dirty needles that heroin addicts tend to share.<sup>19</sup>

There is also a myriad of other ways by which prohibition kills, which we will return to later. The point here is merely to bring this fact to your attention, and it therefore follows that if anything is wrong with the ISCD ratings, it is the fact that the illegal drugs in their comparison to the legal ones are disadvantaged by their mere status.

You see, the ISCD evaluated the dangers of these drugs as they appear under prohibition and as much of their harmfulness is the consequence of their illicit status, it's not really a fair comparison. For example, when it comes to heroin, one could say that prohibition accounts for most of the points it scored. There is, after all, to quote Brechter, "general agreement throughout the medical and psychiatric literature that the overall effects of [this drug] on the users' mind and body under conditions of low price and ready availability are on the whole amazingly bland."<sup>20</sup> And if it wasn't for the regrettable mechanisms prohibition sets into swing, their drug habits would have been a lot less problematic for both drug users and society at large.<sup>21</sup>

How much less problematic is impossible to predict. But we see that methadone scores only 14 points on ISCD's rating on overall harm and this is certainly indicative. Many people actually consider this drug to be more addictive than heroin and since it is also more harmful for the body, heroin would probably, under legal circumstances, rate even lower.

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\* This is likely to be an exaggeration as, according to the WHO, there were 157,800 deaths attributed to illicit drugs (all causes) in 2010.

Again, this reasoning is impossible for most prohibitionists to wrap their minds around. They are used to seeing this drug as the most destructive one of them all, and they don't understand that almost everything they associate with the life of a heroin addict (the crime, the prostitution, the sickness, the lifestyle, the overdoses) is the result of prohibition—and not the drug itself. Still, the evidence is unambiguous, and there is no doubt that our drug laws represent a highly discriminatory practice.

Some may argue that this is OK. After all, the Conventions don't explicitly grant us a "right to use drugs" and neither do they explicitly prohibit discriminating practices in the field of drug policy. This counter-offensive from the prohibitionists, however, will—like the drug laws themselves—not stand up to scrutiny, for the principle of non-discrimination is of *a general character*, something the UN Human Rights Committee itself has pointed out:

*“The committee believes that the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms.”<sup>22</sup>*

The Committee then goes on to say that:

*“[Article 26] prohibits discrimination in law or in fact in any field regulated and protected by public authorities. [It] is therefore concerned with the obligations imposed on State's parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a*

*State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for by the Covenant.”*<sup>23</sup>

As we can see, the Committee itself has taken a broad view of this provision, relating it to all provisions of law, and it is adamant that all “distinctions drawn by law must be based upon reasonable and objective grounds”<sup>24</sup>. Hence, there can be no doubt that the principle of non-discrimination also must be applied to the field of drug policy, and now that we have established this, it is time to bring the proportionality principle into the equation.

### *THE PROPORTIONALITY PRINCIPLE*

*“The state should be able to demonstrate that it has good reasons and has proceeded rationally and with attention to the adequacy of less rights-invasive alternatives before putting a person in jail. Proportionality holds the promise of ridding the criminal law of irrational, arbitrary, and unnecessary restrictions on the negative liberty of accused persons. . . . Proportionality is the discipline that constitutional law can bring to the criminal law.”*<sup>25</sup>

—Kent Roach, Professor of Law—

THIS PRINCIPLE IS ANOTHER important pillar of human rights law.\* And it being somewhat entwined with the equality principle, we now need to take a closer look at this if we are to fully determine our drug laws' relationship to the equality principle.

The reason for this is that the conventions do not prohibit unequal treatment per se. And when we think of it, there are many examples we can find in which the State has adopted a certain set of policies for one segment of the population and another for the rest; tourists or refugees, for example, don't enjoy the same catalogue of rights as natural citizens of a country, and minorities sometimes receive preferential treatment.

These kinds of policies are fully within the limits of human rights law being that they have a purpose and an objective which is legitimate under the conventions, for as the Human Rights Committee itself put it: "the principle of equality sometimes requires State's parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant."<sup>26</sup> Consequently, the only kinds of differential treatment the conventions frown upon are those "distinctions, exclusions, restrictions or preferences . . . which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms"<sup>27</sup> in any field of public life.

If our leaders, then, can say something sensible about *why* we, as a society, should punish the users of heroin and cannabis while we permit the use of alcohol and tobacco, the drug laws are not incompatible with human rights law—and they are free to continue their prohibitionist policies.

It basically comes down to this simple question. However, prohibitionists seem to be left with an insurmountable task, for as

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\* Like the equality principle it is a fundamental part of the Bill of Rights: in the Universal Declaration of Human Rights we find it implicit or referred to in articles 9, 12, 15, 17 (2) and 29 (2) and in the ICCPR the same goes for articles 2, 4 (1), 5, 6 (1), 7, 9 (1), 11, 12 (3), 17 (1), 18 (3), 19 (3), 21 and 22.

Douglas Husak, a professor of law, concludes after reviewing their arguments: “Many attempts to answer this question have been made; none is persuasive.”<sup>28</sup>

This being so, we can safely conclude that we are dealing with a clear violation of the equality principle.

But, one might ask, what if our leaders were to criminalise drugs like tobacco and alcohol? Would their prohibitionist policies then be OK? The discriminatory aspect would then no longer be a problem, and so perhaps it is possible to continue the prohibition provided we criminalize all drugs?

The answer is no. And the reason for this is related to these laws’ incompatibility with the proportionality principle.

To elaborate, we live in a society which fundamental aim is to offer the individual as much control over his/her own life as practically possible. This principle is the very foundation our contract with the State is built upon and our constitutions as well as the Bill of Rights are a testimony to this fact. We can therefore measure any State’s legitimacy according to this principle and to the degree it knows its place in the grander scheme of things.

Unfortunately, however, it’s an undeniable fact that most states have been quite unsuccessful in achieving anything near an ideal balance in this regard. After all, such a balance is only achievable in a society in which every individual is seen as equally important and the State is equally concerned with protecting/enhancing the life, rights and dignity of each and every one of its citizens, regardless of class distinctions.

Our leaders, of course, will profess that this is the case. They have embraced these concepts intellectually and pledged themselves to the realisation of such a perfect world in accordance to their obligations under the U.N. Charter and the conventions. To admit that it in fact wasn’t so, would be to admit that the State didn’t comply fully with its obligations, and this is something our leaders are not likely to do. No matter how bad their human rights record is, they will therefore, like they have done for centuries, predictably argue that whatever interference and

whatever law they adopt and enact is always for the good of the nation.

Still it isn't always so. And the simple reason for this is that even though our officials will beg to differ, our governments are not the pure and benevolent instruments of reason and the people's will they pretend to be. Even though we have come a long way since the old days when the king had a "divine right" to rule as he pleased; the aristocracy had rights according to their wealth and status; and the people below them were left with no rights at all, we still haven't matured to the point where we as a society can live up to the standards we have set for ourselves. It is in name only that we have a government for the people, by the people, and with the people, and in reality the state apparatus is more like a conglomerate of powerful and competing elite-factions struggling to enlarge their influence on the body politic.

This is of course something of a simplification. But the point is that we still live in a highly hierarchical society and that certain elite groups have a lot more influence over the political process than any array of ordinary citizens could ever, yet, dream of exercising. These elite groups are usually way more concerned with protecting their own special interests than anything else, and as a result the state apparatus becomes a machine which the most powerful groups seek control of in order to maximise their influence and realise their own short-sighted ambitions. So it has been for centuries, and so it is today. And as long as it remains so, the state apparatus will have a tendency to expand its reach according to these special interests' ambitions.

The only way for such a dynamic to unfold is for the State to adopt and enforce such policies that restrict the fundamental freedoms of ordinary citizens. We have already seen that the only way a government can enlarge its freedom of action is to reduce the freedom of the individual. And the Bill of Rights, therefore, in recognizing this fact, provides us with a yardstick intended to protect us from undue restrictions placed upon the individual by authoritarian State laws.

This yardstick is expressed in the equality and the proportionality principle. As mentioned earlier we are to be given as free reign as



practically possible, and Article 29 (2) of the Universal Declaration elaborates further on the standards our government's laws must comply with:

*“In the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.*

As we can see, for a law to be acceptable its purpose must be to protect our rights of person (our right to life, liberty and the pursuit of happiness) and property against injustices forced upon us by other individuals or institutions, and the law/restriction itself must be no more repressive or severe than absolutely necessary for the general welfare of a democratic society. This idea of justice is pretty simple and great thinkers like Spencer, Kant, Mill, and Rawls have elaborated upon it.

Our laws, in other words, shall be *a mutual protection against injustice*. And when prohibitionists try to defend the drug laws according to these criteria, their argument is that the illegal drugs present such a threat to the individual and his surroundings that these laws are necessary not only in order to save the individual from himself, but also his surroundings from the evil (meaning the dehumanising and demoralising) effects these drugs have on his person.

They feel pretty confident that without these laws everything would go to hell, and so they have no problem believing that these laws, in turn, are compatible with the provisions raised by the principle of proportionality. After all, no matter how bad it is, they will argue that without these laws everything would be worse. And so, when confronted with the yardsticks of the proportionality principle (is there a legitimate aim to the interference; is the measure suitable or appropriate to achieve the desired end; is the interference proportionate to the identified aim and necessary in a democratic society) they will in all cases argue “yes”,

believing, as they do, that all things considered the drug laws strike a fair balance between the rights of the individual and the interests of society.

They are, however, as wrong as they can be. But before we elaborate on these laws' incompatibility with the proportionality principle, we need to take a look at the destructive consequences they have had for us as a society.

### *OUR DRUG LAWS' DESTRUCTIVE EFFECTS AND CONSEQUENCES*

*“Liberty has never come from government. Liberty has always come from the subjects of government. The history of liberty is the history of resistance.”<sup>29</sup>*

—Woodrow Wilson, U.S. President—

WE HAVE ALREADY SEEN that the illicit drugs are far less dangerous to the user and society than the prohibitionists imagine them to be. Any thinking person can therefore conclude that if the regulated supply of drugs like alcohol and tobacco hasn't already brought our civilization to its knees, there is no reason to believe that the regulated supply of other drugs will.

This simple reasoning, unfortunately, will not convince the prohibitionists. Despite the evidence they keep insisting that there is something about the illegal drugs which makes them exceptionally dangerous, and they will rarely listen to anyone who tries to convince them otherwise. This explains why they don't immediately see the parallels between the 1920s' alcohol prohibition and today's narcotics prohibition. And it also explains why our leaders, while readily agreeing that alcohol prohibition was a failed social experiment which no one

seriously considers returning to, in their next breath—and with a straight face—will argue the exact opposite when it comes to our experiment with drug prohibition.

Still, the lesson is obvious for those who are not blinded by the fear that the oversized enemy image of “drugs” seems to instil in prohibitionists’ minds. And for those with eyes to see, it is clear that the arguments which could be used in favour of abolishing alcohol prohibition with infinitely greater force can be directed at today’s prohibitionist regime. After all, the problems caused by alcohol prohibition were infinitesimal compared to the consequences which have manifested in the wake of narcotics prohibition.

The reason for this is that humanity basically is one giant organism; what we do to others always has consequences for ourselves, and as the war on drugs/alcohol is nothing but a war on human nature/ourselves, it should be pretty obvious that the harder we fight this war, the harder we will lose. It’s really that simple. The history of prohibition reflects this fact and so, as alcohol prohibition was an extreme “light-version” of the war we fight today, it follows that its destructive consequences, while serious and unfortunate indeed, was nothing compared to the damage done to us by the war on drugs.

When it came to alcohol prohibition, the law-and-order approach, for instance, was much less repressive; the budgets which went to enforcement were comparatively small, the punishment for violating the law was much less severe, people were allowed to drink in their home, and very few smugglers or sellers actually went to jail for any length of time. Still, the criminalization created many problems. As one would expect the black market brought with it obvious and predictable consequences like a sharp rise in alcohol-related death and disease. And while having to buy their goods from gangsters who sometimes sold them poisonous drink first and foremost was the users’ problem, the underground economy became society’s. As historian Hugh brogan said:

*“The price of official righteousness always comes high and*

*in case of alcohol prohibition some \$2 billion worth of business was transferred from brewers and bar-keepers to bootleggers and gangsters who worked in close co-operation with the policemen and politicians they corrupted. Blackmail, protection rackets and gangland murders became all too common and no one was punished.*”<sup>30</sup>

And while alcohol prohibition, in sum, was nothing but a politician’s gift to organized crime, being that it neither could stop demand nor make as much as a dent in the supply chain apparatus, this was all trifles compared to narcotics prohibition. After all, while alcohol prohibition was a limited national effort which lasted some 10 years before politicians finally put an end to their insane policies, drug prohibition is a worldwide effort which has been given free and expansive rein for more than 50 years.

Looking back, the budgets spent fighting this war are measured in trillions of dollars. Still we are no closer to controlling either the supply or the demand side of the illicit drug trade. Instead, drugs today are not only more available, but they are cheaper and of better quality than ever,<sup>31</sup> and on the demand side we find that drug use is more widespread and socially accepted than before<sup>32</sup>. In other words, it is clear that the war on drugs, in its own terms, has failed miserably.

We must not forget that it was the supply and demand side that the law-and-order approach was supposed to do something about. And yet it has proven itself to be not only a useless approach, but also a completely misplaced and unacceptable one by any objective measure. After all, we are further away than ever from the ideal of a drug-free society which it was supposed to bring into being. Instead all it has done is to enable some seriously destructive mechanisms to thrive, and even though it is impossible here to present a decent elaboration of all the detrimental unintended consequences our prohibitionist regime has had for the drug law violators and society at large, a brief summarization will look like this:

- The war on drugs has created an enormous underground economy which every year generates some \$400 billion in profits.
- This black economy has given rise to the greatest criminal enterprise the world has ever seen.
- Organised crime does not exist in a vacuum; it can only expand at the expense of the rule of law, and its increasingly corruptive influence has now grown to such proportions that it not only threatens to undermine the government and stability of nations but, in fact, our entire civilization.
- The underground economy is mostly controlled by intelligence agencies, warlords, and shady elite-players. These anti-social forces depend on this economy to feed their own power-political ambitions and they see to it that the profits generated from the drug trade are spent on terror operations, as well as maintaining the hundreds of low-intensity wars which are constantly being fought. In addition to this, the drug trade also ensures that a lot of other disreputable/illegal businesses continue to thrive.
- In the black market there is no law-and-order apparatus available to settle disputes. Instead one is left to fend for oneself and so mechanisms are set into swing in which the most cynical and ruthless individuals come out on top.
- This again makes threats, kidnappings, violence and murder commonplace. And although it is impossible to estimate or imagine the amount of suffering and hardships this has caused millions of people, it's safe to say that hundreds of thousands have died unnecessarily as a consequence of this underground economy<sup>33</sup> (the OAS estimates that roughly 150,000 in Latin America alone every

year as a result of prohibition).

- People, in general, have an unwholesome faith in authority. They rarely know how to question the legitimacy of the laws that govern them, and so stupid and inhumane laws also tend to make people stupid and inhumane. For prohibitionists, for example, the drug law represents everything they hold dear and think is worth protecting, and so it is that its violators come to represent the opposite.
- The drug laws therefore create mechanisms that increase hostilities between people. To prohibitionists drug users symbolize everything that is wretched and evil in this world and so they tend to be scared of them and to treat them as if they were public enemies. The drug users, in turn, react defensively and return the contempt/hatred they feel exposed to.
- The example just mentioned is a reminder that the drug laws breed not only discrimination, violence and death, but also ignorance and fear. Normally, any responsible government would wish to end such an unfortunate social mechanism but instead our leaders encourage it, being that it is a prerequisite for their prohibitionist policies' credibility.
- Any government which is devoted to the status quo and intends to keep policies in place which depend on people's fear and ignorance to exist will have no choice but to use its propaganda apparatus to dumb people down and alienate them from each other.
- This is exactly what our governments have done for the last 50 years, for their reliance on a moral panic and an oversized enemy image to maintain their policies has made them encourage and feed the ignorance and fear these policies yield. In doing so they have not only disgraced themselves and done a great disservice to the

people, but they have also violated ICCPR Article 18, which protects our freedom of thought, as well as Article 20, which holds that “any propaganda for war shall be prohibited by law”.

- It is not only by creating a giant underground economy and relying on a moral panic/exaggerated enemy image that the drug laws have corrupted the fibre of our society. As organisational theory confirms any bureaucracy’s primary concern is maintaining or enlarging its budgets as well as increasing its sphere of influence, and so the trillions of dollars our governments have spent fighting the war on drugs have had a very unfortunate effect upon the state apparatus itself.
- The logical conclusion to be drawn from organisational theory of the mechanism mentioned above will be that the police, as an agency of the State, in its very nature will strive towards the creation of a police state. This, of course, is a taboo topic. Nonetheless, history confirms this beyond serious dispute and the trillions of dollars allocated to the “drug warriors” have as such constantly fed and encouraged the more totalitarian aspects of the state apparatus.
- Thus, as any serious drug war researcher will confirm<sup>34</sup> the only segments of society which has thrived as a consequence of the drug laws are the war profiteers and organised crime. These forces have a common interest in maintaining the status quo and as a result ordinary citizens and defenders of a free and open society have been under constant attack from both sides for the last 50 years.
- This unfortunate dynamic explains why our drug laws are such a dangerous threat to our civilization. And as long as these laws exist, these destructive forces will gain momentum and more and more rapidly destroy what is left of our open and free society.

- People tend not to notice any of this because the transfer from an open and free society governed by the rule of law to a police state is gradual. The transfer to a police state therefore goes unnoticed and neither the populace nor the state representatives will object to it.
- Still, the evidence is there for anyone who cares to see. And while the war on drugs has been a gross failure measured by its explicitly stated goal (a drug-free world) it has succeeded greatly in demolishing our catalogue of rights and fundamental freedoms.<sup>35</sup>
- In fact, at no point in history have our governments interfered in our lives to such an extent as today, never before have so many of us been imprisoned, and never before we have so willingly surrendered to the strong arm of the State.
- The enemy image of “drugs” (and “terror”) has been used against us with such precision that it to a large extent has destroyed our ability to think clearly. So dumbed down and so afraid have we become that the majority of us now accept such idiotic concepts as “pre-crime” and “preventive war”, as well as our officials' absurd reasoning that we “must give up our freedoms in exchange for security”. America’s founding fathers, of course, warned us against such despotic reasoning, arguing that those who consent to such stupidity “deserves neither freedom nor security and shall soon lose both”.
- Indeed we have. And we are now stuck with an oversized government apparatus consisting of incompetent and corrupt officials who no longer are content with being mere civil servants. Instead, they not only think it their natural right to meddle with the most intimate aspects of our lives—our own consciousness—but



when we complain about their abusive policies and seek recourse in the Bill of Rights, they have also ensured that we are denied this\* .

- It is, in other words, clear by now that our giving up our freedoms (as the founding fathers promised us) was a one-way deal, for as a consequence of our leaders' backward policies (the war on drugs and the war on terror) we are less secure than ever.
- The war profiteer's search for enemies—real and imagined—has not only increased instability and unaccountability in political and social systems around the world, but it has also taken its toll on ecosystems and financial systems as well.
- Another adverse aspect of the drug war is that the criminalisation of drug use has increased harm to users<sup>36</sup>. As a consequence of the lack of quality control one never knows what one ingests and this again dramatically increases the amount of health-related problems and overdoses/deaths.
- The criminalisation also creates patterns of drug use which are highly unfortunate. One reason for this is that the more potent the drug, the more profitable it is to traffic. As a result heroin and cocaine becomes available everywhere, while the less harmful version of these drugs (opium and coca leaves) is impossible to get hold of.
- Another reason for the unfortunate patterns of drug use is that there is no credible information from authorities on the proper use of illicit drugs. As a result people are more likely to experiment with

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\* This is a long story that is elaborated on elsewhere, for example in Roar Mikalsen's *Reason Is*, his December 21, 2012 communication to the UN Human Rights Committee and his January 1, 2015 communication to the UN Secretary General (all found online).

them in senseless ways.

- These unfortunate dynamics have led to increased spread of infectious disease. It is for example estimated that drug use/shared needles is the cause of one out of every three new instances of HIV/Aids in the world (except for the area south of Sahara in Africa).<sup>37</sup>
- Another problem caused by prohibitionist reasoning is that it gives the illicit drugs a reputation of having some form of devilish power which is supposed to make the user a mindless victim under its spell. The user himself is prone to accept such myths and so chances are that (1) he will use these drugs less responsibly than he normally would; (2) he will more easily become addicted; (3) he will more likely stay addicted; and (4) he will be encouraged to blame the drug, rather than himself, for all his stupidities.
- The criminalisation of users also exposes them to a downward spiral being that they not only become criminals by definition, but also must deal with criminals. If, for example, they for some reason end up owing money (which they most probably will, either as a result of police arrests or a thousand other factors) or are unable to afford their expensive habits, they are likely to become dealers themselves or engage in other criminal activities (stealing, robbery, prostitution) to survive.
- Prohibition, in other words, generates *a lot* of crime<sup>38</sup>.
- The backward and unscientific classification of the illicit drugs vis-à-vis the legal ones have not only created irrational fears regarding the illegal ones; it has also diverted attention from the dangers of alcohol and tobacco, as most people are under the false assumption that these drugs are safer and less harmful.

- Many of the illegal drugs (e.g. cannabis, heroin, cocaine, LSD, mushrooms, amphetamines, ecstasy) have medical properties and their criminalisation makes these drugs unavailable for such use.
- The criminalisation of such drugs has held back medical research.
- It has also caused many thousands of terminally ill people to die in unnecessary agony just because doctors are afraid to lose their licence—or go to jail—if they prescribe effective pain medicine.
- The criminalisation of these drugs has also forced people to use legal prescription drugs which in many cases are worse than the illicit ones—and less effective.
- The line between medical and recreational use is a blurry one. Most recreational use can be considered medical being that it makes people feel happier, more focused, more content, more comfortable, more relaxed, less in pain, etc.
- Our strict separation of medical and recreational use not only makes no sense but it has made it impossible for people to deal with their pains and illnesses properly.
- In fact, it's a curious coincidence that we have outlawed exactly those drugs which people for thousands of years have used to heal themselves. And that we in criminalising self-medication—which was the norm until the beginning of the 20<sup>th</sup> century—have created a highly lucrative business for the medical profession and the powerful pharmaceutical companies.
- In giving up our right to self-medication we have given away the responsibility for our health to a higher authority. We have done so

in much the same way as Christians in the old days (and some still) gave away the responsibility for their salvation to the Church, and even though there are plenty of good and decent doctors out there (just as there are good and decent priests) this was a very foolish thing to do. After all, every time we give our power away we become a little more enslaved. And we should know by now that whichever class of people we put on a pedestal and blindly put our faith in will take advantage of its privileged position and seek to expand its sphere of influence.

- The result of us giving up our powers is evident everywhere. We have already seen how politicians and other civil servants have misused the power entrusted them, but also the medical profession has been eager to take advantage of the drug laws. The rehabilitation clinics and the addiction maintenance/treatment programs are examples of this. And while there are many medical professionals who have had enough wisdom and integrity to expose the myths which prohibitionist drug-lore is built upon, most people in this profession have accepted these myths as truths. For instance, very few of them have complained about the absurdity of classifying any use of illicit drugs as “misuse”; instead they have argued for more rehabilitation clinics, and the fact that most people have been forced into them as a result of prohibitionist reasoning has apparently been lost on them.
- In addition to this, the addiction maintenance programs have been an absurd and vulgar practice being that all it has done is force the users to give up their favourite opiate (heroin) in exchange for another and more harmful one (methadone). Thomas Szasz, a distinguished professor of psychiatry, pointed out the ridiculousness of such practices:

*“The modern zeitgeist [is] our seemingly limitless fear of and faith*

*in drugs. The fear explains our timidity towards opiates; the faith, our belief that the habitual use of one narcotic (heroin) is a disease, which can be successfully treated with another narcotic (methadone). Grounded in pharmacomythology, not pharmacology, these fears and faiths cannot be dispelled by common sense or medical experience. Instead, we live according to the old adage credo quia absurdum est (I believe because it is absurd), which we find comforting because the credo lists the burden of responsibility for our bad habits from our shoulders. Using one narcotic to cure the addict by taking another narcotic authenticates the doctor's expertise about habit-forming and habit-curing drugs, legitimises them as pharmacological miracle workers, and makes them steadily more indispensable as suppliers of new controlled substances.*"<sup>39</sup>

The sum of all this makes prohibition not only a pathetic, but highly dangerous and inhumane practice. And even though much of this may be news to some people, these points do not in any way exaggerate the destructive consequences brought upon us by prohibition. The further evidence for this is available in numerous books, expert testimonies and reports, and the evidence being unambiguous and overwhelming, our officials would do wisely in recognising the seriousness of the status quo.

Not only do they have a duty to do so, but even though these laws have been quite profitable for everyone involved with enforcing them, the police, the politicians, the courts, the prison authorities and the jurists, just like everyone else, would be far better off without them. Prohibitionists of course may disagree, but no one is really served by the enforcement of inhumane laws. And as it has steadily chipped away at such enforcers' credibility for more than 50 years, our officials have an obligation not only towards the civil population and the rule of law, but also to everyone involved with the law as a profession to deal with these alleged human rights violations properly.

Now we must bear in mind that this list is not complete. It just sums

up the most obvious of the side-effects of prohibition, and we have said nothing of the perverse consequences that is the result of its *explicitly* stated goals—namely to put as many drug law violators as possible behind bars for the longest possible amount of time.

This consequence of prohibition must also be elaborated on, for we should not forget that the criminalisation of hundreds of millions of non-violent people has deprived a steadily increasing percentage of the population of their freedom. Their numbers are at present measured in millions, and we have not only made life a living hell for those people, but also their families and loved ones. The hardships, the pain, and the suffering these people have had to endure because of prohibition is not only unspeakable but a sad testimony to the price our officials are willing to pay in order to preserve their ignorant policies and their image of themselves as moral crusaders fighting a righteous cause. Imprisonment, after all, is the worst and most punitive measure the State can avail itself of and any decent society would wish to limit its use to a bare minimum.

The reason for this is that, as any thinking criminologist will confirm, prisons are places where the most destructive social mechanisms are set into swing, and to the degree we avoid exposing people to such conditions everybody will be better off. Our willingness to expose non-violent people to such hardships is therefore the most visible and concrete example of how prohibition destroys our ability to think. After all, very few of us have any problem accepting it, and empathizing with these miserable souls would indeed seem like a strange and foreign concept to most prohibitionists.

The simple reason for this is that they are overwhelmed by the power of an exaggerated enemy image and therefore have lost their ability to put two and two together. We have already been introduced to their confused reasoning, being that, as they prefer to see it, the drug users are the victims of a menacing evil which threatens to destroy us all. In their minds, therefore, these people should be thrown in prison or forced into rehabilitation for their “own good”. And while they may have some pity left with these “victims”, the people who provide them with their drug of

choice are seen as the ultimate enemy. Many countries consequently have death penalties for such “crimes” and even if authorities in more civilized parts of the world won't go that far, they see no problem in dealing out sentences which are more severe than those offered murderers and rapists. The viciousness and manifest absurdity of such laws is lost on them because, according to their line of thought, the victims of their trade are measured in the millions.

Nevertheless, it is an undeniable fact that it is exactly the same supply and demand mechanisms unfolding when it comes to the illegal drugs as with the legal ones. This, of course, is something prohibitionists are most unwilling to comprehend. But if they did, they would recognise the dim-witted and inhumane policies they have been supporting and promoting for what they are. It would then be embarrassingly clear to them that the drug law violators, those “evil and cynical dealers in death”, were in fact no more cynical and depraved than anyone involved with the supply-chain of alcohol and tobacco. And that they just as well therefore could support criminal policies which sought to put people like this (the farmers, the brewers, the truck drivers, the salesmen, the bar-keepers, and—most likely—themselves) behind bars for the longest possible amount of time.

This simple logic is, of course, infinitely hard for them to grasp. But understanding this, the next logical step would be to come to grips with the fact that the drug law enforcers actually were a lot more “cynical” and “evil” than the drug law violators could be said to be, for while the latter merely have provided people with a service they want, the drug law enforcers have done so much worse. In their enforcement of these laws they have tapped people's phones, opened their mail, spied on them, searched their houses, stripped them naked, performed cavity searches on them, demonised them, discriminated them, stigmatised them, terrorised them, fined them, confiscated and destroyed their property and their valuables, forced them into “rehabilitation”, jailed them, taken their children from them, destroyed their education and work possibilities, threatened them, humiliated them, beaten them, shot at them, killed

them—and at last, after more than 50 years of these despotic and discriminatory practices, when the drug law violators finally have had enough of such abusive behaviours and sought to set things straight in accordance to human rights law, they have set aside the rule of law in an attempt to perpetuate their unlawful and unjust policies.

This, I am sure, may be tough words for any prohibitionist to hear. Nevertheless it is nothing but an accurate description of the situation, and even though this summary may leave us with an unflattering image of the prohibitionists, it is important to emphasize that I do not consider them to be “evil” at all. After all, “evil”, as we think of it, is only ignorance in effect. And for most of them their only sin is falling prey to the influence of an oversized enemy image—and that is really all it takes for otherwise decent people to take part in such appalling practices.

In fact, when we look at history, it’s the same story that repeats itself behind every war and atrocity; proponents of the inquisition were convinced that Satan lived within everyone who didn’t conform to their way of life, the Nazis saw the Jews as a threat against everything they considered good and decent in the world, Eastern fundamentalists see the West as an immense evil and corrupt force which threaten all that is dear to them, and the Western fundamentalists think exactly the same—just the other way around.

No matter where we look it's always the same. And behind every war and every atrocity ever committed we find the influence of an exaggerated enemy image which, in turn, seemed to validate the belief that the end justifies the means. The war on drugs, then, is no different than any other war. And as we are born into a society at war with itself, it is only natural that most of us fall prey to the sloppy thinking that got us into this mess in the first place (what Mill called the despotism of custom). After all, most people start out with the presumption that we are part of a decent society and that our leaders are intelligent people who honestly want what is best for us. No matter the time and place, this is the basic assumption citizens everywhere share. Our upbringing and our education seems to confirm this, and so it is only logical that we take for



granted that our wars are fought for some greater good and that our laws are in place for good reasons.

It is only with experience we grow wiser. And so it is that some people figure out that the drugs they have been raised to fear aren't nearly as evil and dangerous as they thought; that they in most cases, instead, provide people with an experience they desire and find pleasant; and that the war on drugs, on the other hand, is a highly unpleasant and destructive campaign which isn't desirable for anyone but the war profiteers and the gangsters. In other words, it becomes obvious to them that they had it all wrong and that their leaders—the proponents of this war on ourselves—aren't necessarily the good guys.

As soon as their childish faith in authority is somewhat diminished, they suddenly begin to see more clearly. Their old world of black and white begins to crumble and they begin to see the shades of grey which before were invisible. They start thinking about the enormity of the drug trade and the fact that it, together with oil and arms, is the world's biggest commercial enterprise; they begin to imagine what this gigantic underground economy of some \$400-700 billion a year actually does to us as a society; the corruptive influence it must have, and how many politicians, judges, policemen, bureaucrats, elite players, corporations, agencies, banks—and even entire countries—which are part of it and deeply involved in profiteering from it; they think about this and they suddenly realise that tens of trillions of dollars must have been laundered by our banks during the last decades and that no one has gone to jail for this.

Thus it dawns on them that the black and white economy isn't really separate at all and that drug barons like Pablo Escobar aren't at the top of the food-chain; instead people like him must be players in a greater game of shadows where the secret services rule supreme, deeply involved in shaping all aspects of this enormous market in whatever fashion that suits the needs and power-political ambitions of their elite masters.

This line of thinking slowly manifests. And as the shades of grey become clearer, suddenly the parallels between (and the mechanisms

behind) every war our leaders ever fought and presently are involved with is revealed; for as they look closer into the reality behind our leaders' official reasons for going to war, they begin to understand that every time they start a war, their pretexts for doing so is always a series of half-truths and straight up lies. They then reflect upon the fact that they had to figure this out by themselves and that even though these lies and falsehoods are easily exposed, no one in authority seems too eager to do so. Instead, for some reason, the major players in academia, media, and even the political opposition parties seem more concerned with burying the truth than in exposing the lies which are said to validate our reasons for going to war.

This at first puzzles them. But as their vision sharpens and they begin to understand how powerful the war-profiteers are and the stranglehold they have on society, they begin to see more clearly our wars for what they are; they understand that they are not benevolent attempts to spread freedom and democracy fought for the greater good of humanity, but that they instead conform to historic precedent and power-political reasons,<sup>40</sup> enabling, as they do, the elite to grab control of precious resources abroad while strengthening control of the population at home.

After accepting this, they begin to realize that maybe the war on drugs isn't the result of the ignorant thinking it seems to be; maybe our leaders actually couldn't care less if "drugs" aren't the threat they are said to be; maybe they don't mind if our drug laws' credibility is the result of a moral panic; maybe they don't care if the oversized enemy image behind it destroys our ability to think; and maybe they don't mind the destructive social mechanisms it sets into swing—could it in fact, when all was said and done, be that the wide range of unfortunate consequences this war has exposed us to weren't unintended at all? Could it be so simple that the whole thing was a charade, a campaign whose real purpose was to keep doing what it does—filling the war-profiteer's pockets, while feeding the destructive mechanisms which undermine our liberties and keep them in power?

Such reasoning as this would, of course, just seem like conspiratorial

and silly rambling to prohibitionists. They are still under the spell of an oversized enemy image and having not yet lost their childish faith in authority they still see the world in the old black and white. Consequently, to them, their leaders are never bad or wrong; instead, they are always good, their enemies always evil, and begging to differ is somehow unpatriotic and suspect.

Still, the evidence is contrary to their beliefs. And the more one learns about the world, the more pressing such “conspiratorial” thinking and “unpatriotic” questioning becomes; and the more one accepts such reasoning, the more one’s old worldview is turned upside down—until suddenly, everything seems to fall into place.

So it is that more and more people begin to speculate that maybe the purpose of fighting this war isn’t a drug-free world at all, and that maybe instead the whole point is war for war’s sake—a so-called eternal war for eternal peace. After all, our leaders cannot possibly be so stupid that they believe in their prohibitionist policies; they have been caught time and time again burying the evidence, faking it, misrepresenting it, manipulating it—doing, in fact, everything to turn black into white in order to fit their agenda for war<sup>41</sup>; and while they officially stand before us as dedicated war-mongers, in private they tend to agree that the war effort has failed<sup>42</sup>. As Julian Chritchley, the former director of the UK Anti-Drug Coordination Unit confirms:

*“What [I think] was truly depressing about my time in the civil service was that the professionals I met from every sector held the same view: the illegality of drugs causes far more problems for society and the individual than it solves. Yet, publicly, all those people were forced to repeat the mantra that the government would be “tough on drugs”, even though they all knew that the policy was causing harm.”<sup>43</sup>*

Chritchley quit his job because he “was sick of having to implement

policies that I knew, and my political masters knew, were unsupported by evidence.”<sup>44</sup> And as any thinking person in government service knows this for a fact, one is left with the seemingly inescapable conclusion that our leaders must be either (1) a spineless bunch of hypocrites without a shred of integrity left or (2) must owe their ultimate allegiance to gangsters or war-profiteers. It could of course be a little bit of both. But either way it should be obvious by now that our government apparatus has become so corrupted by this war that our civil servants are either incapable or unwilling to end it. And as our civil servants, for some reason, are so eager to keep these policies in place that they are willing to set aside the rule of law in order to do so, it is of paramount importance that drug users and human rights defenders around the world avail themselves of their catalogue of rights to ensure that the problematic relationship between drug prohibition and the Bill of Rights is properly reviewed.

In chapter 5 we shall elaborate on this bit, but let us first conclude with a summarization of our drug policies’ incompatibility with the principle of proportionality.

### *THE PROPORTIONALITY PRINCIPLE AND THE DRUG LAW*

*“Necessity is the plea for every infringement on human rights. It is the argument of tyrants; it is the creed of slaves.”*

*—William Pitt, British Prime Minister—*

FROM WHAT WE HAVE already seen it should be quite obvious how our drug laws violate this principle. After all, while the negative

consequences of prohibition are disturbing, they are neither controversial nor disputable when we take the evidence into consideration. Many—if not most—of them are in fact acknowledged by the prohibitionists. It's just that they will argue that without these laws everything would be worse, and so they tend to believe that as unfortunate as all this collateral damage is, it's actually worth it.

Still, they hold this belief contrary to the evidence, for it's an incontestable fact that prohibition has been as unsuccessful in curbing the supply as it has been in reducing the demand for illicit drugs, and there is much evidence to suggest that we would be far better off in legalizing the drug trade and regulating the sale of these substances. This evidence indicates that the law has had little or no significance at all being that the degree of criminalisation appears to be irrelevant to the prevalence of use.<sup>45</sup> The Netherlands, for example, has in effect legalised the sale of cannabis for more than 30 years, but still its population uses this drug to a lesser extent than many of the neighbouring countries—and far less than Americans, who for so long have been subjected to strict penalties.

This type of evidence is corroborated by many other decriminalisation experiments. And when we take this evidence into account, the common finding is that the further away from the punitive law and order approach we go, the better off we are. As professor Nutt confirms: “Drug users are part of society and when we treat them as such, the outcome improves for everybody, including non-drug users.”<sup>46</sup>

In other words, the conclusion seems inescapable that all the damage prohibition has done—all the misery and death it has caused the drug law violators and all the collateral damage it has caused society—has been for nothing! And while the prohibitionists refuse to recognise this fact and instead, in a last effort to preserve their policies, will try to defend their war on the premise that we do not know the consequences of peace, this is nothing but a fool's last stand. After all, the law is clear, and the burden of evidence rests not upon the proponents of peace. It is instead the prohibitionists who must justify their war—and this they have never been able to do.

They have of course attempted to do so, arguing that the illicit drugs are a threat to our mental health, physical health, moral health, a threat to our children, our community, and so on—and that the law is needed to protect us from such harms. But theirs are arguments of faith rather than reason, and as Professor Husak and many others have shown, none of them are convincing.<sup>47</sup> In fact, when we stop relying on the exaggerated enemy image that “drugs” represents to a prohibitionist, we find that the illegal drugs do not only pose a lesser threat than the legal ones but, when all is said and done, that our leaders might just as well criminalize unhealthy foods and start throwing overweight people in prisons (or forcing them into “rehab”). This, of course, seems absurd. But eating not only provides many people with a “high” which can make them crave more and more and become “addicted”; it also can lead to serious health problems, and health-related issues like diabetes and heart disease not only kills many more people every year but they also cost society much more than the use of illicit drugs.<sup>48</sup>

As one can see, the idea of criminalizing it and having the “obesity-police” arrest these people is by no means any more absurd than criminalizing drug users and having the narcotics-police arrest them. I am obviously not advocating either. I am just pointing out the manifest stupidity of our current policies, and the fact that their inherent shamelessness is lost on the populace is itself a testimony to the damage prohibitionist propaganda has done to us.

After all, until a century ago, most people would consider the idea of a drug law as the preposterous piece of impudence it is. And even jurists back then knew how to recognise vices from crimes. Today, regrettably, this important distinction is lost on most, but Lysander Spooner reminds us of the difference:

*“Vices are those acts by which a man harms himself or his property. Crimes are those acts by which one man harms the person or property of another. Vices are simply the errors which a man makes in his search after his own happiness.”*

*Unlike crimes, they imply no malice towards others, and no interference with their persons or property.*”<sup>49</sup>

This is a very important distinction to make. For while we may disagree with other people’s lifestyle and think it better if they drank less, spent less time watching TV, playing video games, surfing the internet for porn, and instead exercised more, ate more healthy foods, cared more for others, and so on, we cannot possibly, in a decent society governed by reason and the rule of law, enact laws against such behaviours and call them crimes. Spooner, again, explains why:

*“The object aimed at in the punishment of crimes is to secure, to each and every man alike, the fullest liberty he can possibly have—consistently with the equal right of others—to pursue his own happiness, under the guidance of his own judgment, and by the use of his own property. On the other hand, the object aimed at in the punishment of vices is to deprive every man of his natural right and liberty to pursue his own happiness, under the guidance of his own judgment, and by the use of his own property.*

*These two objects, then, are directly opposed to each other. They are as directly opposed to each other as light and darkness, as truth and falsehood, or as liberty and slavery. They are utterly incompatible with each other; and to suppose the two to be embraced in one and the same government, is an absurdity, an impossibility. It is to suppose the object of a government to be to commit crimes, and to prevent crimes; to destroy individual liberty, and to secure individual liberty.*”<sup>50</sup>

Back then, not only scholars but even politicians recognized this important distinction, and the concept of a drug law would be seen as a violation of the Constitution. As President Lincoln himself said:

*“Prohibition goes beyond the bounds of reason in that it attempts to control a man’s appetite by legislation and makes crimes out of things that are not crimes. A prohibition law strikes a blow of the very principles upon which our government was founded.”<sup>51</sup>*

Even though there are still a few scholars and politicians around who recognise this fact, we have indeed come a long way since then. The American Supreme Court, for instance, has ruled that lifetime imprisonment is not an unconstitutionally severe sentence for the “crime” of cocaine possession, 33 countries have capital punishment in place for drug “crimes”, and there are plenty of prohibitionists around who are prepared to bring us back to the dark ages and beyond, advocating as they do corporal punishment and other evils in order to win their war on drugs.

We shall not spend too much time here pointing out the absurdity of their reasoning, but their attitude is summed up neatly by Daryl Gates, who as Chief of Los Angeles Police Department stated that “casual drug users should be taken out and shot. We are in a war and drug use is treason.”<sup>52</sup>

As can be seen, the prohibitionist propaganda has really made a mess of things. And not only is the fundamental distinction between vices and crimes lost on us, but we have as a society also lost our way completely in our sentencing practices. For even if the examples just mentioned belong to the more extreme end of the spectrum, there seems to be no end to the lengths most countries will go to when it comes to punishing the drug law offenders. And while most jurists today seem to think that all is well and that none of this constitutes “cruel, inhumane or degrading punishment”, hopefully they would reconsider if it were alcohol drinkers, tobacco farmers, or simply obese people we exposed to such hostile treatment.

After all, it’s already an established fact that they cannot say



anything sensible about why we should treat the illicit drug users any differently than these groups of people. And when it comes to alcohol drinkers, the European Court of Human Rights, in *Witold Litwa v. Polen*, has said a great deal about what the principle of proportionality entails in the area of drug policy.

In this case, the Court considered the appropriateness of throwing extraordinary drunk people into prison. It accepted in its verdict that the States parties could deprive us of our liberty if we were so intoxicated that we could be considered to be a threat to ourselves and our surroundings, but it concluded that 6.5 hours in a holding cell was an *inappropriate* interference and that the proper thing to do would have been to drive Litwa home, so that he could sleep it off in his own bed. It was by any measure a good decision. And while it referred to alcohol users, it would, in a decent society governed by the rule of law, be considered a discriminatory and inappropriate practice to treat illicit drug users any differently.

Now, we all know that reality isn't so. Instead, in our world the thought of granting the illicit drug users the same rights and the same dignified approach seems somehow absurd—even objectionable. And so it is that we live in a society, in which each State party undertakes to respect and ensure to all individuals—except the drug law violators—the rights recognised in the Bill of Rights; where all persons, except them, shall be equal before the law and be entitled to equal protection of the law; where everybody, except them, shall be recognised as a person before the Courts and entitled to a fair hearing by a competent, impartial and independent tribunal to have their rights determined; where everybody, except them, shall have an effective remedy against unlawful detention as well as abusive, discriminatory and degrading policies, and where everyone, except them, shall have an enforceable right to compensation after being the victim of such practices.

We live in a society in which everybody, except them, shall have the right to self-determination and to freely pursue their social, cultural, economic and spiritual development; where every human being, except

them, shall have the inherent right to life and to be protected from being arbitrarily deprived of it; where no one, except the drug violators, shall be subjected to cruel, inhuman or degrading treatment or punishment; where no one, but them, shall be subjected to arbitrary and unlawful interference with his privacy, family, home or correspondence, and where everyone, but them, have the right to be protected by law against such interferences.

We are supposed to accept a social contract where everyone, except them, have the right to liberty and security of person and where no one, but them, shall be unlawfully deprived of their liberty; where everyone, but them, shall have the right to freedom of expression and to seek, collect and impart information and ideas of all kinds, regardless of frontiers; where any propaganda for war—except drug war—shall be prohibited by law; where any advocacy of hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law—except that which is directed at the drug law violators; and where any family, except theirs, are entitled to protection by society and the State.

While all of this, apparently, is an acceptable state of affairs to most people, it is quite an unfortunate one for those of us who take human rights seriously. After all, there can be no doubt about our drug laws' violation of the equality principle. And when it comes to the proportionality principle, it is also clear that these laws have failed to meet the standards of its criteria.

First of all, we have committed the ultimate stupidity by making a crime out of non-crimes (vices); secondly, the laws intended to deal with these non-crimes have not only proven to be unfit for purpose, but they have also increased harms to the users as well as society; and, thirdly, there are obviously much less invasive means available to achieve the desired ends. In other words, the cure has proven itself to be many times worse than the disease, the law therefore is not properly framed and it cannot be said to strike a fair balance between the rights of the individual and the interests of the community.

According to human rights law, then, there isn't a reasonable relationship of proportionality between the aim pursued by prohibition and the means deployed to reach its aim. The drug laws, therefore, cannot be regarded as "necessary in a democratic and open society". On the contrary, these laws are nothing but an arbitrary violence perpetrated against the citizens of the world; they have violated the fundamental principles of human rights to such an extreme degree that they fulfil the criteria to be regarded as a crime against humanity—and the time has come to recognize this fact and let the healing process begin.

# 4

## THE ARTICLES OF THE BILL OF RIGHTS AND THEIR INCOMPATIBILITY WITH PROHIBITION

*“The history of human rights bears a testimony to the evolution and development of human rights as a result of the ever-changing aspirations and needs of people and the ever-increasing need to put constraints on what governments may do to individuals.”<sup>53</sup>*

—B.C. Nirmal, Professor of Law—

HAVING FAMILIARIZED OURSELVES WITH how drug prohibition fails to fulfil the criteria of the test of reason, we shall now see how it violates the different articles in the Bill of Rights\*. I remind you that these articles are interrelated and indivisible and that it is the greater picture which is important. Nevertheless, we must begin somewhere, so

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\* As previously stated, the International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). While many articles of the ICESCR also can be used to demonstrate a violation, we shall content ourselves with focusing on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

let us begin with article 2 of the Universal Declaration.

This article holds that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

As we can see, this article seeks to guarantee to the right-holders (us) the protection provided by the International Bill of Human Rights. It is a most central feature of our catalogue of rights and its implications are elaborated on in ICCPR article 2 (1) which states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind”. As we can see, its language is derived from the equality principle; *we are all, without distinction of any kind, entitled to the rights and freedoms set forth in this declaration*, and further elaboration on its implications is found in ICCPR article 2 (2) and 2 (3) which expand on the obligations of the State. These articles emphasize that the State party must take the necessary steps (1) “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”; (2) “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system”; and (3) “to ensure that the competent authorities shall enforce such remedies when granted”.

Now, this is important stuff. The State party is under a contractual obligation to promote and secure your rights, and in its General Comment no. 31, the Human Rights Committee has more to say about the scope of the State’s legal obligations:

*“The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible*

*under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right”.*

As we can see, the proportionality principle comes into play. Remember that the fundamental premise from which all else follows is that the individual is to have as much autonomy as practically possible. We find this principle mirrored in the Universal Declaration’s article 29 (2) which asserts that “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. Also ICCPR article 19 (3) emphasizes this principle. While underlining our right to freedom of expression (our freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers), it declares that

*“the exercise of the rights provided for in . . . this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals”.*

In order to justify any limitation on our freedoms, then, the State must prove that “just requirements of morality, public order and the general welfare in a democratic society” necessitate it. This means that

the drug law must stand the test of reason and that the State must show that (1) there is a legitimate aim to the interference; (2) the measure is suitable or appropriate to achieve the desired end; and (3) that the interference is proportionate to the identified aim and necessary in a democratic society. *Only by doing so can the State party show that a certain limitation satisfies the tests of legality, necessity, reasonableness and legitimate purpose.* To succeed in this endeavor, then, the State must (1) show that the drug law does not represent a discriminatory practice, (2) that it is suitable to achieve the desired end (which is a drug-free world), (3) that its interference is proportionate to the identified aim, and (4) that it strikes a fair balance between the rights of the individual and the interests of the community. *If the State fails to show that the drug law meets these criteria, then we are dealing with an arbitrary, disproportionate and discriminatory practice, and we have a clear violation of our catalogue of rights.*

To find out if, indeed, a certain law violates our rights, the State party must let us have the issue reviewed by an independent, impartial and competent tribunal. Article 2 has more to say on this, for paragraph 3 requires that in addition to effective protection of Covenant rights, the State party must ensure that individuals also have accessible and effective remedies to vindicate those rights. The Human Rights Committee's General Comment no. 31 has more to say about this:

*“Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy”.*

Article 2, paragraph 3, also requires that States Parties make reparation to individuals whose Covenant rights have been violated, and when such a violation has occurred, the States Parties must ensure that those responsible are brought to justice. The Human Rights Committee is clear on this, and continues: “as with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant”. Enforcing accountability is a most serious matter and “where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States Parties concerned may not relieve perpetrators from personal responsibility . . . Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defense of obedience to superior orders.”

*The provisions of article 2, then, seek to protect us against all unjust interferences, to provide us with an effective remedy when such interference has occurred, and to hold those officials who are responsible for the violation accountable.*

This is the essence of the Bill of Rights, and its importance cannot be overstated. It is therefore affirmed again and again in a series of articles: in the Universal Declaration of Human Rights its article 7 holds that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”; article 8 states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”; article 10 affirms that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him; article 28 says that “Everyone is entitled to a social and



international order in which the rights and freedoms set forth in this Declaration can be fully realized”; and article 30 states that “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein”.

It is also reiterated in the United Declaration’s Preamble which, to summarize, affirms that “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind; Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law; Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms; Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge; Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

The Preamble of the International Covenant on Civil and Political Rights also emphasizes “the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms”. It reaffirms “that these rights derive from the inherent dignity of the human person” and “that the individual, having duties to other individuals and to the community to which he

belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”. Furthermore, its article 3 holds that “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”; its article 5 reiterates that “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”; its article 14 reaffirms that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”; its article 16 repeats that “Everyone shall have the right to recognition everywhere as a person before the law”; its article 17 assures that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation” and that “Everyone has the right to the protection of the law against such interference or attacks”; its article 26 emphasizes the absolute abrogation of discriminatory practices, declaring that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; its article 46 reiterates that “Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations”; and its article 47 reaffirms that “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources”.

All in all, then, there can be no doubt about the State Party's duty to promote, protect and secure our rights, *and yet we are in the unfortunate situation where prohibitionists have chosen to violate all these articles by refusing to abide by their contractual obligations*. The reason is that prohibitionists in the Norwegian government, European Court of Human Rights, Council of Europe, and the UN Human Rights Committee refuse to recognize the fact that "everyone" also includes the drug law violators\*. Despite having been shown evidence that in detail exposes the drug laws' incompatibility with human rights; despite having seen evidence that police officers, judges, professors, drug policy experts, prime ministers, justice ministers, a former UN High Commissioner of Human Rights and a former UN Secretary General all support the contentions made; despite having seen that the destructive effects and consequences of prohibition, as well as its futility, is overwhelmingly agreed upon; despite having seen that a majority of experts in the field agree with the basic premises of the complaint; and despite having seen that several professors of law agree with its legal reasoning, they will not let us have the problematic relationship between the drug law and human rights law reviewed.

Hence, some 300 million drug users, having been denied their right to an effective remedy, are currently without the protection of the Bill of Rights. And now that we have established beyond doubt that *all laws* must conform to the test of legality, necessity, reasonableness and legitimate purpose, and that *all people*, without distinction of any kind, are entitled to the rights and freedoms set forth in this Bill, we shall see which other articles are currently being violated by the status quo\*\*.

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\* As previously stated, you will find out more about this in Roar Mikalsen's *Reason Is, his communication with the UN human Rights Committee*, and his January 1, 2015 letter to the UN Secretary General (all found online).

\*\* We have already, in chapter 3, seen how the drug law is in violation of ICCPR article 26, so we shall not discuss it here.

To continue, then, one can say that drug prohibition is incompatible with the Universal Declaration of Human Rights article 1 which holds that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. We are after all dealing with a discriminatory, disproportional, arbitrary and profoundly unjust practice which every year kills roughly 300,000 people and wrongfully imprisons 10 million more. We wouldn’t subject anyone but the drug law violators to such treatment; even if alcohol drinkers and obese people represent a much greater cost to society, we could not in our wildest dreams find legitimate reasons for persecuting a group of people the way we do the drug law violators, and so, obviously, the situation is that all human beings are NOT born free and equal in dignity—and our transgressions against them are absolutely not in the spirit of brotherhood.

Now, we have already seen how drug prohibition kills many people, and as 33 countries around the world have death penalties in place for drug law violations, we can say that it violates ICCPR article 6 which holds that “Every human being has the inherent right to life” and that “No one shall be arbitrarily deprived of his life”. All these articles inform on each other, and as the entire system of prohibition represents a discriminatory and arbitrary practice, such people are most certainly “arbitrarily deprived of their life”.

The right to life is also mentioned in the Universal Declaration’s article 3 and ICCPR article 9, which states that “Everyone has the right to life, liberty and the security of person”. The latter elaborates, adding that “No one shall be subjected to arbitrary arrest or detention” and that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Now, “liberty of person” concerns freedom from confinement of the body, not a general freedom of action. Nonetheless, we fail to include the drug law violators in this equation, for they, having been denied their right to a fair trial and effective remedy against the drug laws, are fair game for the

disciples of the police state and are arbitrarily being deprived of both life, liberty and the security of person.

Speaking of “arbitrary arrest and detention” the principle of proportionality is fundamentally related to the principle of arbitrariness. This simply means that if the prohibitionists cannot defend the Status Quo, then not only shall the drug laws be removed but also the millions of people currently imprisoned for the violation of these laws shall be freed. This, of course, is difficult for prohibitionists to comprehend. Yet ICCPR article 9 explicitly prohibits arbitrary detention, and as the UN Working Group on Arbitrary Detention concludes: “[The detention is arbitrary] when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty” (category I) and “when the deprivation of liberty constitutes a violation of international law for reasons of discrimination . . . and which aims towards or can result in ignoring the equality of human rights” (category V).<sup>54</sup>

Its category II explicitly mentions violations of ICCPR article 26 in this regard. And as the Human Rights Committee, in its General Comment no. 35, also holds the view that “Arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3, or article 26 is in principle arbitrary”, this issue is beyond serious dispute. Whether or not these people also should be compensated for the hardships they have endured as a consequence of the prohibitionists' despotic rule—and how much—is an even more controversial matter. Suffice here to say that according to human rights law, they are entitled to compensation for the horrors they've endured. Paragraph 5 of article 9 of the ICCPR provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation, and in its General Comment no. 35 the Human Rights Committee has this to say:

*“The State party remains responsible for adherence and ensuring adherence to article 9. It must rigorously limit those powers and must provide strict and effective control to*

*ensure that those powers are not misused, and do not lead to arbitrary or unlawful arrest or detention. It must also provide effective remedies for victims if arbitrary or unlawful arrest or detention does occur.”*

Defenders of the status quo might try to argue that only arrests lacking legal basis is arbitrary, and that as long as there is a law—and the deprivation of liberty is done in accordance with such procedure as are established by law—then everything is as it should be. This, however, is not so, for as the Human Rights Committee says:

*“An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality.”<sup>55</sup>*

Hence, there can be no serious doubt that currently some 10 million people are the victims of arbitrary detention, and the rule of law dictates that they shall be freed and compensated for the hardships they’ve endured.

Let’s not forget that article 9 also protects the “security of person”. This is a broader concept than that of “liberty” which concerns freedom from confinement of the body. As interpreted by the Human Rights Committee, “Security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity”, and considering that roughly 80 percent of the 160,000 yearly drug deaths can be attributed to prohibition<sup>56</sup>; considering that 100 percent of the roughly 200,000 people who die every year as a result of the drugs economy must be credited to prohibition; considering that prohibition also generates many other types of crime and that the illegal economy not only corrupts the law and order

apparatus but also other democratic institutions and processes; considering that the spraying of coca bushes destroys the livelihood of third world farmers, ruining food crops, spreading death among livestock and disease among people; considering that the persecution of drug law violators not only violates their bodily and mental integrity, but also damages the fabric of society, tearing families apart, spreading fear, prejudice, ignorance, death, and disease in its wake; and considering that this little summary only scratches the surface of the unfortunate consequences heaped upon us by prohibition, it is safe to say that we are dealing with a violation of the right to security of person.

The content of article 9 is also informed by the content of other articles. For instance, ICCPR article 7 and the Universal Declaration's article 5 hold that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The aim of the provisions of these articles is to protect both the dignity and the physical and mental integrity of the individual. Whether we are dealing with "cruel, inhuman or degrading treatment or punishment" depends on the nature, purpose and severity of the treatment applied, and as we wouldn't have accepted treating anyone else the way we treat the drug law violators, one can argue fairly well that we are dealing with an instance of "inhuman or degrading treatment or punishment".

In addition to this, the Universal Declaration's article 12 and ICCPR article 17 hold that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation" and that "Everyone has the right to the protection of the law against such interference or attacks". This is a very important article which provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy.

Before we state the obvious and conclude that drug prohibition is a clear violation of our right to privacy, however, let's see what the accepted definition of "arbitrary" or "unlawful" interference is. In its General Comment no. 16, the Human Rights Committee elaborates: "The term "unlawful" means that no interference can take place except in

cases envisaged by the law. Interference authorized by States can only take place on the basis of law, *which itself must comply with the provisions, aims and objectives of the Covenant*". As pertains to the definition of "arbitrary interference", it goes on to state: "in the Committee's view the expression "arbitrary interference" can also extend to interference provided for under the law. *The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances*".

Considering, then, that drug prohibition has proven to be a discriminatory and disproportional practice, one can safely conclude that the provisions of the Universal Declaration's article 12 and ICCPR article 17, also on this account, protect us against such interference.

Another article that weights in here is the Universal Declaration's article 18 and ICCPR article 18 which affirm that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom . . . to manifest his religion or belief in teaching, practice, worship and observance". The latter goes a little further, adding that "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice" and that "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".

Again, we see the proportionality principle comes into play. And in its General Comment no. 22 the Human Rights Committee expands on its implications:

*"Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. . . . In interpreting the scope of permissible*



*limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. . . . Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.*

As we can see, even if the religious use of certain substances is unheard of in some circles, the proportionality principle and the equality principle come heavy into play whenever the ruling elites feel like prohibiting religious practices they themselves do not adhere to or understand. And as the drug laws already have been weighed and found wanting when measured against the criteria provided for by the test of reason, things don't look too good for the prohibitionists on this account either.

This is, of course, provided that we can make the case that drugs can be used in a religious context and that its use can be a spiritual endeavor. To a prohibitionist this might seem like a far-fetched idea, but as a matter of fact, there is a wealth of material documenting such use. Indeed, psychoactive substances like cannabis, peyote, mescaline, ayahuasca, ibogaine, and psilocybin-containing mushrooms have been used for millennia by people who claim that these mind-altering drugs can help them experience divinity more directly, and despite the prohibitionists' efforts eradicate such use, we find that it is more widespread than ever.

Even though most of this use is done privately by individuals who are searching for a mystical experience, there are also several religious communities that hold substances like these sacred. In North America, for instance, we have the Native American Church with more than 250,000 members who use a mescaline-containing cactus called peyote to communicate with spirit, in Latin America we have the Santo Daime and the União do Vegetal who use a DMT-containing plant potion called ayahuasca for similar purposes, and in West Africa we have the Bwiti who use ibogaine.

Ignorant people might dismiss such activities, thinking all such claims to be utter nonsense. Nonetheless, there are more than enough studies that support their contentions, and the fact that even the US Supreme Court has recognized such use as legit, speaks volumes about the evidence. After all, it is deeply frowned upon by the prohibitionists in power, and had they found any way of discrediting such use, they would have. We shall not elaborate here on the over one thousand<sup>57</sup> scientific research reports on psychedelics, nor the abundance of books that detail the extent to which they can be most beneficial and awesome tools for those in search for enlightenment and communion with the Divine. Suffice to say that it is well documented, and that a solid case can be made that drug prohibition also violates our right to exercise religion in a manner of our choosing.

While we are at it, we must also look into whether or not prohibition is incompatible with the other provisions of this article. After all, it does not only recognize our freedom of religion, but also freedom of thought and conscience, and this article is far-reaching and profound. It encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant. It does not permit *any limitations whatsoever* on the freedom

of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice.

The fundamental protection of the freedom of thought is important because drugs offer us the possibility to see things from a new perspective. Prohibitionists have a problem understanding this, but many brilliant minds will testify that drug use has helped them expand their horizons. Several Nobel Laureates, for example, have admitted as much and Kary Mullins, a chemist who won the Nobel Prize in 1993, has stated that "I think I might have been stupid in some respects if it weren't for my psychedelic experiences."<sup>58</sup>

There are more than enough studies that confirm these substances' unique ability to help us transcend old, limited, and misguided patterns of belief, and to prohibit their use most certainly infringes on our freedom of thought. Such a freedom, after all, must also include a freedom to choose one's cognitive processes, to select how one will think, and to control one's own thinking processes, for as Thomas B. Roberts stated:

*"Our thinking is composed of both (1) the way we think (the cognitive processes we use and our skills in using them) and (2) the specific content of our thoughts (our ideas, concepts, assumptions, values, etc.). Freedom of thought includes freedom of both the contents of thinking and the process of thinking. Self-control over one's own thoughts cannot occur if one does not have freedom to select both the specific ideas one finds truthful and the freedom to select the cognitive processes one uses when thinking with those ideas. Freedom of cognition includes selecting one's thinking processes, one's mind-body state, provided, of course, it does no harm to others".<sup>59</sup>*

This should be obvious. After all, what good is a right to freedom of thought if it does not also recognize the right to independent thinking, to

autonomy over our own mind and brain chemistry, and the right to experience the full spectrum of possible thought and consciousness?

While the Bill of Rights fails to specifically enumerate an absolute freedom of cognition, it is implicit in the spirit of the doctrine, for, in essence, it is the right upon which all other explicitly enumerated rights are premised. If the freedom of thought is to mean something, then, it must also include the freedom to think, i.e., the freedom to stimulate the mind as one chooses. And this, most certainly, as Allison Brandi Margolin states, includes “the freedom to explore one’s mind, to do something to create a thought that would not otherwise be created without the antecedent action, e.g. taking drugs.”<sup>60</sup>

The only reason why this hasn’t been self-evident to the prohibitionists, is that they assume that there is only one correct way of thinking and that theirs is it. However, as the discipline of psychology has evolved, we have learned to recognize that there are higher, more advanced states of consciousness available. These are often referred to as unitive states of consciousness and while they can also be reached by other methods, the psychoactive drugs are trustworthy and unique tools in this regard. They have a canny ability to expand the perimeters of the narrowly-focused ego-consciousness into greater territories of the psyche. Thus, they make it possible for us to acquaint ourselves with hitherto unrecognized aspects of our psyche—and when we have worked through our issues and transcended old, narrow-minded, and erroneous belief structures, then a higher state of consciousness opens up to us.

Research shows that people who have experienced this state of consciousness tend to be better educated, more successful, more responsible, more confident, less racist, and happier on measures of psychological well-being. They are less afraid of death and other things that normally terrify the average person; they are less attached to material possessions, have higher ego-strength, more meaningful lives, and are more imaginative, self-sufficient, intelligent and relaxed<sup>61</sup>.

The empirical data supporting this is overwhelming. Since prohibition came into being, there has been a cognitive revolution that

recognizes a new, multistate perspective on our minds. This cognitive revolution has not yet been acknowledged by the prohibitionists, and it is high time that they come to terms with the outmoded ways of their thinking and recognize the fallacy of the single-state theory. As a matter of fact, prohibition itself has slowed the progress of science in this area tremendously. Researchers in the 50-60s were only beginning to understand the potential of the psychoactive drugs when lawmakers effectively put an end to a most promising area of research into the human mind. Despite the hurdles put in place by prohibition, however, diligent scientists have gathered evidence that validates the expanded states of consciousness and the awesome potential of the psychedelic drugs to help humanity evolve.

From what we have said here, we can also see how prohibition is in violation of the Universal Declaration's article 19 and ICCPR article 19. The former holds that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The latter elaborates on these provisions. Its paragraph 1 concerns the freedom to hold opinions, while paragraph 2 deals with the freedom of expression, adding that "this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

While the freedom of opinion is absolute, the freedom of expression is somewhat more restricted. Its paragraph 3 elaborates: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals".

This freedom of opinion and expression forms a basis for the enjoyment of many other human rights, and is closely related to the

previously discussed article 18. In its General Comment no. 34, the Human Rights Committee speaks to it thus: “Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions”. To further emphasize the importance of our right to the fullest extent of freedom of expression, the Committee goes on to note that:

*“The concept of morals derives from many social, philosophical and religious traditions; consequently, limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination. . . .The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive”.*

The proportionality principle coming into play, the State party, then, must demonstrate the legal basis for any restrictions imposed on the freedom of expression. It must demonstrate in specific fashion the precise nature of the threat; it must demonstrate that the restriction is necessary for a legitimate purpose (it must be appropriate to achieve its protective function) and that the restriction isn't overbroad (it must be the least intrusive instrument amongst those which might achieve a protective function). As the Committee continues in General Comment 34:

*“When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific*

*action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.*

Now, as the drug law already has proved to be worse than the drug use, we know that the State party will have great difficulty in convincing an independent, impartial, and competent commission of the necessity of such a restriction on our freedom of expression. After all, there can be no doubt that “the right to seek, receive and impart information and ideas of all kinds regardless of frontiers” also includes the right to explore the expanded states of consciousness, and as certain drugs are needed for most to arrive at these levels of consciousness, one can conclude that prohibition is also incompatible with the provisions of this article.

Continuing to the next set of articles, we arrive at the Universal Declaration’s article 20 and ICCPR article 20 which state that “Any propaganda for war shall be prohibited by law,” and that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

This should be simple enough, but before we point out the obvious, let’s see what the Human Rights Committee has to say on the provisions of this article:

*“The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned.”<sup>62</sup>*

This article applies to prohibition because the war on drugs has also been a war on truth. The idea of prohibition as a proper and decent

endeavor begins with us first accepting the enemy-image of drugs, and only to the degree this perceived threat is allowed to grow in our minds will we accept its premises. If it was not for the moral panic that follows in the wake of this enemy image, we would long since have understood that drug users have the same rights as anyone else to be protected against discriminatory, disproportionate, and arbitrary practices. We would have seen through the prejudice and misconceptions that govern prohibitionist reasoning, and we would never have accepted the senseless persecution of the drug law violators.

However, so it is. For more than 50 years we have been blind to the terrible effects and consequences of prohibition; we have been so afraid of these drugs that we have accepted the worst transgressions imaginable, and all this because of a greatly exaggerated enemy image.

Now, the only way evidence-based drug policies and rational debate could be held at bay for so long was by the prohibitionists taking control of the debate. Truth being their enemy, it follows that they had to rely on propaganda to make themselves look good. They had to create a moral climate where they held the perceived high-ground and where anyone opposing their policies was seen as suspect. They had to advocate a system of thought where no objections to their ideology were allowed, where they had a monopoly on the truth, and where people blindly submitted to their zero-tolerance vision and retarded reasoning. Only in such a world could their ideology thrive—and to the extent that it has prevailed until today it is, indeed, precisely because of such conditions.

The war on drugs, then, could never have gained ground without a massive propaganda apparatus at the prohibitionists' disposal. After all, since day one, it was evident for those with eyes to see that prohibition was brought into being by a corrupt political process; that it, as Judge James P. Gray said, was "motivated by racism, fear, empire building, and ignorance"<sup>63</sup>; that prohibitionists distorted or disregarded the available evidence to have their way<sup>64</sup>, and that voices of reason were either censored<sup>65</sup> or overlooked. Thanks to their propaganda apparatus, however, prohibition has continued to this day supported by an unbroken



chain of self-serving bureaucrats<sup>66</sup>, even though it has been evidence all along that an unbiased analysis, whether performed by cost-benefit<sup>67</sup> or human rights/moral criteria<sup>68</sup>, would favor legalization.

The propaganda for war has been so complete, so compelling, that prohibitionists themselves have been enthralled by its power. It has inflicted on us a state of collective mass-psychosis, for, as the current state of affairs will attest to, it has proved impossible to those caught in its grip to put two and two together. The prohibitionists' navel-gazing and childish denial of reality is proof of this; they have so much prestige, so much power, so much money invested in this hell-ride that they have preferred to set aside the rule of law rather than let reality impede their delusion. Hence, we find ourselves where we are today, some 300 million people having been denied the protection of human rights law, while the prohibitionists continue their persecution of the drug users unabashed.

We have already seen that the destructive consequences of almost 100 years of warfare ensure that their regime can be classified as one of the worst crimes ever perpetrated against humanity. Because of this war, we have created a state apparatus dedicated to doing everything in its power to make life a living hell for the drug law violators; because of this war, several millions have died while hundreds of millions arbitrarily have been thrown in prison; because of this war, the United States (adjusted for population) enslaves about 6 times as many black citizens as South Africa did under apartheid; and because of this war, 25 percent of African-Americans who grew up in the past three decades have had at least one parent locked up during their childhood<sup>69</sup>.

All things being interrelated, we also see from this how families are destroyed by the drug war. Hence, we can also say that prohibition is in violation of ICCPR article 23 which states that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

*None of this* would have been possible without the prohibitionists' propaganda apparatus. Ignorance and arrogance alone have contributed

to this parade of horrors, and knowing that the persecution of the drug users represents a discriminatory and disproportional practice, one can safely conclude that we are dealing with a clear violation of the provisions of article 20.

# 5

## YOUR RIGHT TO A FAIR TRIAL AND AN EFFECTIVE REMEDY

*“It is for you to realize these rights, now and for all time.  
Human rights are your rights. Seize them. Defend them.  
Promote them. Understand them and insist on them.  
Nourish and enrich them!”*

—Kofi Annan, UN Secretary General—

TO SUMMARIZE, WE JUST saw how drug prohibition is in violation of ICCPR articles 2 (1), 2 (3a), 2 (3b), 5 (1), 5 (2), 6 (1), 7, 9 (1), 9 (5), 14 (1), 16, 17 (1), 17 (2), 18 (1), 18 (3), 19 (2), 19 (3), 20 (1), 20 (2), 23 (1), 26, 46 and 47, as well as the Universal Declaration’s articles 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 18, 19, 28, 29 (1), 29 (2), 29 (3) and 30. They all touch upon a problematic aspect of the status quo, and now that we have seen how current policies are incompatible with fundamental human rights principles, we shall talk a little bit more about our possibilities for effecting change.

There are several obvious ways we can do this, and the easiest one (at least the least stressful for you personally) is discussing it with others, writing about it in the media, or informing politicians of the troubled relationship between the two. If you choose the latter, your politicians will not only have a duty to assist you in having the issue properly reviewed, but they can also be held liable for wilfully aiding and abetting in crimes against humanity if they fail to do so. We have seen the human

rights conventions clearly state that our officials have a positive obligation to take allegations of human rights violations seriously and they also provide a set of performance standards against which these actors can be held accountable. Having received evidence indicating a violation of human rights, they are therefore obligated to act on it, and so this is most certainly a way forward.

What I would recommend then, is that you write to your politicians, present them with information suggestive of the drug laws' incompatibility with human rights, and ask that (1) a national commission is set up, one that independently, impartially, and competently can have the issue reviewed; or (2), considering that drug prohibition is a worldwide problem, organized at the top from the UN level, that they work to have the issue resolved internationally. The UN General Assembly shall have a special session on drugs in 2016, and your officials should see to it that the rights-oriented debate then gets the attention it deserves.

As you may know, this special session was brought about as a result of pressure from Latin American countries. The OAS estimates that some 150,000 people die in the region each year because of prohibition, and as their problems with prohibition are a lot worse than their problems with drug use, responsible leaders have called for a review of current policies. As drug policy experts around the world agree that the current classification system makes no sense and that the fundamental assumptions behind the law-and-order approach have been disproved after 50 years of a global war on drugs, there is also increasing pressure for reform from other countries and NGOs. Uruguay and several U.S. States have already legalized marijuana, and as the prohibitionists claim that this is in breach of their obligations to the UN drug control conventions, the time has come for an open debate on the issue and to investigate whether such regimes really violate the drug conventions—or if, on the other hand, the drug conventions violate the human rights conventions.

To further specify the essence of the rights-oriented debate for your politicians, you can point out to them four questions that must be answered to the satisfaction of an impartial, independent and competent tribunal in order for drug prohibition to be found compatible with our Bill of Rights. Provided that our leaders recognize the rights-oriented debate, these questions are basically the same, and can, using cannabis as an example, be stated like this:

- Whereas all comparisons of the problems associated with cannabis and legal drugs like alcohol and tobacco<sup>70</sup> demonstrate that the legal ones are more harmful to users' health and more destructive to us as a society: *How will you defend present policies? How can you, without building your drug policy on a discriminatory practice—and thus violate the principle of equality—argue in favor of a health-oriented approach toward alcohol users and a continued criminalization of cannabis users?*

- Whereas there is the same supply and demand factors involved when it comes to cannabis and other drugs like alcohol and tobacco, and whereas the different groups of drugs also have the same varying patterns of use associated with them<sup>71</sup>: *How will you justify the persecution and the demonization of the drug law violators? What sort of crimes against his fellowmen has a cannabis producer, transporter or seller committed that an alcohol producer, transporter or seller has not?*

- Whereas virtually all of the world's leading drug policy scholars are in agreement that the drug laws have had worse consequences for society in general and users in particular than the drug use itself would have had<sup>72</sup>, and whereas more and more organizations and commissions<sup>73</sup> publish reports that confirm the same: *How will you, from the growing evidence base that*

*suggests the cure (cannabis prohibition) is worse than the disease (cannabis use) defend current policies as measured against the principle of proportionality?*

- Whereas a majority of drug policy experts agree that there was a moral panic behind the outlawing of cannabis<sup>74</sup>; whereas drug policy experts acknowledge that its current classification makes no sense<sup>75</sup>; whereas scholarly works such as James Ostrowski's *Answering the Critics of Drug Legalization*, Douglas Husak's *Drugs and Rights*, and David A.J. Richards' *Sex, Drugs, Death, and the Law* have thoroughly refuted the traditional arguments in favor of criminalization; whereas an independent, impartial, and competent tribunal (the Cannabis-tribunal in the Hague, 2008) has already qualified the prohibitionist argument as "based on fallacies" and "absolutely worthless"<sup>76</sup>, and whereas the drug laws thus seem to build their credibility on a series of faulty premises: Considering the fact that the enemy image of cannabis has proven vastly exaggerated; considering that the separation between the licit and illicit substances has proven an arbitrary divide; considering that that the evidence is increasingly clear that the drug laws have failed in reducing their supply and demand<sup>77</sup>; considering that American, as well as European<sup>78</sup> decriminalization experiments have shown a health-oriented approach to be more successful in dealing with the harms caused by drug use<sup>79</sup>; considering that the cure has proven worse than the disease to the degree that the harms caused by prohibition<sup>80</sup> now have become so enormous that they threaten to undermine the very fabric of our society<sup>81</sup>; considering that paternalistic and moralistic arguments have failed, and considering that you can no longer justify prohibition on the basis that (1) it suppresses different types of crime<sup>82</sup>, (2) that it protects our youth<sup>83</sup> and the wellbeing of society<sup>84</sup>, (3) that drug abuse has substantial economic and social costs<sup>85</sup>, (4) that cannabis use is intrinsically

immoral<sup>86</sup> and degrading in nature, (5) that its use is self-destructive, dangerous and may cause a variety of harms, including physical injury, addiction and death<sup>87</sup>, (6) that it is a gateway drug<sup>88</sup>, (7) that its use is not a victimless crime since it causes harm to others<sup>89</sup>, and (8) that we do not know the consequences of legalization<sup>90</sup>: *All this considered, what compelling reasons can there be for prohibition, and in what way are its means tailored towards its explicitly stated ends?*

I chose cannabis as an example because, as you can see from the endnotes, the evidence that speaks in its favor is so compelling. Provided therefore that the prohibitionists cannot answer these questions—and provided that they recognize that the Bill of Rights protects *all people* against arbitrary, disproportionate, and discriminatory interferences, and that the same test of reason that all other laws must conform to also applies to the drug laws—one can safely conclude that current policies represent a grave violation of our catalogue of rights.

For a prohibitionist there is no way out of this predicament. In order to justify the status quo, he must succeed in convincing an independent, impartial, and competent tribunal of one or the other—and if our most obstinate prohibitionist officials, sensing they cannot successfully refute these questions, should endeavor to deny the merits of the rights-oriented debate all together, then they must invalidate this chain of reasoning and answer the following question:

- Whereas the fundamental principle from which our system of law follows is that the individual is to have as much freedom, responsibility, and self-determination as absolutely possible (that is, as compatible with a similar right and freedom of others); whereas to whatever degree our rights and freedoms shall be restricted weighty societal considerations must necessitate such actions (that is, they must be required for the protection of the general welfare and the purpose of securing due recognition and

respect for the rights and freedoms of others); whereas the purpose of human rights law is to see to it that this is so and to protect the individual from undue, unjust, and arbitrary interferences; whereas at the core of the International Bill of Human Rights we therefore find certain legal principles, principles that are derived from the Wholeness concept, are mirrored in all humanitarian values, and bring together constitutional law, social contractarian thought and moral theory; whereas the articles of the Bill of Rights are the result of these principles and established to promote them so that their light can shine forth as we mature as a society towards greater levels of understanding; whereas the Bill of Rights thus is established to ensure to all people, *without distinction of any kind*, protection against discriminatory, unjust, arbitrary and disproportional practices; whereas this obviously includes the world's 200-300 million drug users, and whereas the objective of human rights law therefore is to secure *also to them* the rights and protections recognized in the Bill of Rights: Considering that you undertake to strive for the advancement and observance of the rights and protections recognized in the Bill of Rights; considering that the principles you have a duty to promote and protect establish certain criteria that our system of law must be in accordance with in order to be lawful; considering that the legalization activists have assembled overwhelming evidence that the drug laws, as measured against these criteria, are found wanting; considering that these laws' societal function and consequence has been so devastating that they fulfill the criteria as gross human rights violations and crimes against humanity; considering that the legalization activists have presented documentation that legal scholars and drug policy experts around the world have concluded the same; considering that former officials of such stature as UN Secretary General and High Commissioner for Human Rights are among the people who have attested to this



factual picture; considering that you have been presented with four questions that must be answered to the satisfaction of an independent, impartial and competent tribunal if these scholars' and experts' conclusions are to be refuted; considering that the prohibitionist regime has never been submitted to the test of reason and that our officials hitherto have refused to respond to these questions; considering that *the rule of law demands that they be answered*, but that every official so far confronted with the matter has flouted his duties and denied us our right to an effective remedy; considering that up to 300 million drug users therefore are without the protection of human rights law and considering that the validity of the social contract and your credibility as civil servants now depends on the degree to which you take the promotion and observance of human rights law seriously; considering that your responsibility not only to the world's drug users, but humanity at large, the rule of law, and the Bill of Rights you have a duty to protect and promote is clear; considering that objectively speaking there is no doubt that the legalization activists' concerns are valid and that in order to protect the integrity of the principles at the heart of the Bill of Rights you therefore need to see to it that human rights law rules supreme, that the matter is properly reviewed, and that these questions are satisfactorily answered; considering that if you fail to do so without adequately addressing the issues raised herein—that is, explaining *wherein* this chain of reasoning you disagree and/or *what more* corroboration we need to substantiate our contentions—it will become evident that your opposition to drug reform is blind; that it is motivated by ignorance and ignoble ambitions and that you are misusing your authority in an attempt to arrest the development of human rights rather than advance it; considering that in doing so you are, in effect, an enemy of all things good and decent, standing shoulder to shoulder with gangsters and war profiteers against the rule of law and the

interests of the human race, and that you rightfully can be persecuted as a willful participant in crimes against humanity: *All this considered, how will you explain your reasons for maintaining that the principles of human rights law do not apply to our drug laws? How will you explain your position and your rationale that the drug users somehow are exempt from a catalogue of rights that is inherent to every human being and that we are all supposed to enjoy?*

This is the great challenge facing every prohibitionist; only by answering these questions can they stand their ground; only by doing so can they ensure that current policies are compatible with the Bill of Rights; only by doing so can they assure the world's drug users that their rights are respected; and only by doing so can the State present itself as an adherent to the rule of law.

In theory, then, it should be a rather straightforward matter to get our politicians to answer these questions and to help us have the issue properly reviewed. In practice, however, things aren't that simple. I know this, because I, myself, have presented this documentation more than a hundred times to government officials and none of them have cared. For some reason they are committed to ignorance and no matter how patiently you try to guide them along, they just space out into an incoherent state of mind when you confront them with the facts.

This, of course, will not relieve them of responsibility when the drug laws are gone and they must answer for their actions. I am just saying that theory and practice are two different things, and that it is up to us to bridge this gap.

When it comes to this, we are all uniquely positioned to do so. For some, talking with friends and colleagues will be natural, others might want to write about it, others again might demonstrate and demand that politicians take their obligations to international law seriously, while others again might want to use the justice system to effect change. All non-violent options are on the table, for when dealing with such gross

violations of human rights, you are free to throw yourselves with all your weight against the levers of the machine that has become an enemy of humanity. You are under no obligation to accept a social contract based on lies, exploitation, and injustice, and as the state machinery's force of inertia continues to ensure that its disciples take part in crimes against humanity, one would do well to remember freedom activist Mario Savo's famous words. For as he cried out in his impassioned 1964 speech at Berkeley:

*“There comes a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part, you can't even tacitly take part, and you've got to put your bodies on the gears and upon the wheels, upon the levers, upon all the apparatus, and you've got to make it stop. And you've got to indicate to the people who run it, to the people who own it, that unless you're free, the machine will be prevented from working at all!”*

Now, be advised that the following information isn't for everyone, but for those of you who have the courage, one way of going forward is advocating change through the justice system. We saw in chapter 1 how our system is built on such governing doctrines as the principles of popular sovereignty and separation of powers, and if our politicians refuse to check whether the laws they enact and uphold are in violation of our catalogue of rights, we can avail ourselves of the justice system to have our rights recognized.

In order to understand how this works, it is perhaps useful to backtrack a bit. In chapter one, we discussed the fundamentals of our social contract and how our society was built on governing principles such as popular sovereignty and separation of powers. The former principle states that all power emanates from the people. The government is just a body put together to ensure that the wheels of society function optimally and that individual rights are respected, while the separation of

powers is put in place to ensure that one power-political faction does not become too powerful.

However, even though we have an independent press, there remains a possibility that certain special interests become influential enough to subvert the political process, and it is here the judiciary comes into play. As we have already seen, the executive and the legislative branches of government have hitherto shied away from their responsibility to international law, and the judiciary has the power to correct this unfortunate situation.

What you can do then, if you are caught violating the drug law, is to tell the judge that you do not recognize the law because it is in violation of your catalogue of rights. Every signatory to the human rights conventions has outlawed arbitrary, discriminatory, and disproportional practices, and so, if you tell the judge that the drug law happens to be precisely this kind of practice, he is obliged to grant you the creation of an independent, impartial, and competent tribunal where the issue can be properly reviewed.

Your right to a fair trial and judicial review is further detailed in the human rights conventions (such as ECHR articles 6 and 13 and ICCPR articles 2 and 14). In chapter four we saw how several articles in the UN Bill of Rights sought to guarantee us this right, and it is also elaborated on in the Human Rights Committee's General Comments no. 31 and 32. In the former's paragraph 15, the Committee expands on the obligations of the State:

*“Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person . . .*

*The Committee attaches importance to States Parties' establishing appropriate judicial and administrative*

*mechanisms for addressing claims of rights violations under domestic law. . . . Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. . . . A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.”*

As a defendant, then, the judge is required to recognize your right to an effective remedy if you can present documentation that supports your allegations. This is an integral part of your right to a fair trial, and in its General Comment no. 32, the Committee summarizes its position:

*“The notion of fair trial includes the guarantee of a fair and public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. . . . Deviating from fundamental principles of fair trial . . . is prohibited at all times.*

*. . . The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1 [that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law], those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.*

*. . . The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. . . . The requirement of impartiality has two*

*aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial”.*

This is the essence of your right to a fair trial, and if the State party fails to show that the drug laws are necessary in a democratic society and that their interference is narrowly tailored to combat the threat they purport to protect us from, then the drug laws must be removed and you are entitled to compensation<sup>91</sup> for the hassles you’ve endured. Not only that, but according to the rule of law the State also has a responsibility to ensure that those officials who have failed to honor their obligations to the human rights conventions are brought to justice.

This is also imperative, because strengthening accountability of public officials is an important contributor to human rights protection. Historically we find that the culture of impunity is the greatest threat to the advancement of human rights, and this is why the UN Human Rights Committee has been keen to point out that “failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. . . . The States Parties concerned may not relieve perpetrators from personal responsibility . . . [and] no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility.”<sup>92</sup>

This, then, is the theory. Your right to a fair trial and an effective remedy is a most fundamental part of our justice system\* and so important is this doctrine that Johs. Andenæs, Norway’s most renowned jurist, referred to it as “one of the West’s most significant contributions to civilization.”

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\* In the American Justice System we find it mirrored in the jury nullification principle (a jury’s right to judge the law as well as the facts), the Substantive due process doctrine and the right to judicial review.

He was by no means exaggerating. Our right to challenge the law is the system's safety valve when all else fails, and if the government's representatives deny us this right they have effectively robbed us of our most effective defense against the police state and its disciples.

It follows from this that if the State aspires to protect the rule of law—and its own reputation—it is of paramount importance that its officials respect this right to an effective remedy. And so, if you are in the unfortunate situation of being prosecuted for violating the drug law, then it most certainly makes sense to avail yourself of it.

That being said, despite the theory being clear-cut and easy to understand—and the act of subverting the rule of law a major criminal offense—you should know that our authorities most likely will deny you this right. This, at least, is my experience. Not only has it happened six times in the National Courts, but also the European Court of Human Rights and the UN Human Rights Committee would rather forsake the rule of law than let us enjoy the protection of the human rights conventions.

Theory and practice being two different things, then, I am afraid that anyone attempting to challenge the law will be met by the same wall of denial in the courts as elsewhere. Nonetheless, the juridical framework is in place for anyone who have the audacity to stand up for their rights—and no matter how many times they deny us an effective remedy, it is only a matter of time before they have to recognize it.

The law, after all, is clear: (1) There is no denying that the principles of human rights provide a set of values that is supposed to guide the work of Governments and other political and social actors; (2) it is plain for everyone to see that the drug laws, as measured against these values and principles, are weighed and found wanting; and (3) there can be no doubt that the purpose of the Bill of Rights—and the rule of law—is to help fill the gap between human rights standards and principles, on the one hand, and their implementation through governance interventions, on the other. As signatories to the UN Charter, all State parties have pledged allegiance to the principles of human rights; as signatories to the

International Covenant on Civil and Political Rights, they have a contractual obligation to protect and promote human rights law, and as members of the United Nations they have dedicated themselves to the continuous process of articulating human rights in order to translate them from morality and principles into binding international law.

No matter how much power, money, and prestige our officials have invested in prohibition, then, there is no doubt that they have a duty to the world community to ensure that the drug laws are submitted to the test of reason. The UN Human Rights Committee itself is clear that the Bill of Rights is to be a living instrument, flexible enough to protect the individual against all discriminatory, disproportionate, and arbitrary practices, and that addressing inequalities requires a focus on the marginalized and vulnerable. This makes it impossible to argue that the drug users, somehow, are exempt from a catalogue of rights that is inherent to every human person, and so it is only a matter of time before the right-oriented debate gets the attention it deserves.

I am guessing it won't be long, for as the disastrous consequences of prohibition are becoming more palpable, more and more people wake up to see through the lies, prejudices and misconceptions that sustain our drug policies. No longer can the prohibitionists control the debate by claiming the moral high-ground and refusing to answer their critics. 50 years of worldwide prohibition has long since disproven the validity of their premises, and now that they have set aside the rule of law in a final attempt to shield the drug law from critical review, they have really made a mess of things.

The rights-oriented debate, after all, will not go away by the prohibitionists simply closing their minds and ignoring the questions it raises. It is a time-honored truth that no policy can survive the test of time supported by ignorance and arrogance alone, for as humanity evolves we inevitably break free from the old shackles of oppression. Whether these shackles have come in the form of inhumane and unjust laws or delusional, disserving beliefs does not matter; in the end the former reflect the latter, and the spirit of freedom will always endure.



The fate of prohibition, then, has been sealed since day one. It was never a matter of *if* these repressive policies would ever end; it was only a matter of *when* and now that the rights-oriented debate has seen the light of day it is sure to bring humanity a most longed-for victory.

The prohibitionists have no say in this. They can only accept the inevitable or keep stalling by displaying an ever more farcical contempt for the rule of law. However, in choosing to continue their pathological denial of reality, they will only add fuel to the fire they so desperately are trying to put out, and so it is that the endgame draws nearer each day.

In the final analysis, then, it all depends on two variables: (1) the length to which prohibitionists will go to see to it that justice is denied and (2) how much longer the people will put up with self-serving civil servants who think they are above the law. When it comes to this, what you can count on is that the prohibitionists in power will not abdicate willingly. Power never does, and looking back at history we find that rights are never given; they are always hard won, and while the authorities sometimes have had to give a little in order not to lose everything, it is the human rights defenders of the past whom have kept tyranny in check. Thanks to them we now have our Bill of Rights, and it is up to us to see to it that those rights are respected.

The state apparatus, after all, is never short of system-zombies eager to thin out our catalogue of rights. They are constantly trying to increase the State's sphere of influence by diminishing ours, and to the degree the public remains too complacent and apathetic to care, they will succeed.

We see from this that there is a strong correlation between freedom and responsibility; in the end, only those worthy of liberty will retain it and those who want freedom must be prepared to fight the disciples of tyranny inch by inch. In saying so, I am of course not advocating violent means. Only a non-violent revolution will be worthy of our cause, and the finest freedom-fighters out there will follow the examples of former champions of liberty such as Martin Luther King and Mahatma Gandhi. As these people have shown, the most effective tool against any form of tyranny is civil disobedience, but it has to come from a place of love and

not contempt. This is extremely important, for the latter will only increase hostilities, and this is most certainly not what we want. Any action therefore, whether it is civil disobedience or merely discussing the issue with prohibitionists should be inspired by our love for humanity. If we want a better world, we must quite simply be the change we want to see, and to the degree we stand up for our rights while patiently correcting the prohibitionists' erroneous belief, we will see the rights-oriented debate move forward.

Truth is, we will always get the kind of government we deserve; for those with eyes to see, our authorities' reasons for going to war have always been a series of falsehoods, and the only reason why this war on ourselves could have lasted for so long is because we were too timid to take responsibility for our own lives. In the name of the war on drugs, we have willingly let them take away our freedoms, and our politicians' hypocrisy, short-sightedness, and lack of respect for human rights have merely mirrored our own. Conversely, if we wise up, we will find that a new, more constructive dynamic will take place between the individual and the State; to the extent we clean up our act, we will get civil servants who know their place within the framework of the larger scheme of things; their motivation will be to serve rather than to dominate; they will not be corrupted by special interests, and they will have no need to empower themselves at our expense. Indeed, the Wholeness-concept and its implications will be embedded in their reasoning and this will bridge the current gap between theory and practice. Consequently, we will get a new class of politicians who will want to encourage our individuality rather than suppress it, who will inspire us rather than disempower us; and who will foster our sense of responsibility rather than discourage it.

Knowing this, people should be inspired to fight back against all forms of tyrannical government. Truth being on our side, we cannot lose, for as a wise man once said, there is nothing more powerful in this world than the human soul on fire, and as a storm that will be the end of the

enemies of freedom is brewing, those of you who have the courage to stand up for your rights are most welcome to join the barricades\*.

This is where the action is at, and this is where your service to humanity is desperately needed, for we do have a say in the creation of our own reality and the way forward is quite simple: the more people we are who demand answers, the harder it will be for them to ignore us; and the harder it becomes for them to ignore us, the sooner we will rid the world of a war that has trampled human rights, corrupted our thinking, and nearly destroyed a civilization in its wake.

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\* If you want to give a voice to the rights-oriented debate, a good place to begin is to join the Alliance for Rights-Oriented Drug Policies. Check us out at [www.arodpolicies.org](http://www.arodpolicies.org).

# ENDNOTES

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<sup>1</sup> Randy Barnett, a professor of law, commented thus: “It seems that no facts are sufficient to shake the prohibitionists’ faith in this tragic policy. As . . . suggested elsewhere, some persons act as though they are addicted to drug laws, with all the connotations of irrationality that term is meant to convey when applied to drug users. Consequently, they are unlikely to be swayed by the copious facts and arguments presented [by reform activists]. . . . [Nonetheless] the case against prohibition is overwhelming, precisely because so many different types of considerations all point to a single solution: the legalization of illicit drugs.” Randy E. Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, 103 Yale Law Journal (1994), p. 2598.

The drug war bureaucrats, however, have so far refused to acknowledge any of this, and for more on “the extent to which these hardliners have gone to maintain the status quo through rhetoric, denial, manipulation, selective presentation, misrepresentation and suppression of evidence, selective use of experts, threats to funding, and purging “defeatists” from the UN system”, see Martin Jelsma, *Drugs in the UN System: the Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs*, International Journal of Drug Policy 14 (2003), pp. 181-195, and Francisco Thoumi & Jorrit Kamminga, *The Recent Changes at UNODC and its Role in Advancing and Innovating Anti-Drug Policies: Old Wine in New Cleaner Bottles*.

Professors Bakalar and Grinspoon has this to say on the evolution of drug policy: “Looked at as a series of incidents, the history of social and legal responses to drug use, especially in the last century and in the United States, sometimes seems melancholy and haphazard. It is easy to find inadequate pharmacology, inconsistent ad hoc responses based on poor information, indulgence of passions and prejudices, including racism, in response to drug scares, institutional self-aggrandizement by narcotics police, and a fair amount of hypocrisy and corruption.” James B. Bakalar & Lester Grinspoon, *Drug Control in a Free Society*, Cambridge University Press (1998), p. 68. For more on how prohibitionists have ignored the evidence, see *infra* notes 3, 14, 64, 65, 66, 70, 74.

<sup>2</sup> John F. Galliher, David P. Keys & Michael Elsner, *Lindesmith v. Anslinger: An Early Government Victory in the Failed War on Drugs*, vol. 88 of *Journal of Criminal Law and Criminology* (1998), p. 681.

<sup>3</sup> Until this day prohibitionists have shied away from confronting facts and questions revealing the fallacies upon which their policies are based. This is uncontroversial, for our public officials have never tolerated an open examination of the facts, and every study they’ve funded has been designed to bolster prohibitionist propaganda. Reform-minded activists are keen to point this out. The Global Drug Policy Commission, for

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example, has noted that “in spite of the increasing evidence that current policies are not achieving their objectives, most policymaking bodies at the national and international level have tended to avoid open scrutiny or debate on alternatives.” Former U.S. Senator Joseph L. Galiber was even blunter when he, in a bill to repeal the drug laws, stated that “criminalization of . . . drugs has fostered—indeed, even required—not enlightenment, but enforced public ignorance of the true nature of the perils of drug use. One of the more conspicuous accoutrements of our futile coercive tactics is what has been euphemistically labeled drug “education.” There is nothing remotely educational about the hyperbole publicly expounded about drugs, which is little other than a medieval attempt to suppress, not reveal, knowledge. It is no more educational than Victorian efforts were to educate young males about masturbation. The metaphors have merely changed from impotence, blindness, and hairy palms to fried brains. The design is the same: terror and fright replace information. Our drug educators act as shrill propagandists instead of cultivators of inquisitive minds.” Joseph L. Galiber, *A Bill to Repeal the Drug Laws: Replacing Prohibition With Regulation*, p. 14.

Professor of law Randy Barnett commented thus on the prohibitionists’ lack of concern for the ill-fated consequences of their policies: “In war, it is said, truth is the first casualty. To be blunt, many committed prohibitionists inside and outside of government who profess to care so much about the morals of others routinely lie or willfully mislead the public about nearly every aspect of both drugs and the policy of prohibition. Our consistent experience with drug prohibition—from marijuana, to heroin, to cocaine—is that when careful empirical studies are eventually performed, they reveal the initial official accounts to be either false or wildly exaggerated. Rarely, if ever, does law enforcement then reverse itself or even moderate its rhetoric.” Randy Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, p. 2603. See also *supra* note 1 and *infra* notes 14, 64, 66, 70, 74

<sup>4</sup> Charles Whitebread, a professor of law who has written extensively on the subject, speaks to it thus: “The lesson is clear. Moral regulation perpetuates fear, not morality. . . . At the core of the effort to regulate morality lies the desire of “us” to regulate “them.” With each prohibition, a socially dominant group burdens a weaker class of citizens with its notion of propriety. And notwithstanding the moral justifications used to support them, moral regulations only succeed in exacerbating existing social rifts. . . . As we enter a new century, it is abundantly clear that it is time to free ourselves from the idea of prohibition. . . . We should understand, like never before, that the idea is inherently flawed.” Charles H. Whitebread, *Us and Them and the Nature of Moral Regulation*, *Southern California Law Review* Vol. 74:361, pp. 362-63,70. See also *infra* notes 67, 72, 73, 77, 78, 79, 80, 81, 82, 83, 84.

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<sup>5</sup> The quote is taken from a report they prepared together with other members of the Global Commission on Drug Policy. For more, see the Global Commission on Drug Policy's *June 2011 report*, p. 5, 17.

<sup>6</sup> Douglas and McDonald, *The Prohibition of Illicit Drugs is Killing and Criminalising our Children and We are All Letting it Happen*, Report of a high level Australia 21 Roundtable (2012), p. 22.

<sup>7</sup> Barret et al., *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy*, Beckley Foundation (2008), pp. 1-2.

<sup>8</sup> It is estimated that, at any given point in time, some 10 million people around the world are imprisoned for drug-related offenses (See Bryan Stevenson, *Drug Policy, Criminal Justice, and Mass Imprisonment*, Global Commission on Drug Policy working paper, prepared for January 24-25 meeting (2011)). As pertains to the more than one million estimated drug-war deaths, it is estimated that in Latin America alone, some 150,000 people are murdered every year as a result of prohibition (*The Drug Problem in the Americas*, Organization of American States, 2013, p. 76). Add to this the numbers from the rest of the world, as well as the fact that of the estimated 160,000 drug-related deaths worldwide, some 80 percent is assumed to be systemic (i.e. a consequence of prohibition), and you will find that this number is not an exaggeration. For more on this, see *infra* note 80.

<sup>9</sup> Thomas Szasz, *Our Right to Drugs* (Praeger 1992) p. 14.

<sup>10</sup> David Bergland, *Libertarianism, Natural Rights and the Constitution: A Commentary on Recent Libertarian Literature*, p. 510 (available at <http://engagedscholarship.csuohio.edu/clevstlrev/vol44/iss4/6>).

<sup>11</sup> See *infra* notes 70, 71.

<sup>12</sup> See *infra* notes 67, 72, 73, 77, 78, 79, 80, 82, 83, 84.

<sup>13</sup> See *infra* note 71.

<sup>14</sup> In discussing the American Medical Association's role in perpetuating falsities about drugs, Thomas Szasz writes: "The American Medical Association's position on self-medication and drug control has at least been consistent during the past fifty years. It has never told the truth about drugs (as that 'truth' was seen and recorded by contemporary chemists and pharmacologists), if telling it was in conflict with government policies." Thomas Szasz, *Ceremonial Chemistry*, p. 128. See also *supra* notes 1, 3 and *infra* notes 65, 70, 74.

<sup>15</sup> David Nutt, *Drugs: Without the Hot Air* (2012), p. 43.

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- <sup>16</sup> *Ibid*, p. 7.
- <sup>17</sup> *Ibid*, p. 280. See also *infra* note 70.
- <sup>18</sup> Gary Null, C. Dean, et al., *Death By Medicine* (2003).
- <sup>19</sup> Douglas Husak, *Legalize this! The Case for Decriminalizing drugs* (2002), p. 137.
- <sup>20</sup> Roar Mikalsen, *Human Rising* (2010), p. 111.
- <sup>21</sup> For more on this, see *infra* note 78, 79, 80, 82,
- <sup>22</sup> General Comment no. 18, paragraph 7.
- <sup>23</sup> General Comment no. 18, paragraph 12.
- <sup>24</sup> *Human Rights: Civil and Political Rights*, Human Rights Committee's Fact Sheet No. 15 (Rev.1) p. 7.
- <sup>25</sup> Kent Roach, *The Primacy of Liberty and Proportionality, Not Human Dignity, When Subjecting Criminal Law to Constitutional Control*, *Israeli Law Review* 44:91 (2011), p.112-13.
- <sup>26</sup> General Comment no. 18, paragraph 10.
- <sup>27</sup> General Comment no. 18, paragraph 6.
- <sup>28</sup> Douglas Husak, *Legalize this! The case for decriminalizing drugs* (2002), p. 163. See also *infra* notes 83-90.
- <sup>29</sup> Woodrow Wilson: *Address, New York Press Club, May 9, 1912*
- <sup>30</sup> Hugh Brogan, *Longman History of the United States of America* (1987), p. 518.
- <sup>31</sup> David Nutt, *Drugs: Without The Hot Air* (2012), p. 269. See also *infra* notes 45, 77, 78, 81.
- <sup>32</sup> *Ibid*, p. 271. See also *infra* notes 45, 77, 78, 81.
- <sup>33</sup> See *infra* note 80.
- <sup>34</sup> Thomas Szasz speaks to it thus: "Doctors, lawyers and politicians started the War on Drugs and continue to wage it, and (...) they are its real beneficiaries. In contrast, the drug war's ostensible beneficiaries—the poor, the uneducated, the young, the old, and the sick—are its actual victims." Thomas Szasz, *Our Right to Drugs* (1992), p. 157. See also *infra* note 84.
- <sup>35</sup> Steven Wisotsky, professor of law at Nova Southeastern University, has written an article called *A Society of Suspects: the War on Drugs and our Civil Liberties* (Cato

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Institute Policy Analysis No. 180, 1992). He states: “This country’s Founders would be disappointed with what we have done to their legacy of liberty: The War on Drugs, by its very nature, is a war on the Bill of Rights. When the Founders rebelled against British tyranny, they grounded their cause in a belief in the natural rights of the individual and the Enlightenment ideas of progress through reason. Understanding the dangers of an excessive concentration of political power, they divided and limited the reach of that power through a federal structure with the states, the separation of powers among the three branches, and the guarantees of personal freedom in the Constitution itself and in the Bill of Rights. With the War on Drugs, however, the wisdom of the Founders has been cast aside. In their shortsighted zeal to create a “Drug-Free America” by 1995, our political leaders—state and federal, elected and appointed—have acted as though the end justifies the means, repudiating our heritage of limited government and individual freedoms while endowing the bureaucratic state with unprecedented powers.” (p. 1, sources omitted).

<sup>36</sup> See *infra* notes 42, 79, 80, 82.

<sup>37</sup> Count The Costs, *The War on Drugs: Undermining International Development and Security, Increasing Conflict*, p. 7

<sup>38</sup> See *infra* notes 80, 81, 82.

<sup>39</sup> Thomas Szasz, *Our Right to Drugs* (1992), p. 136.

<sup>40</sup> The American Navy recognized this taboo topic in a report to Congress some 50 years ago when they said: “Realistically, all wars have been for economic reasons. [But] to make the politically palatable, ideological issues have always been involved. Any possible future war will undoubtedly conform to historical precedent.” Gerald Colby, *Du Pont Dynasty: Behind the Nylon Curtain* (1984), p. 408.

<sup>41</sup> Roar Mikalsen, *Human Rising* (2010), p. 22-166 and David Nutt: *Drugs Without The Hot Air* (2012), p. 45-46 and 271-73. See also *infra* notes 64, 66, 70

<sup>42</sup> “Has the War on Drugs minimised harm? The short answer is, no. In fact it has done the opposite: it has increased harm for pretty much everyone. This is well known amongst policy-makers, though rarely openly acknowledged.” David Nutt, *Drugs: Without The Hot Air* (2012), p. 273.

<sup>43</sup> Roar Mikalsen, *Human Rising* (2010), p. 46.

<sup>44</sup> *Ibid*, p. 45.

<sup>45</sup> A group of experts concluded thus after looking into the subject matter: “Fairly consistently, the finding has been that changes in penalties for use have little effect on rates of use, or on problems arising from effects of the drug. In general, the attempt at



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deterrence of use or possession though criminal laws have failed.” (Room et al. *Cannabis Policy: Moving Beyond Stalemate* (2010), p. 148). This has also been confirmed by a British Government study. In November 2014, the Home Office released its *Drugs, International Comparators* study, which looked at different approaches to drugs policy and treatment in a number of countries including some from countries that have harsh criminal sanctions for users and some that have effectively decriminalised the possession of drugs. The report found that tough criminal sentences for drug users makes no difference to the rates of drug use, being that use of illegal substances is influenced by factors “more complex and nuanced than legislation and enforcement alone” and “there is no apparent correlation between the ‘toughness’ of a country’s approach and the prevalence of drug use.” Other reports and studies confirming this are Jean-Paul Grund & Joost Brecksema, *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands*, Open Society Foundations (2013); Transform, *Drug Decriminalisation in Portugal: Setting the Record Straight*, 2014; Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana Prohibition*, (2006); Patricia G Ericson & Benedict Fisher: *Canadian Cannabis Policy: Impact of Criminalization, the Current Reality and Future Policy Options* p. 227-242 in Lorentz Bollinger (ed.), *Cannabis Science: From Prohibition to Human Right* (1997); Artur Domoslawski, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, Open Society Foundations (2011); Craig Reinerman, Peter D. A. Cohen & Hendrien L. Kaal, *The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco* (2004) 94 Am. J. Pub. Health 836. For even more on this, see *infra* notes 77, 78, 84.

<sup>46</sup> David Nutt, *Drugs Without The Hot Air* (2012), p. 24.

<sup>47</sup> Douglas Husak, *Legalize This! The case for decriminalizing drugs* (2002). See also *infra* notes 82-90.

<sup>48</sup> David Nutt, *Drugs Without The Hot Air* (2012), p. 23.

<sup>49</sup> Lysander Spooner, *Vices Are Not Crimes*, p. 1

<sup>50</sup> Lysander Spooner, *Vices Are Not Crimes*, p. 5.

<sup>51</sup> James P Gray, *Why Our Drug Laws Have Failed and What We Can Do About It* (2001), p. 122.

<sup>52</sup> Ronald Irving, *The Law is a Ass* (2010), p. 269.

<sup>53</sup> B.C. Nirmal, *Natural Law, Human Rights and Justice: Some Reflections on Finnis’s Natural Law Theory*, p 26.

<sup>54</sup> Mads Andenæs, Erik Bjørge, *Menneskerettene Og Oss* (2012), p. 33

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<sup>55</sup> General Comment no. 35, paragraph 12.

<sup>56</sup> Drug analyst James Ostrowski estimates that roughly 80% of the world's 160,000 drug-use-deaths are caused by prohibition, while only 20% by the inherent qualities of the drugs (Ostrowski, *The Moral and Practical Case for Drug Legalization*, p. 654). For more on the destructive effects of prohibition, see *infra* notes 79, 80.

<sup>57</sup> See Grinspoon & Bakalar, *Psychedelic Drugs Reconsidered*; Roar Mikalsen, *Reason Is*; Robert Forte, *Entheogens and the Future of Religion*; Christopher Gray, *The Acid Diaries*; Stanislav Grof, *Realms of the Human Unconscious*; Stanislav Grof, *LSD: Doorway to the Numinous*; Stanislav Grof, *The Cosmic Game: Explorations of the Frontiers of Human Consciousness*; Neal Goldsmith, *Psychedelic Healing*; Rick Strassman, *DMT: the Spirit Molecule*.

<sup>58</sup> Robert Forte, *Entheogens and the Future of Religion* (Park Street Press) 2012, p. 4.

<sup>59</sup> *Ibid.*, p. 186.

<sup>60</sup> Allison Brandi Margolin, *On the Right to Get High* (2002) p. 37.

<sup>61</sup> Robert Forte, *Entheogens and the Future of Religion* (Park Street Press, 2012), p. 189. See also Roar Mikalsen, *Reason Is*.

<sup>62</sup> General Comment 11, paragraph 2.

<sup>63</sup> James P. Gray, *Why Our Drug Laws Have Failed and What We Can Do About it: A Judicial Indictment of the War on Drugs* (Temple University Press 2001), p. 11.

<sup>64</sup> Examples of responsible studies of marijuana available in the 1930s include the Indian Hemp Drugs Commission of 1893-94, and Siler et al., *Marijuana Smoking in Panama*. The findings of such empirical studies were either ignored or violently attacked by enforcement officials committed to the contrary position. For more on this, see Lester Grinspoon, *Marihuana Reconsidered* (Harvard University Press) 1977, pp. 27-29. See also *supra* notes 1, 3, 14, and *infra* notes 65, 66, 70, 74.

<sup>65</sup> In the *Journal of Criminal Law and Criminology* vol. 88 (1998) John F. Galliher, David P. Keys, and Michael Elsner documents in *Lindsmith v. Anslinger: An Early Government Victory in the Failed War on Drugs* how prohibitionists intimidated and fought those who opposed their deceitful propaganda. See also *supra* notes 1, 3, 14, 64 and *infra* notes 66, 70, 74.

<sup>66</sup> See William J. Stuntz, *The Collapse of American Criminal Justice* (Harvard University Press, 2011); William J. Chambliss & Robert B. Seidman, *Law, Order, and Power* (1971); and Robert P. Rhodes, *The Insoluble Problems of Crime* (1977). In *Rationalizing Drug Policy under Federalism* (pp. 711-21) professors David W. Rasmussen & Bruce L.

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Benson analyze current policy as a result of bureaucratic self-interest. They conclude: “In a representative democracy there is a tendency to expect that public opinion drives drug policy. This is not the case, as every detailed study of the emergence of legal norms has consistently shown the immense importance of interest-group activity, not the public interest, as the critical variable. Drug war, the excessive application of enforcement that aggravates rather than mitigates the social consequences of drug use, is waged because it is in the interests of particular politically influential groups, including law enforcement bureaucracies and public officials. According to this view, legislators can act as moral entrepreneurs, but they are more generally “middle-men” whose actions are largely determined by interest groups, including those engaged in the law enforcement process—police chiefs, sheriffs, and prosecutors.”(p. 711)

The same conclusion, that the war on drugs persists because of bureaucratic self-interest, is found in Bruce L. Benson, *The War on Drugs: A Public Bad* (2008), pp. 36-50. For more on how prohibitionists, until today, have ignored scientific advice and concealed the facts in order to maintain their flawed policies, see Judge Robert Sweet’s lecture in *Towards a Compassionate and Cost-effective Drug Policy: A Forum on the Impact of Drug Policy on the Justice System and Human Rights*, Fordham Urban Law Journal Vol. 24, Issue 2 (1996), pp. 319-30; Laurent Laniel, *The Relationship between Research and Drug Policy in the United States*, Management of Social Transformations, Discussion Paper No. 44; Blumenson & Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform* (2009), pp. 12-16; and Rolles (ed.), *A Comparison of the Cost-effectiveness of Prohibition and Regulation of Drugs*, Transform Drug Policy Foundation (April 2009), pp.14-15. See also *supra* notes 1, 3, 14, 64, 65 and *infra* notes 70, 74.

<sup>67</sup> For literature calling for the decriminalization of drugs/victimless crimes from a perspective of efficiency-based arguments, see John Kaplan, *Marijuana: The New Prohibition* (1970); Norval Morris & Gordon Hawkins, *The Honest Politician’s Guide to Crime Control* (1970); Herbert Packer, *The Limits of the Criminal Sanction* (1968); Kadish, *The Crisis of Overcriminalization*; Steven B. Duke, *The Future of Marijuana in the United States* (2013); Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*; Daniel D. Polsby, *Ending the War on Drugs and Children*; John J. Donohue et al., *Rethinking America’s Illegal Drug Policy* in Philip J. Cook, Jens Ludwig, and Justin McCrary (ed.), *Controlling Crime: Strategies and Tradeoffs*; Blumenson & Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform* (2009); Rasmussen & Benson, *Rationalizing Drug Policy under Federalism*. For a cost-benefit analysis of prohibition versus legalization, see Rolles (ed.), *A Comparison of the Cost-effectiveness of Prohibition and Regulation of Drugs*, Transform Drug Policy Foundation (April 2009).

This approach, however, fails to give adequate weight to the dignity of persons, and for a more comprehensive defense of legalization on both moral and cost-benefit

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grounds, see James Ostrowski, *The Moral and Practical Case for Drug Legalization*, Hofstra Law Review, Vol. 18:607 (1990). See also *infra* notes 78, 80.

<sup>68</sup> See for example Samuel Freeman's article *Liberalism, Inalienability, and Rights of Drug Use*, in Pablo De Greiff (ed.), *Drugs and the Limits of Liberalism: Moral and Legal Issues* (1999); Douglas Husak, *Drugs and Rights*; Douglas Husak, *Legalize This: the Case for Decriminalizing Drugs*; Roger Pilon, *The Illegitimate War on Drugs*, in Timothy Lynch (ed.), *After Prohibition: an Adult Approach to Drug Policies in the 21st Century* (2000); Andrew Koppelman, *Drug Policy and the Liberal Self*; David A.J. Richards, *Sex, Drugs, Death, and the Law*; David Bergland, *Libertarianism, Natural Rights and the Constitution: A Commentary on Recent Libertarian Literature*; Warren Redlich, *A Substantive Due Process Challenge to the War on Drugs*; Eva Nilsen & Eric Blumenson, *Liberty Lost: the Moral Case for Marijuana Law Reform*; Thomas Szasz, *Our Right to Drugs*; Walter Block, *Drug Prohibition: A Legal and Economic Analysis* (1993).

<sup>69</sup> Roar Mikalsen, *Reason Is* (2014).

<sup>70</sup> For more on the harmfulness of licit and illicit drugs, see for instance Duke and Gross, *America's longest war*. This epic work begins by comparing the harmfulness of tobacco and alcohol with marijuana, heroin, and cocaine. The authors organize their presentation of empirical research on each drug around its physical and psychological effects, its criminogenic effects, and its positive and negative health consequences. The legal ones are shown each in their own way to be worse than the illegal ones. When it comes to marijuana, they conclude that not only alcohol and tobacco, but also obesity are far more damaging to the human body, and on pages 74-77 statistics are presented suggesting that per 100,000 users, the following numbers are killed by their drug of choice every year: tobacco 650; alcohol 150; heroin 80; cocaine 4; marijuana 0.

Similar comparisons revealing the irrational separation between licit and illicit drugs, are found in the Global Cannabis Commission Report, *Cannabis Policy: Moving Beyond Stalemate*, Beckley Foundation (2008), pp. 52-55; James Ostrowski, *The Moral and Practical Case for Drug Legalization*, Hofstra Law Review: Vol. 18:607 (1990), pp. 688-702; and the Journal of the American Medical Association 270 (18) (1993), pp. 2207-12. In the latter, Michael McGinnis and William Foege's article *Actual Causes of Death in the United States*, concludes that Americans are twenty-five times more likely to die from the use of tobacco and alcohol than they are from the use of illicit drugs.

Another scientific study investigated the severity of addiction and withdrawal across six psychoactive drugs (caffeine, nicotine, alcohol, heroin, cocaine, and marijuana). This study concluded that marijuana and caffeine were the least addictive of these substances, asserting that marijuana is "slightly less addictive than caffeine. (See Zimmer L.E., and

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Morgan J.P., *Marijuana myths, marijuana facts: a review of the scientific evidence*, Bookworld Services, 1997.)

A World Health Organization study adds to this picture. In 2000, it estimated the amount of disease that was caused by a range of major risk factors and concluded that the proportion of the total burden of disease in the Western European region that was attributable to tobacco was 12.2%, alcohol 9.2%, and illicit drugs 1.8%. (Robin Room, *The Public Health Significance of Cannabis in the Spectrum of Psychoactive substances* in EMCDDA, *A Cannabis Reader: Global Issues and Local Experiences*, Monograph series 8, Vol. 2, 2008, p. 147.) On a global scale, the WHO estimated in 2001 that illicit drug use accounted for approximately 0.6% of all lost disability-adjusted life years (DALYs) (all causes), compared with 6.1% caused by alcohol and tobacco. (WHO, *The Global Burden of Disease*; Alan D. Lopez, Epidemiology and Burden of Disease Team, World Health Organization. 2020 Focus 5, Brief 2, February 2001.)

Other articles which compare the harms of licit and illicit drugs include Nutt et al., *Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse*, *Lancet* 369 (2007), pp. 1047–53; Gable, *Comparison of Acute Lethal Toxicity of Commonly Abused Psychoactive Substances*, *Addiction* 99 (2004), pp. 686–96; the *Lancet* editorial *Dangerous Habits*, the *Lancet* no. 9140 (1998); van Amsterdam, Opperhuizen, Koeter & van den Brink, *Ranking the Harm of Alcohol, Tobacco and Illicit Drugs for the Individual and the Population*, *Eur Addict Res* 16 (2010), pp. 202–27; as well as the discussion paper *A Public Health Approach to Drug Control in Canada*, Health Officers Council of British Columbia (October 2005) pp. 6-8. The latter mentions some interesting findings: “Single et al compared the deaths and diseases caused by alcohol, tobacco and illegal drug use in Canada. They found that alcohol, tobacco, and illegal drugs accounted for 20.0% of all deaths, 22.2% of years of all potential life lost, and 9.4% of all admissions to hospital in Canada in 1995. Of all substances, tobacco was by far the largest contributor to mortality, making up 83% of deaths, while alcohol accounted for 16% and illegal drugs only 2% respectively. The PYLL (potential years of life lost) proportions reflect the younger age profile of deaths due to illegal drugs and to alcohol-related injuries, with alcohol making up 24% of PYLL, illegal drugs 5% and tobacco 71%. By any measure tobacco is the dominant contributor to health related harms.”(p. 6-7, sources omitted)

The report by Single et al. also estimated the costs of substance abuse in Canada. Alcohol accounted for more than \$7.5 billion in costs, representing 40.8% of the total costs of substance abuse, and tobacco accounted for \$9.56 billion in costs. This was more than half (51.8%) of the total substance abuse costs, while the economic costs of illegal drugs were estimated at \$1.37 billion (7.4%). It must be noted that much of these costs must be attributed to prohibition. The costs of enforcement, for instance, totaled some \$400 million; much of the cost attributed to lost productivity was because of people

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erving jail time; and much of the disease and premature death was due to prohibition-related effects. The discussion paper goes on to note: “The larger societal economic costs due to alcohol and tobacco have been replicated in recent reviews in other countries. Collins and Lapsley found costs in Australia of \$34.7 Billion (AU) per annum, that were proportionally 61% due to tobacco, 22% due to alcohol, and 17% due to illegal drugs. In France in 1997, proportional costs of 41%, 53% and 6% respectively were found due to tobacco, alcohol and illegal drugs, out of a total societal cost of 218 Billion franc per year. Harwood found in the United States the costs in 1992 were US\$148 Billion related to alcohol, and US\$98 Billion related to illegal drugs. These studies were consistent in that the greater economic losses for alcohol and tobacco were due to lost productivity, whereas for illegal drugs the costs related more to enforcement.”(pp. 7-8, sources omitted)

Another good article which summarizes a great deal of the research on this topic (as of 2008) is Robin Room, *The Public Health Significance of Cannabis in the Spectrum of Psychoactive substances* (see EMCDDA, *A Cannabis Reader: Global Issues and Local Experiences*, Monograph series 8, Vol. 2, 2008, pp. 146-54.). His paper not only shows how the licit drugs are worse than many illicit, but also how the prohibitionists have tried to obscure this fact. As he says: “There is an enormous commitment by many involved in the international control system and equivalent national systems to keeping the status quo, [therefore] comparing degrees of dangerousness is a fraught topic. General comparisons of this type have often faced substantial opposition in the course of publication. [For instance], the material from the Prime Minister’s Strategy Unit was only released on 1 July 2005, 2 years after compilation, in partial compliance with a Freedom of Information request. The report by Hall et al. was eventually published after a media storm over its omission from the [WHO] report for which it was originally commissioned. The Roques report also caused considerable controversy when it appeared. As a French review noted, there were complaints not only about including alcohol among ‘drugs’, but also that the group of experts ‘banalized the danger of cannabis by putting in evidence the weak physical and psychic dependence from this product, compared with those of tobacco and alcohol’.” EMCDDA, *A Cannabis Reader: Global Issues and Local Experiences*, Monograph series 8, Vol. 2, 2008, p. 153,152, Sources omitted.

Still, despite attempts to sabotage the drive towards evidence-based policies, more and more research along these lines is publicized. The most comprehensive study so far was performed by the Independent Scientific Committee on Drugs in 2010 (see Nutt et al., *Drug harms in the UK: a Multicriteria Decision Analysis*, Lancet 2010; 376: pp. 1558–65). This study is further discussed in David Nutt, *Drugs: Without the Hot Air*, a book in which Nutt is careful to note how the social, health, and economic costs associated with licit drugs are far greater than the illicit ones. A 2015 study by Dirk W.

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Lachenmeier and Jürgen Rehm performed a comparative risk assessment study of licit and illicit drugs using the margin of exposure (MOE) approach and the main finding was the qualitative validation of previous expert-based approaches on drug-ranking (like ISCD's 2010 study above), especially in regard to the positions of alcohol (highest) and cannabis (lowest).

In addition to this, the irrationality of the classification system has been pointed out by many other experts, including Margaret P. Battin, Erik Luna, Arthur G. Lipman, Paul M. Gahlinger, Douglas E. Rollins, Jeanette C. Roberts, and Troy L. Booher. In their book *Drugs and Justice: Seeking a Consistent, Coherent, Comprehensive View*, (Oxford University Press 2008), the authors argue that the entire classification system must be revised if our policies shall be evidence-based. As they state: “The argument that differences in regulatory rationales are designed to track differences in drugs is not supported by pharmacology or actual practice. Such an argument might be plausible if differing types of drugs were classified consistently according to an intelligible, well-reasoned, consistent, and coherent schema. Yet much of the current drug classification and thus assignment to a particular agency appears to be the product of politically motivated historical events, rather than by the properties of the drugs themselves or their effects in users.” (p. 88)

“. . . Some illegal drugs present little risk of harm to the user or to others, but are nonetheless listed in the Controlled Substances Act. Many, if not most, of these drugs are hallucinogens. LSD, peyote, DMT, psilocybin, mescaline, and marijuana do not present major biological risks of harm to the user, are not physically addictive, and present no evident harm to others when taken in an appropriate setting.” (p.172)

“It would be tempting to say that these misclassifications are at the root of any conceptual and practical trouble over drugs. Indeed, these misclassifications do play a major role, and they are the focal point for much of the contemporary critique of drug policy. Recognizing these misclassifications, based on inappropriate and inadequate rationales for the categorization of specific drugs, presents a major opportunity for reclassification and thus the development of more consistent, coherent, comprehensive drug theory and policy.” (p. 159)

“We must make significant changes, not merely cosmetic prunings, in the way we treat drugs—all drugs. This means scrapping many of the laws now on the books and starting over.”(p. 258)

Also other reports like *A Fresh Approach to Drugs*, UK Drug Policy Commission (October 2012) and the Report of the Global Commission on Drug Policy (June 2011) recommend a total revision of the classification system. See also House of Commons Science and Technology Committee, *Drug classification: Making a Hash of It?* Fifth Report of Session (2005–06), pp. 3-50, for more on its lack of merit.

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<sup>71</sup> Research indicates that the vast majority of people who use illegal drugs, (like the vast majority of people who use legal drugs) do so without creating problems for themselves or others. The United Nations, for instance, estimates that there are 250 million drug users worldwide, of which less than 10 percent are considered to be problem drug users. (Report of the Global Commission on Drug Policy (June, 2011), p.13)

The illicit drugs' addictive/destructive properties, then, is vastly misrepresented, something which Arnold S. Trebach's, *The Heroin Solution* (Yale University Press, 1982) says more about. In this book statistics are presented which indicate that while the U.S. had 500,000 heroin addicts in the late 1970's, there were 3,500,000 non-addicted occasional users. This suggests a 12.5% addiction rate, which is also confirmed by looking at the numbers in Great Britain. While 0.9 percent of people aged 16-59 had tried opiates, only 0.1 percent reported having used them in the last year. (Peter Reuter & Alex Stevens, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission*, 2007, pp. 20-21)

Last year use, of course, doesn't necessarily mean that they are problem users, for quite a few of them are able to control their use of heroin, contradicting popular notions that addiction is an inevitable consequence of heroin use. Several studies confirm this. For more information see Warburton et al., *Occasional and controlled heroin use: Not a problem?* York: Joseph Rowntree Foundation (2005) and D. Shewan & P. Dalgarno, *Evidence for controlled heroin use? Low levels of negative health and social outcomes among non-treatment heroin users in Glasgow (Scotland)*, *British Journal of Health Psychology*, 10, (2006), pp. 33-48.

Some laboratory studies show a higher rate but these studies use medical grade, pure heroin. In *Health Consequences of Smoking: Nicotine Addiction* (Surgeon General's Report, 1988), a comparison is made of the relative addictiveness of smoked tobacco and several other drugs. According to this report alcohol has a 15% addiction rate, while tobacco is credited with an addiction rate of 90%. The Surgeon General's Report also observes that of the US soldiers who became addicted to heroin in Vietnam, approximately 90% were able to avoid readdiction upon return to the U.S. Another source of statistics is an article entitled *Hooked, not Hooked* by Deborah Franklin (In *Health* magazine Nov/Dec 1990). This article cites addiction experts' rankings of various legal and illegal drugs as follows: (1) Nicotine, (2) Crack, (3) Valium, (4) Alcohol, (5) Heroin, (6) Cocaine, (7) Caffeine, (8) Marijuana, (9) Ecstasy, (10) Psilocybin Mushrooms and LSD.

In Eric Goode, *Drugs in American Society* (1999) pp. 129-30, it is stated that of people who have taken an alcoholic drink at least once in their lives 62% have also done so in the past month; the figures for other drugs are cigarettes 40%; marijuana 15%; heroin 9%; cocaine 8%; stimulants 9%; and hallucinogens 7%. In Philip J. Cook, Jens Ludwig, and Justin McCrary (ed.), *Controlling Crime: Strategies and Tradeoffs*, John J.



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Donohue et al. compare alcohol and cannabis (see *Rethinking America's Illegal Drug Policy* pp. 244-269) citing reports that deal with addiction rates, harms, and patterns of use. Among other things, they cite research mentioned in a N.Y. Times article by Kershaw and Cathcart, suggesting that 10 percent of cannabis users, 15 percent of alcohol users, 15 percent of cocaine users, 25 percent of heroin users, and 33 percent of tobacco smokers will develop addiction.

Speaking of addiction and these drugs' rumored ability to destroy lives, we must also keep in mind that how the drug is experienced depends on psychological, *not* pharmacological properties. For more on this, see Richard G. Schlaadt and Peter T. Shannon, *Drugs: Use, Misuse, and Abuse*. We should also keep in mind that there is no real distinction between drug and nondrug addictions (see for instance Lance Dodes, *The Heart of Addiction*) and that studies in the addictionology literature have found that 9 percent of the entire population will be addicted to something (not only drugs) at some point in their lives. For more on this, see David A. Fishbain, *Chronic Opioid Treatment: Addiction and Pseudo-Addiction in Patients with Chronic Pain*, *Psychiatric Times* (February 2003), found online at <http://www.psychiatrictimes.com/p030225.html>.

For more on addiction, see James B. Bakalar & Lester Grinspoon, *Drug Control in a Free Society*, Cambridge University Press (1998), p. 35-67, and for more on patterns of use, see Thomas Nicholson et al., *Is Recreational Drug Use Normal?*; Ethan A. Nadelmann, *Drug Prohibition in the United States: Costs, Consequences, and Alternatives*; M.E. Jarvik, *The Drug Dilemma: Manipulating the Demand*; A. Goldstein, & H. Kalant, *Drug Policy: Striking the Right Balance*; C. Winick, *Social Behavior, Public Policy, and Nonharmful Drug Use*; Steven B. Duke, *Drug Prohibition: An Unnatural Disaster* pp. 29-37; and Roar Mikalsen, *Human Rising*, Kolofon (2010) pp. 426-34.

<sup>72</sup> The list of professionals is way too long to elaborate properly on. After all, it includes just about everyone who knows a thing or two about drug policy. However, to give you an idea, a group of 500 luminaries from around the world—including Nobel Laureate Milton Friedman, former Secretary of State George Shultz, and former UN Secretary General Javier Perez de Cueller—have signed an open letter the U.S. President and Congress arguing that the global war on drugs is causing more harm than good and urging that alternatives be considered. Another group of 770 academics wrote to the UN Secretary General in 1998, declaring that “the global war on drugs is now causing more harm than drug abuse itself”, and asking the bureaucrats “to initiate a truly open and honest dialogue regarding the future of global drug control policies; one in which fear, prejudice and punitive prohibitions yield to common sense, science, public health and human rights”. (see <http://www.drugpolicy.org/publications-resources/sign-letters/public-letter-kofi-annan/ungass-public-letter-kofi-annan-signato>)

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For other signatory campaigns, see the work of the Global Commission of Drug Policy, a group of statesmen and academics who say exactly the same. Other examples include Isaac Campos, a drug historian at the University of Cincinnati; Jeffrey Miron, an economist at Harvard University; economists David W. Rasmussen and Bruce L. Benson; Jefferson M. Fish, a professor emeritus of psychology; Thomas Szasz, another distinguished psychiatrist; Scholars of law such as John J. Donohue III, Steven B. Duke, Albert C. Gross, Harry G. Levine, Douglas Husak, Richard Glen Boire, Marc J. Blitz, Roger Pilon, Michelle Alexander, Randy E. Barnett, James Ostrowski, Andrew Koppelman, David A.J. Richards, Doug Bandow, David Bergland, Paul Hager, Allison Brandi Margolin, Michèle Alexandre, Warren Redlich, Merle Anouk de Vries, Erik Luna, Eva Nilssen and Eric Blumenson have all written on the subject; Herbert Packer, a Stanford Law School professor, argued likewise already in the 1960's; so did Charles H. Whitebread, a professor of law at the University of Southern California, and Steven Wisotsky also said so in a prepared statement before the Select Committee on Narcotics Abuse and Control, House of Representatives, September 29th, 1988. The list goes on and on...

<sup>73</sup> *Marijuana: A Signal of Misunderstanding*, National Commission on Marihuana and Drug Abuse (1972); *Legislative Options for Cannabis in Australia: Report on the National Task Force on Cannabis*, Australian National Drug Strategy Committee (1994); *A Wiser Course: Ending Drug Prohibition*, New York City Bar Association (1994); *Drug Lore: The Questioning of our Current Drug Law*, Australian Drug Law Reform Foundation (1996); *Cannabis: Our Position for a Public Policy*, Canadian Senate Special Committee on Illegal Drugs (Sept. 4, 2002); Rolles et al., *After the War on Drugs: Options for Control*, Transform Drug Policy Foundation (2004); *A Public Health Approach to Drug Control in Canada*, Health Officers Council of British Columbia (October 2005); Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana Prohibition*, (2006); *The Failure of the War on Drugs: Charting a New Course for the Commonwealth*, Report of the Massachusetts Bar Association Drug Task Force (2008); *After the War on Drugs: Blueprint for Regulation*, Transform Drug Policy Foundation (2009); Werb et al., *Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review*, International Centre for Science in Drug Policy (2010); *The War on Drugs Has Failed: It is Time for a New Approach*, Global Commission on Drug Policy (17 November 2011); Peter Hakim, *Rethinking US Drug Policy*, Inter-American Dialogue/the Beckley Foundation (2011); Oscapella et al., *Changing the Frame: A New Approach to Drug Policy in Canada*, Canadian Drug Policy Coalition (January 2012); *A Fresh Approach to Drugs*, UK Drug Policy Commission (October 2012); *Drugs and Democracy: Toward a Paradigm Shift*, Statement by the Latin American Commission on Drugs and Democracy; The Alternative World Drug Report: *Counting the Costs of the War on Drugs* (2012); *Governing the Global Drug*

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Wars, London School of Economics (October 2012); Bob Douglas and David McDonald, *The Prohibition of Illicit Drugs is Killing and Criminalising our Children and We are All Letting it Happen*, Report of a high level Australia 21 Roundtable Debate (2012); *An Exit Strategy for the Failed War on Drugs: A Federal Legislative Guide*, Drug Policy Alliance (2013); *Getting to Tomorrow: A Report on Canadian Drug Policy*, Canadian Drug Policy Coalition (2013); *The Drug Problem in the Americas*, Organization of American States (2013); Rep. Earl Blumenauer & Rep. Jared Polis, *The Path Forward: Rethinking Federal Marijuana Policy* (2013); Ilona Szabo de Carvalho, *Latin America Awakes: A Review of the New Drug Policy*, NOREF report (2013); *Blueprint for a Public Health and Safety Approach to Drug Policy*, DPA/NYAM (2013); *Taking Control: Pathways to Drug Policies that Work*, Global Commission on Drug Policy (2014); *Proposed Amendment of UN Drug Treaties*, LEAP (2014); Youngers & Correa (ed.), *In Search of Rights: Drug Users and State Responses in Latin America*, Colectivo de Estudios Drogas y Derecho, (2014); WACD, *Not Just in Transit: Drugs, the State and Society in West Africa*, An Independent Report of the West Africa Commission on Drugs (June 2014); Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies that Work* (2014).

<sup>74</sup> It has been well documented that the move to regulate marijuana was motivated in large part by racism and xenophobia. See, e.g., Martin D. Carcieri, *Obama, the Fourteenth Amendment, and the Drug War*, 44 Akron Law Review, 303, 325 (2011). In *Sex, Drugs, Death, and the Law*, Professor David A.J. Richards points out that “The campaign leading to the passage of the Marihuana Tax Act of 1937. . . included remarkable distortions of the evidence of harm caused by marijuana, ignoring the findings of empirical inquiries.”(p.164, sources omitted).

For further analysis of the irrationality surrounding marijuana prohibition in the United States, see Bonnie & Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*; Lester Grinspoon, *Marihuana Reconsidered* (Harvard University Press 1977), pp. 10-29; or Bonnie & Whitebread, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (1974), where they conclude that “logic, science and philosophy have had almost nothing to do with the evolution of drug policy.” (pp. 298-299). See also Jack Herer, *The Emperor Wears No Clothes*; Steven B. Duke & Albert C. Gross, *America’s Longest War: Rethinking Our Tragic Crusade against Drugs*; Matthew A. Christiansen, *A Great Schism: Social Norms and Marijuana Prohibition*, 4 Harvard Law & Policy Review. 229, 235 (2010); Roar Mikalsen, *Human Rising*.

It should also be noted that cannabis entered the international drug control regime on equally dubious grounds. As quoted in *The Rise and Decline of Cannabis Prohibition: The History of Cannabis in the UN Drug Control System and Options for Reform*, Transnational Institute/Global Drug Policy Observatory (2014): “Subsequently, under the

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United Nations, the decision to place cannabis in Schedules I and IV of the 1961 Single Convention was heavily influenced by a memo expressing the very biased personal opinion of the WHO official Pablo Osvaldo Wolff, and not based on a position taken by the WHO Expert Committee on Drug Dependence (ECDD). Although many delegates misread his paper as the WHO position, in fact the Expert Committee never presented a formal recommendation to the CND about the scheduling of cannabis; not prior to the Single Convention or, indeed, ever. . . . In itself, the absence of a WHO recommendation is sufficient reason to question the legitimacy of the current classification of cannabis on procedural grounds. A group of academic experts, including WHO researchers, recently concluded as much in *Drug and Alcohol Dependence*: “The present situation in which several important substances (e.g., cannabis, cannabis resin, heroin and cocaine) were never evaluated or were evaluated up to eight decades ago seriously undermines and delegitimizes their international control.” (p. 4-5, sources omitted)

For more on this, see Jacob Sullum, *Saying Yes: In Defense of Drug Use*; David F. Musto, *The American Disease: Origins of Narcotics Control*; James T. Bennett & Thomas J. Dilorenzo, *Official Lies: How Washington Misled Us* (1992) pp. 237-39; Roar Mikalsen, *Human Rising*; Robinson & Scherlen, *Lies, Damn Lies and Drug War Statistics*; Doris Marie Provine, *Unequal Under Law: Race in the War on Drugs*; and Deborah Ahrens, *Drug Panics in The Twenty-First Century; Ecstasy, Prescription Drugs, And The Reframing Of The War On Drugs*. For even more on unscientific classification, prohibitionist propaganda, censure and biased agencies, see Martin Jelsma, *Drugs in the UN system: the Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs*, *International Journal of Drug Policy* 14 (2003) p. 181-195; Matt Winterbourne, *United States Drug Policy: The scientific, Economic, and Social Issues Surrounding Marijuana* (2012); and Christopher Hallam, Dave Bewley-Taylor & Martin Jelsma, *Scheduling in the International Drug Control System*, Series on Legislative Reform of Drug Policies No. 25, TNI IDPC (June 2014). See also *supra* notes 1, 3, 14, 64, 65, 66, 70, and *infra* note 7.

<sup>75</sup> Professors Nilsen and Blumenson confirm: “According to current knowledge, marijuana satisfies none of the three Schedule 1 requirements: it (1) has a low potential for harm and abuse; (2) appears to have therapeutic benefit, as the government itself claimed in its successful patent application; and (3) according to the American College of Physicians, may be used safely under appropriate conditions.” Blumenson & Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform* (2009), p. 26, sources omitted. See also the Global Cannabis Commission Report, *Cannabis Policy: Moving Beyond Stalemate*, Beckley Foundation (2008), p. 52-55; Kimani Paul-Emile, *Making Sense of Drug Regulation: A Theory of Law for Drug Control Policy* (*Cornell Journal of Law & Public Policy* vol. 19:691, 2010), an article that shows how drugs are regulated without relying upon scientific or medical evidence regarding the pharmacological

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properties of the drugs; New York City Bar Association, *A Wiser Course: Ending Drug Prohibition, Fifteen Years Later* and *supra* notes 70, 74.

<sup>76</sup> See Roar Mikalsen, *Human Rising* (2010) p. 393, or <http://www.encod.org/info/THE-CANNABIS-TRIBUNAL-IN-THE-HAGUE.html>

<sup>77</sup> To quote drug researchers Peter Reuter & Alex Stevens: “Overall, the international evidence suggests that drug laws do not have direct effects on the prevalence of drug use.” (*Reuter & Stevens, An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission*, 2007, p. 61) This is uncontroversial among drug policy experts. As a matter of fact, drugs today are cheaper, of better quality, and more available than ever before, while drug use at the same time is more widespread. In other words, by every measure the data shows that the war on drugs has failed in its stated objectives. For more on this, see the World Drug Report of 2008; EMCDDA, *A Cannabis Reader: Global Issues and Local Experiences*, Monograph series 8, Vol. 1 and 2, European Monitoring Centre for Drugs and Drug Addiction (2008); the Report of the Global Commission on Drug Policy (June 2011) p. 4; Werb et al., *Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review*, International Centre for Science in Drug Policy (2010), p. 19; Eric Blumenson, *Recovering from Drugs and the Drug War: an Achievable Public Health Alternative* (2003), p. 2; Warren Redlich, *A Substantive Due Process Challenge to the War on Drugs* (p. 12-15); *supra* note 45 and *infra* note 78, 81.

<sup>78</sup> As the quote by Stevens and Reuter *supra* note 77 indicates, the available evidence suggests that the degree of criminalization has little effect the prevalence of drug use. Cannabis use among Dutch citizens, for instance, is lower than in many other countries, even though it has been legally available the last four decades. For more on this, see the Global Cannabis Commission Report, *Cannabis Policy: Moving Beyond Stalemate*, Beckley Foundation (2008), p. 60, showing that neighboring countries like France, Germany, and UK have higher prevalence of past year and lifetime marijuana use (this also includes USA, Canada, and Australia), as well as pp. 128-49 summarizing a series of survey findings. See also EMCDDA, *European Drug Report: Trends and Developments* (2014), p. 77; Robert MacCoun and Peter Reuter, *Assessing Drug Prohibition and Its Alternatives: A Guide for Agnostics*, Annual Review of Law and Social Science, Vol. 7 (2011), pp. 61-78; John J. Donohue et al., *Rethinking America’s Illegal Drug Policy* in Philip J. Cook, Jens Ludwig, and Justin McCrary (ed.), *Controlling Crime: Strategies and Tradeoffs*, pp. 250-52. The latter also finds that Portugal, more than a decade after decriminalizing the possession of all drugs, continues to have one of Europe’s lowest prevalence of Cocaine and Cannabis use (p. 252).

In fact, research across the board suggests that the further we move away from the law-and-order approach, the better off we are. Dr Alex Wodak, president of the

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Australian Drug Law Reform Foundation and former president of the International Harm Reduction Association mentions one of the studies that confirm this: “The best evidence that the management of heroin dependence with controlled and prescribed heroin availability made a difference, is a study published in the *Lancet* in 2006. This study was based on the city of Zurich. This showed that between 1992 and 2002 the number of new heroin users in Zurich was reduced from 850 in 1990 to 150 in 2002. Corresponding with that was a decrease in drug overdose deaths, a decrease in HIV infections among injecting drug users, a decrease in crime and a decrease in the quantities of heroin seized. Clearly, what was happening was that people were moving from black market heroin to white market methadone and white market heroin. This showed that treatment does work at a population level.” Douglas and McDonald, *The Prohibition of Illicit Drugs is Killing and Criminalising our Children and We are All Letting it Happen*, Report of a high level Australia 21 Roundtable (2012), p. 10. For more on this and other case studies, see the June 2011 report of the Global Commission on Drug Policy, pp. 7, 10-11. See also *supra* note 45. For more on the situation in Portugal, ten years after decriminalization of all drugs, see Artur Domosławski, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, Open Society Foundations (2011); and Transform Drug Policy Foundation, *Drug Decriminalisation in Portugal: Setting the Record Straight* (2014). For more on the situation in the Netherlands, 40 years after the sale of cannabis products was legalized, see Jean-Paul Grund & Joost Brecksema, *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands*, Open Society Foundations (2013); Transform, *How to Regulate Cannabis: A Practical Guide* (2014); and Robert J. MacCoun, *What Can We Learn from the Dutch Cannabis Coffeeshop Experience?*, RAND (2010). For more on the situation in Switzerland, see Joanne Csete, *From the Mountaintops: What the World Can Learn from Drug Policy Change in Switzerland*, Open Society Foundations (2010); For more on the recent trends towards decriminalization worldwide, see Rosmarin & Eastwood, *A Quiet Revolution: Drug Decriminalization Policies in Practice around the Globe*, Release (2012). The latter summarizes some of the available research on decriminalization and demonstrates that the law enforcement model adopted has little impact on drug-prevalence rates within a given society. For more on why legalization will not turn us into a nation of addicts, see Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*, Faculty Scholarship Series, paper 812 (1995) pp. 598-611. See also *supra* notes 71, 77, and *infra* notes 79, 82.

<sup>79</sup> Instead of addressing the underlying problems of drug use, prohibition has only worsened the situation drug users find themselves in. As noted by Mike Trace, the former deputy UK Drug Czar: “Whereas much of the work of social affairs and development agencies at the national and international level have focused on improving the living conditions of poor and marginalised groups, and on promoting their social and economical integration in society, many aspects of drug control policies have had the

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opposite effect. Programmes focusing on widespread arrests and harsh sanctions towards drug users have led to further marginalisation and stigmatisation, pushing them away from jobs, education and other health and social services, and driving them into more risky behaviours. This process of criminalisation and marginalisation is acknowledged by the United Nations as a major barrier to the global challenges of tackling HIV/AIDS, and of promoting social and economic development.” Mike Trace, *Drug Policy: Lessons Learnt, and Options for the Future*, Global Commission on Drug Policies (2011), pp. 7-8.

This, again, is uncontroversial. For example, the authors of *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us*, National Research Council (2001), point out that many of the harms associated with drug use are caused or augmented by prohibition. In his *Drug Prohibition: A Legal and Economic Analysis*, professor Walter Block argues that present drug policies have increased crime, decreased respect for legitimate law, and created great social upheaval; likewise is argued by most of the reports and law reviews mentioned elsewhere, and Professor Andrew Koppelman speaks to it thus: “It is true that many drug abusers in contemporary America are in wretched health, undernourished and sickly, and that many of them are infected with AIDS, often as a result of shared needles for intravenous drug use. Many steal to support their habits, and of course the drug trade produces enormous violence and corruption. These are, however, artifacts of illegality. If drugs were legal and cheap, these people would be able to get their supply with no danger to their health, and needle sharing would disappear. Drug addicts could live more comfortably than they do now.” Andrew Koppelman, *Drug Policy and the Liberal Self* (2006), p. 286, sources omitted.

Another scholar, Doug Bandow, elaborates: “Prohibition is advanced as a means to protect users from themselves. . . . However, the illegal marketplace makes drug use more dangerous. Noted economists Daniel K. Benjamin and Roger Leroy Miller, “Many of the most visible adverse effects attributed to drug use . . . are due not to drug use per se, but to our current public policy toward drugs”. Products are adulterated; users have no means of guaranteeing quality. Given the threat of discovery, dealers prefer to transport and market more potent (and thus both more concealable and valuable) drugs. As a result, the vast majority of “drug-related” deaths are “drug law-related” deaths.” Doug Bandow, *From Fighting the Drug War to Protecting the Right to Use Drugs: Recognizing a Forgotten Liberty* (2012), p. 268.

To put the damages caused by prohibition in further perspective, drug analyst James Ostrowski estimates that roughly 80% of the world's 160,000 drug-use-deaths are caused by prohibition, while only 20% by the inherent qualities of the drugs (Ostrowski, *The Moral and Practical Case for Drug Legalization*, p. 654). As he explains: “A given amount of legal drug use would cause much less death and illness than the same quantity of illegal drug use. A realistic estimate is that illegal drug use is five times more dangerous than legal use. This means that even a highly unlikely five-fold increase in

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drug use under legalization would not increase the current number of drug overdose deaths. That is: the yearly number of heroin and cocaine deaths combined is about 3,000 per year. Of the 3,000 deaths, 80 percent or 2,400 deaths are caused by black market factors, while 20 percent or 600 deaths are caused by the intrinsic effects of the drugs. Thus, if under legalization legal drug use remained at the same level as current illegal use, there would be only 600 deaths each year. Only a five-fold or 500 percent increase in use would match the current black market death toll. Furthermore, it would take a 1,200 percent increase in legal drug use to produce as many deaths as prohibition causes through murder, AIDS, and poisoned drugs. Prohibition now causes 7,925 deaths, while 600 are the result of the drugs themselves. Thus, in order for legalized drug use to match the overall death toll of prohibition, use would have to increase more than thirteen-fold.” Ostrowski, *The Moral and Practical Case for Drug Legalization*, Hofstra Law Review: Vol. 18:607, 1990, p. 669-70 (sources omitted).

The same argument (that “even if consumption of legalized drugs increased tenfold under a repeal regime, the physical harms associated with drug use could be less than under prohibition”) is presented by Steven B. Duke in *Drug Prohibition: an Unnatural Disaster*, p. 600. That being said, no serious-minded scholar expects anything near such an increase in drug use. In fact, even a 100 percent increase is considered highly unlikely, for as stated elsewhere there is evidence that prohibition has had little effect on drug use rates.

For more on the harms caused drug users by criminalization, see The Alternative World Drug Report: *Counting the Costs of the War on Drugs* (2012) pp. 61-97; Warren Redlich, *A Substantive Due Process Challenge to the War on Drugs* p. 15-20; INPUD, *Drug User Peace Initiative: Stigmatising People who Use Drugs* (2014); and Rodrigo Uprimny, Diana Guzman and Jorge Parra, *Addicted to Punishment: the Disproportionality of Drug Laws in Latin America* (2012). See also *supra* notes 45, 71, 77, and *infra* note 82.

<sup>80</sup>Every honest student of drug policy knows that the harms caused by prohibition vastly transcend the harms caused by the drugs themselves. See, for instance, Andrew Koppelman, *Drug Policy and the Liberal Self*, p.286; Warren Redlich, *A Substantive Due Process Challenge to the War on Drugs*, pp. 15-16; Ernest Drucker, *Drug prohibition and public health: 25 years of evidence*, Public Health Reports, (January 1, 1999); James Ostrowski, *Thinking about Drug Legalization*, Policy Analysis No. 121, Cato Institute (1989) at notes 47-51 and accompanying text; Daniel Polsby, *Legalization Is the Prudent Thing to Do*, in Timothy Lynch (ed.), *After Prohibition: an Adult Approach to Drug Policies in the 21st Century*, The Cato Institute (2000). As professor Polsby therein states: “Without in any way minimizing the social costs that would undoubtedly flow from legalizing drugs, it is simply incredible to believe that the costs of pursuing the policy of minimizing drug use through the criminal law has not been many, many times



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more expensive, in treasure, shattered lives, and nasty externalities that have been borne by virtually the entire country.”(p. 174.)

We have already presented some of the evidence for this. However, the damage prohibition does to drug users is not the whole story. Professor of law Randy Barnett elaborates: “When I was a prosecutor, over half of the murders I prosecuted were “drug law related” in the sense that the victim was killed as a result of a drug deal gone bad or a robbery of someone suspected of having either valuable drugs or money from selling drugs.”(Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, p. 4.) This figure is supported by research mentioned by Ostrowski in *The Moral and Practical Case for Drug Legalization* (pp. 648-50), where he concludes that some 40 percent of US murders are drug-law related. Professor Steven Duke elaborates on similar findings: “In many cities, such as New Haven, Connecticut, at least half of the killings are drug-business related. Nationwide, between 5,000 and 10,000 murders per year are systemic to the drug business. Thus, more people are killed by the prohibition of drugs than by the drugs themselves.” Steven B. Duke, *Drug Prohibition: an Unnatural Disaster*, Faculty Scholarship Series, paper 812 (1995) p. 577, sources omitted.

Furthermore, in Latin America, the Grupo de Apoyo Mutuo Foundation in Guatemala estimates that 45 percent of all homicides in that country are drug trafficking-related. (Organization of American States, *The Drug Problem in the Americas* (2013), p. 76) Other countries in the region are not better off. As mentioned, it is estimated that 150,000 murders in the Americas are drug war related, and it is a fact that prohibition kills many more than the drugs themselves. As stated by the OAS: “By any standard of comparison, the number of deaths caused by drug use appears minimal when compared with the deaths from criminal actions related to drug trafficking. The government of Mexico estimated that between December 2006 and January 2012, approximately 60,000 people died in that country as a result of executions, clashes between rival groups, and attacks on the authorities by criminal organizations involved in drug trafficking. During that same period, the World Health Organization (WHO) recorded 563 deaths in Mexico from overdoses of controlled drugs.” Organization of American States, *The Drug Problem in the Americas* (2013), p. 84

As a matter of fact, the more repressive the law-and-order approach becomes, the more likely it is to foster crime than increase public safety. This point is no longer controversial. In fact, after taking on a systematic review of all available English language peer-reviewed research on the impact of prohibition on drug market violence, researchers Dan Werb, Greg Rowell, Gordon Guyatt, Thomas Kerr, Julio Montaner and Evan Wood concluded thus: “The available scientific evidence suggests that increasing the intensity of law enforcement interventions to disrupt drug markets is unlikely to reduce drug gang violence. Instead, the existing evidence suggests that drug-related violence and high homicide rates are likely a natural consequence of drug prohibition.

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... In this context, and since drug prohibition has not achieved its stated goal of reducing drug supply, alternative models for drug control may need to be considered if drug supply and drug-related violence are to be meaningfully reduced.” Werb et al., *Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review*, International Centre for Science in Drug Policy (2010), p. 5-6.

It is facts like these that make knowledgeable scholars so certain that legalization is the only way to go. For a more elaborate account of the harms caused by prohibition, see The Alternative World Drug Report: *Counting the Costs of the War on Drugs* (2012), pp.15-97; Jeffrey A. Miron, *A Critique of Estimates of the Economic Costs of Drug Abuse*, Drug Policy Alliance (2003), pp. 9-20; James Ostrowski, *The Moral and Practical Case for Drug Legalization*, Hofstra Law Review: Vol. 18:607 (1990), pp. 641-69; Steven B. Duke, *Mass Imprisonment, Crime Rates, and the Drug War: A Penological and Humanitarian Disgrace*, Faculty Scholarship Series Paper 826 (2010), pp. 4-6; Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*, Faculty Scholarship Series, paper 812 (1995), pp. 575-98; Randy E. Barnett, *The Harmful Side Effects of Drug Prohibition*, Utah Law Review No. 1 (2009), pp. 11-34; *supra* note 79 and *infra* notes 82, 83, 84. For more on why law enforcement strategies tend to increase drug market-related violence, see the June 2011 report of the Global Commission on Drug Policy, p.15; and McSweeney et al., *Tackling Drug Markets & Distribution Networks in the UK London*, UK Drug Policy Commission (2008).

<sup>81</sup> “The available evidence suggests that in the past two decades, US anti-drug policies—focused on prohibiting drug production, trade, and consumption, and punishing those involved—have done little to diminish the problems they were designed to address. They have neither curbed the supply nor reduced the consumption of illegal substances in the United States. In countries across the globe, drug-related problems, such as organized crime, violence, and corruption have worsened as a result. In some countries these issues threaten the political and social stability of the state.” Peter Hakim, *Rethinking US Drug Policy*, Inter-American Dialogue/the Beckley Foundation (2011), p. 1. For more on drug prohibition being a threat to civilization, see WACD, *Not Just in Transit: Drugs, the State and Society in West Africa*, An Independent Report of the West Africa Commission on Drugs (June 2014); and Werb et al., *Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review*, International Centre for Science in Drug Policy (2010).

<sup>82</sup> Prohibitionists are fond of arguing that there is a well-established relationship between drugs and crime. This, however, is wrong. For example, a study of crime and drug use among 9,945 Philadelphia men in their late twenties conducted in 1972 for the National Commission on Marijuana and Drug Abuse found that “available data did not permit a conclusion that drug use caused more crime or more serious crime.” Laurent Laniel has

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more to say on this issue: “independent researchers say that the causal relationship between drugs and crime is merely a hypothesis that has not been proven true. Two scholars from the Earl Warren Legal Institute of the University of California at Berkeley, Franklin Zimring and Gordon Hawkins, who have published a highly regarded study of drug control problems in 1995, even contend that it is untrue. Indeed, they argue that while “it is beyond dispute that drug use and crime overlap and interact in a multiplicity of ways”, the higher rate of drug use among offenders could be explained by factors in their personality, such as a higher propensity for taking risks and “a willingness to ignore the threat of moral condemnation”, that lead them to both commit crimes and take drugs. In this view, both drugs and crime are simultaneous but independent consequences of other variables; in simple terms: it is not drug use that causes crime but rather other factors that lead the vast majority of those who commit crime to also take drugs.” Laurent Laniel, *The Relationship between Research and Drug Policy in the United States*, Management of Social Transformations, Discussion Paper No. 44, p.17, sources omitted.

Another knowledgeable scholar, Steven Duke, has this to say on the alleged link between drug use and crime: “Contrary to what our government told us when it imposed drug prohibition, most illegal recreational drugs have no pharmacological properties that produce violence or other criminal behavior. Heroin and marijuana diminish rather than increase aggressive behavior. Cocaine—or cocaine withdrawal—occasionally triggers violence but usually does not. Very little crime is generated by the mere use of these drugs, especially in comparison to alcohol, which is causally related to thousands of homicides and hundreds of thousands of assaults annually. The major linkages between illegal drugs and crime must be found elsewhere—in prohibition. . . . [In fact,] the drug war as it is currently being waged probably produces at least half of our serious crime. That is, half of our crime (not counting drug crimes, of course) simply would not occur were we not conducting a drug war. No more damning an indictment of our political leaders can be imagined than that they have affirmatively created half the crime under which we suffer.” Steven B. Duke, *Drug Prohibition: an Unnatural Disaster*, Faculty Scholarship Series, paper 812 (1995) p. 575, 581, sources omitted.

While prohibitionists will disagree, the criminogenic effects of prohibition are undisputable. We have already seen (*supra* note 80) that hundreds of thousands of murders are the direct result of prohibition, but it is also the cause of untold suffering and mischief unrelated to death tolls. As Duke alludes to above, the murders, kidnappings and violence are only one aspect of the illegal economy, for the high prices also encourage other criminal activities, like thefts and burglaries. *In other words, it is prohibition, not drug use, that generates crime.* This is further documented by researchers Katherine Beckett and Steve Herbert: “Contrary to what this theory would predict, the evidence suggests that drug arrests in general, and marijuana arrests in particular, do not lower criminal activity, and may actually increase crime. For example, researchers using

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Florida data found that every additional drug arrest led to an increase in 0.7 index crimes. That is, for every 10 additional drug arrests, there were an additional 7 index (violent and property) crimes. A similar but more recent study found that a 1% increase in drug arrests leads to a .18% increase in index crimes. And a study of New York state law enforcement practices reports that rising numbers of drug arrests resulted in a significant increase in assaults, robberies, burglaries, and larcenies. For example, the authors report that a 10% increase in marijuana sales arrests was accompanied by an additional 800 larcenies in the state. Collectively, these studies show that increased law enforcement attention to drug crimes is associated with higher rather than lower levels of serious crime. To explain these correlations, researchers theorize that shifting limited resources to drug law enforcement adversely affects law enforcement's ability to respond to, investigate, and solve crimes with victims, thus leading to an increase in the number of such crimes.” Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana Prohibition* (2006), p. 31.

For an excellent elaboration on how and why prohibition generates crime and other negative externalities, see Bruce L. Benson, *The War on Drugs: A Public Bad* (2008), pp. 4-36; James Ostrowski, *Answering the Critics of Drug Legalization* pp. 12-13; Rasmussen and Benson, *Rationalizing Drug Policy under Federalism*, pp. 685-711. For more on why prohibition is not justified in order to prevent crime, see Douglas Husak, *Legalize this! The Case for Decriminalizing Drugs* (Verso 2002), pp. 82-93; and James B. Bakalar & Lester Grinspoon, *Drug Control in a Free Society*, Cambridge University Press (1998), p. 133.

<sup>83</sup> For more on why prohibition is not justified in order to protect our children, see Douglas Husak, *Legalize this! The Case for Decriminalizing Drugs* (Verso 2002), pp. 67-82. See also Rolles et al., *After the War on Drugs: Options for Control*, Transform Drug Policy Foundation (2004), pp. 27.28.

<sup>84</sup> Prohibitionists argue that drug use would skyrocket if it weren't for their law-and-order approach. This, however, is wrong, as researchers have shown “that regulating the cannabis market through law enforcement has only a marginal, if any, effect on the level of cannabis consumption.” For more on this, see Dirk Korf, *An Open Front Door: The Coffee Shop Phenomenon in the Netherlands*, in EMCDDA, *A Cannabis Reader: Global Issues and Local Experiences*, Monograph series 8, Volume 1 (2008); Reuband, *Drug use and drug policy in Western Europe: Epidemiological findings in a comparative perspective*, European Addiction Research 1 (1-2) (1995), pp. 32-41. For more on why drug use would not skyrocket, see Ostrowski, *The Moral and Practical Case for Drug Legalization* (1990), pp. 672-75; and Roar Mikalsen, *Human Rising*, Kolofon (2010) pp. 440-42. For case studies documenting that decriminalization have little or no effect on user prevalence, see the June 2011 report of the Global Commission on Drug Policy pp.

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10-11; Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana Prohibition* (2006); and *A Wiser Path: Ending Prohibition*, The New York Bar Association (1994). For more on why legalization is a more humane approach, see Warren Redlich, *A Substantive Due Process Challenge to the War on Drugs*, pp. 17-20.

All summed up, then, if we exclude the war profiteers and gangsters, it is hard to see any way prohibition benefits society. Steven Duke speaks to it thus: “The costs of drug prohibition are undeniably huge. But what of the benefits? Sadly, there probably are none to the society at large. Drug dealers owe their livelihoods to prohibition, as do thousands of drug warriors. Prison builders benefit, as do politicians who owe their careers to their opposition to demon “drugs.” Inner-city morticians who dress bodies of victims of drug war turf battles, car dealers and jewelers who sell their goods to drug distributors, and other satellite entrepreneurs benefit from drug prohibition, but only those who make money from the drug war benefit from it. Everyone else suffers greatly.” Steven B Duke, *Drug Prohibition: An Unnatural Disaster*, p. 598.

<sup>85</sup> Many prohibitionists rely on studies of the economic and social costs of drug abuse in order to justify their policies. Despite the enormity of these estimates, however, such studies provide no evidence on the merits of prohibition. These studies document harms that occur under prohibition, but they contain no information on whether prohibition increases or decreases the harms from drug abuse. A valid analysis of prohibition, to quote Miron, “must specify an alternative policy, such as legalization, and compare prohibition to this alternative with respect to each of three issues: (1) The direct costs of enforcing the policies; (2) The auxiliary consequences of the policies; and (3) The effects of the policies on the harms from drug use.”

Such analysis is a difficult undertaking. Nevertheless, when all the pros and cons of legalization versus prohibition are considered, it will most definitely not look so good for the prohibitionists. I only know of two works which have attempted this task. One is Rolles (ed.), *A Comparison of the Cost-effectiveness of Prohibition and Regulation of Drugs*, Transform Drug Policy Foundation (April 2009). The other is James Ostrowski, *The Moral and Practical Case for Drug Legalization*, where Ostrowski concludes that 80 percent of all the economic and social costs of drug abuse are attributable to prohibition (p. 662).

For more on why the costs of drug abuse by themselves say nothing about whether prohibition is good policy and what issues a scientific evaluation must address, see Jeffrey A. Miron, *A Critique of Estimates of the Economic Costs of Drug Abuse*, Drug Policy Alliance (2003).

<sup>86</sup> For more on why the moral argument fails, see Douglas Husak, *Legalize this! The Case for Decriminalizing Drugs* (Verso 2002), pp. 109-124; David A. J. Richards, *Sex, Drugs, Death and the Law: An Essay on Human Rights and Overcriminalization* (Rowman &

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Littlefield 1986), pp. 168-85; Doug Bandow, *From Fighting the Drug War to Protecting the Right to Use Drugs: Recognizing a Forgotten Liberty*, in Fred McMahon (ed.), *Towards a Worldwide Index of Human Freedom*, Fraser Institute (2012), p. 259-64; and Nilsen & Blumenson, *Liberty Lost: the Moral Case for Marijuana Law Reform*, pp. 6-11.

<sup>87</sup> For a critique of such paternalistic arguments, see Nilsen & Blumenson, *Liberty Lost: the Moral Case for Marijuana Law Reform*, p. 11-19; Doug Bandow, *From Fighting the Drug War to Protecting the Right to Use Drugs: Recognizing a Forgotten Liberty*, pp. 258-59; Ostrowski, *The Moral and Practical Case for Drug Legalization*, pp. 632-35; Douglas Husak, *Legalize this! The Case for Decriminalizing Drugs* (Verso 2002), pp. 93-108; Douglas Husak, *Drugs and Rights* (Cambridge University Press 1996), pp. 71-144.

<sup>88</sup> Marijuana is no more a gateway to harder drugs than milk, coffee, beer, or cigarettes. Numerous studies have confirmed this, for instance a study funded by the National Institute of Medicine at the instigation of former Drug Czar Barry McCaffrey (Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., *Marijuana and Medicine: Assessing the Science Base*). This study found no causal relationship between marijuana use and use of hard drugs. This should come as no surprise, as it is nothing inherent in marijuana that makes the user crave or desire the kind of drug experience rendered by heroin or cocaine. For more on this, see Erich Goode, *Drugs in American Society* (1993), pp. 203-07; House of Commons Science and Technology Committee, *Drug classification: making a hash of it?* Fifth Report of Session (2005–06), p. 25-26; Jacob Sullum, *Saying Yes: In Defense of Drug Use* (Tarcher/Penguin, 2004), pp.126-30.

<sup>89</sup> For more on this, see Doug Bandow, *From Fighting the Drug War to Protecting the Right to Use Drugs: Recognizing a Forgotten Liberty*, pp. 256-58. He explains: “The criminal law normally applies to direct rather than indirect harm, that is, when individual rights (to be secure in one’s person or property, for instance) are violated. The criminal must cause the harm to others, rather than engage in otherwise legal conduct which causes incidental loss. Moreover, only some drug use some of the time hurts others. Observed Robert J. MacCoun of the University of California (Berkeley) and Peter Reuter of the University of Maryland, “it is likely that many if not most drug users never do wrongful harm to others as a result of their using careers.” (p.257, sources omitted)

Further elaboration is provided in James Ostrowski, *Answering the Critics of Drug Legalization*. As he makes clear: “[Prohibitionists] make the irresistible argument that drug use is not a “victimless crime”. But this is sheer word play. Such an argument involves changing the definition of “victim” without telling the audience. Drug use certainly is a victimless crime if victim is defined in the traditional sense as one who has been subjected to force or fraud by a criminal. Drug offenses are also victimless crimes because one can be convicted of violating them even though no actual harm has been done to anyone. [Prohibitionists], however, uses the term victimless crime in a totally

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different sense. Drug use is a "victimful" crime because some of the people who use drugs do bad things to others allegedly because of their drug-taking. There are numerous problems with this argument. First, it assumes that drug use, as opposed to personality and other factors, is a major cause of harmful conduct. However, it is very difficult to prove this causal relationship. Nevertheless, under legalization, any actual harm a drug user might cause to person or property would be punishable and/or compensable under existing law. Furthermore, greater resources would be available to deal with actual third-party harm from drug use once these resources were no longer devoted to preventing and punishing drug use per se. This solution to the problem is far better than punishing all drug users to prevent some from possibly harming others. The rights of all drug users should not be infringed solely because prohibition might prevent some drug users from causing harm to third parties, when such harm is already unlawful. Besides, outlawing drug use because some users might harm others is self-contradictory since it necessitates harming many drug users who themselves have harmed no one. Finally, any third party harm caused by illegal drug use today is dwarfed by the third party harm caused by illegal drug laws. Ironically, while drug users under legalization would be legally responsible for the harm they cause to third parties, prohibitionists today are not at all responsible for the harm they cause to others. Thus, the moral argument from third-party consequences actually runs in favor of legalization, not against." James Ostrowski, *Answering the Critics of Drug Legalization*, 5 Notre Dame J.L. Ethics & Pub.Pol'y 823 (1991), pp. 835-36, sources omitted. For a fuller elaboration on why prohibition cannot be justified on the grounds that drug use harms others, see Douglas Husak, *Drugs and Rights* (Cambridge University Press 1996), pp. 145-208.

<sup>90</sup> Prohibitionists have, when all else fails, tried to argue that any uncertainty favors the status quo. This is false, for they cannot argue for eternal war on the grounds that we do not know the consequences of peace. Quite the contrary, the law is clear and any doubt favors the legalization argument. In *The Moral and Practical Case for Drug Legalization*, Ostrowski not only discusses the burden of proof, but elaborates on the implications of the burden of proof being theirs. In order for prohibition to continue, he argues that "supporters of prohibition must demonstrate all of the following: (1) the use of currently illegal drugs is immoral; (2) the state has the right to enforce this moral rule; (3) the state can effectively enforce this moral rule without creating additional problems as serious as drug use itself; that is: (a) that drug use would increase substantially after legalization; (b) that the harm caused by any increased drug use would not be offset by the increased safety of legal drug use; (c) that the harm caused by any increased use would not be offset by a reduction in the use of dangerous drugs that are already legal (e.g., alcohol and tobacco); and (d) that the harm caused by any increased drug use not offset by (b) or (c) would exceed the harm now caused by the side effects of prohibition (e.g., crime and corruption). In the absence of data supporting these propositions, neither the theoretical

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danger of illegal drugs nor their actual harmful effects, are a sufficient basis for prohibition. Even if it were proven that drug use would rise if legalized, such proof would be insufficient to support prohibition. Prohibitionists face a daunting task—one that no one has yet accomplished or, apparently, even attempted”.

The case for legalization, however, “is sustained if any of the following propositions is true: (1) regardless of whether the use of currently illegal drugs is immoral, the state has no moral right to enforce this moral prohibition because doing so would violate individual rights; (2) prohibition has no substantial impact on the level of illegal drug use; (3) prohibition increases illegal drug use; (4) prohibition merely redistributes drug use from illegal drugs to harmful legal drugs; (5) even though prohibition might decrease the use of illegal drugs, the negative effects of prohibition outweigh the beneficial effects of reduced illegal drug use.” James Ostrowski, *The Moral and Practical Case for Drug Legalization*, Hofstra Law Review: Vol. 18:607 (1990), pp. 616-17, sources omitted.

<sup>91</sup> In its General Comment 31, paragraph 16, the Human Rights Committee elaborates: “Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations”.

<sup>92</sup> General Comment no. 31, paragraph 18.