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## NADELMANN'S RESPONSE

ETHAN A. NADELMANN

John Burnham is almost certainly correct in asserting that prohibition did contribute to a decline in alcohol consumption, particularly among lower income Americans.<sup>1</sup> Yet we must be wary of thereby assuming that prohibition was, on balance, a success. The most dramatic decline in alcohol consumption in the United States occurred not during the period during which the Eighteenth Amendment was in effect (1920-1933) but between 1916 and 1922. The enactment of prohibition statutes by many states during this period as well as the government's closing of breweries and distilleries during the First World War undoubtedly contributed to this decline. But it is important to recognize that factors other than criminal laws also played a significant, perhaps more important, role. The temperance movement was highly active and successful during this time in disseminating information about the dangers of alcohol and in popularizing negative attitudes toward drinking. The patriotic fervor aroused by the war contributed to a spirit of self-sacrifice and alcohol temperance derived from the need to conserve grain and "an atmosphere of hostility toward all things German, not the least of which was beer."<sup>2</sup> In short, a great variety of factors coalesced during this brief period to substantially reduce the extent of alcohol consumption and alcohol-related ills.<sup>3</sup>

Further proof of the importance of factors other than prohibition statutes is provided by the very evidence on which Burnham relies. He notes that the admission rate for alcohol psychoses to New York state hospitals declined from 10% in 1909-1912 to 1.9% in 1920.<sup>4</sup> Yet this decline occurred largely *prior* to national prohibition and in a state that had *not* enacted its own prohibition law. Similarly, alcoholic admissions to Bellevue Hospital in New York City dropped from 4.99 (per 1,000 New Yorkers age 25-64) in the peak year of 1910 to 2.85

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1. Burnham, *New Perspectives on the Prohibition "Experiment" of the 1920s*, 2 J. SOC. HIST. 51 (1968).

2. D. KYVIG, *REPEALING NATIONAL PROHIBITION* 10 (1979).

3. F. ALLEN, *ONLY YESTERDAY: AN INFORMAL HISTORY OF THE 1920S* (1931).

4. Burnham, *supra* note 1.

in 1919, then dropped dramatically to 0.73 in 1920 and 0.81 in 1921, and then rose steadily to 2.44 in 1933.<sup>5</sup> First admissions for alcohol psychoses to New York State mental hospitals evidenced similar trends.<sup>6</sup> Another study on which Burnham relies indicates that the estimated rate of chronic alcoholism in the United States dropped from 1,248 in 1910 and 1,202 in 1915 to 681 in 1920 and remained at approximately that level throughout Prohibition.<sup>7</sup>

At best, one can argue that national prohibition was effective during its first years, when temperance norms remained strong and illicit sources of production had not yet been firmly established. By almost all accounts, alcohol consumption was higher in the middle and end of national prohibition than it was at the beginning—despite the substantially greater resources devoted to enforcement during the later years. The decline in alcohol consumption between roughly 1916 and 1922, much like the dramatic decline in cigarette consumption in recent years, had less to do with prohibition laws than with changing norms and the imposition of non-criminal justice measures.

Burnham's contention that prohibition was largely incidental to crime is also difficult to sustain. Between 1923 and 1933, the proportion of the U.S. population incarcerated in federal and state prisons and reformatories increased approximately 50% (from 73 to 110 per 100,000 total population).<sup>8</sup> By contrast, the proportion had remained constant between 1910 and 1923, the years during which alcohol consumption declined most dramatically.<sup>9</sup> Similarly, the proportion of the population imprisoned in jails increased 61% between 1923 and 1933 (from 26 to 42 per 100,000 population) after apparently declining significantly from 1910.<sup>10</sup> The number and proportion of inmates incarcerated in federal prisons for liquor law violations increased dramatically from 12% of the 5,426 committed in 1909-14 to 43.4% of the 47,322 committed in 1929-34.<sup>11</sup> Although these figures do not prove that alcohol

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5. Jolliffe, *The Alcoholic Admissions to Bellevue Hospital*, 83 SCIENCE 306 (1936).

6. Landis & Cushman, *The Relation of National Prohibition of the Incidence of Mental Disease*, 5 Q. J. STUDIES ON ALCOHOL 527 (1945).

7. Jellinek, *Recent Trends in Alcoholism and Alcohol Consumption*, 8 Q. J. STUDIES ON ALCOHOL 1 (1947).

8. U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, HISTORICAL CORRECTIONS STATISTICS IN THE UNITED STATES, 1850-1984 34 (1986).

9. *Id.*

10. *Id.* at 78.

11. *Id.* at 153.

prohibition caused higher rates of crime, they do suggest a causal relationship.

More importantly, alcohol prohibition clearly did add a criminal dimension to most aspects of alcohol production and distribution. Even if most participants in the alcohol market were never arrested, the fact remains that tens of millions of Americans were, directly or indirectly, participants in an illicit activity and typically perceived themselves as such. Criminal enterprises reaped billions of dollars in revenues, paid protection money to many thousands of government officials, and engaged in violent interactions with one another. The results of Prohibition, Frederick Lewis Allen wrote, "were the bootlegger, the speakeasy, and a spirit of deliberate revolt which in many communities made drinking 'the thing to do'."<sup>12</sup>

Perhaps the most telling indictment of the U.S. experiment with alcohol prohibition is provided by the British experience with alcohol control during a similar period. Whereas in the United States the death rate from cirrhosis of the liver dropped from 13-15 per 100,000 population in 1910-1914 to 7 during the prohibition years and then climbed back to pre-1914 levels by the 1960s, in Britain the death rate from cirrhosis of the liver dropped from 10 in 1914 to 5 in 1920 and then gradually declined to a low of 2 in the 1940s before rising to a rate of 3 by 1963.<sup>13</sup> Other indicators of alcohol abuse dropped by similar magnitudes.<sup>14</sup> "This remarkable achievement occurred," Milton Terris has written, "despite the fact that there was no prohibition in the United Kingdom." Britain's "wartime measures included a sharp curtailment in the amount of alcohol available for consumption, drastic restriction of the hours of sale, and marked increases in taxes on alcoholic beverages. With the end of the war, the limitations on the available quantity of alcohol were removed, but the hours of sale were extended to only half the pre-war time of opening, while taxation was increased even further."<sup>15</sup>

Britain not only reduced the negative consequences of alcohol consumption more effectively than did the United States, but it did so in a manner that raised substantial govern-

12. F.L. ALLEN, *supra* note 3, at 82.

13. Terris, *Epidemiology of Cirrhosis of the Liver: National Mortality Data*, 57 AM. J. PUBLIC HEALTH 2085 (1967).

14. Saunders, *The Case for Controlling Alcohol Consumption*, in THE MISUSE OF ALCOHOL 214-31 (N. Heather, I. Robertson & P. Davies, eds. 1985); A. SHADWELL, DRINK IN 1914-1922: A LESSON IN CONTROL (1923); H. CARTER, THE CONTROL OF THE DRINK TRADE IN BRITAIN (1919).

15. Terris, *supra* note 13, at 2085.

ment revenues; by contrast, the United States government spent substantial revenues attempting to enforce its prohibition laws and sacrificed far greater revenues into the hands of criminal enterprises. The British experience strongly indicates that the national prohibition of alcohol in the United States was, on balance, not successful. It also suggests that more effective control measures after the repeal of prohibition might have prevented the return to high levels of alcohol abuse.

Our conclusions with respect to the high points of both alcohol control efforts, however, must be tempered by the recognition that they coincided with (and possibly contributed to) dramatic increases in the consumption of another highly addictive psychoactive substance. Per capita annual consumption of small cigarettes in the United States rose from 34.68 in 1900 to 85.49 in 1910, jumped to 470.85 in 1920, doubled again to 976.91 in 1930, and continued to rise during the following three decades.<sup>16</sup>

Siassi's and Fozouni's conclusions regarding the lessons of Iran's experience with an opium maintenance program are of questionable relevance to my analysis. As they in fact note, Iran's program was neither well conceived nor well maintained. Once it was curtailed, "other illicit sources of supply. . . at once replaced the sale from the 'legal' sources."<sup>17</sup> Moreover, other countries that did not experiment with such maintenance plans also experienced dramatic increases in opiate use; indeed, the enactment of anti-opium laws in many Asian countries in which opium use was traditional—including Hong Kong, Thailand, Laos and Iran—is believed to have played a strong role in stimulating the creation of domestic heroin "industries" and substantial increases in heroin use.<sup>18</sup> Finally, a central criterion by which any maintenance program should be measured is its impact on drug users who would otherwise rely entirely on the black market; this issue is not addressed by Siassi and Fozouni.

Nahas is correct as he contends that interdiction measures can curtail consumption in some cases. He neglects, however, to emphasize that the effectiveness of such measures typically depends upon the ruthlessness of the regime and the homoge-

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16. R.J. TROYER & G.E. MARKLE, CIGARETTES: THE BATTLE OVER SMOKING 34 (1983).

17. Siassi & Fozouni, *Dilemmas of Iran's Opium Maintenance Program: An Action Research for Evaluating Goal Conflicts and Policy Changes*, 15 INT'L J. ADDICT. 1127 (1980).

18. Westermeyer, *The Pro-Heroin Effects of Anti-Opium Laws in Asia*, 33 ARCHIVES GEN. PSYCHIATRY 1135 (1976); Ibrahim, *Iran Puts Addicts in its Labor Camps*, N.Y. Times, July 22, 1989, at 3.

neity of the society;. The Japanese and Swedish successes in curtailing the illicit consumption of amphetamines and heroin owed much to the extraordinary homogeneity of their societies; and even the account of Japan's success must be tempered by recognition that abuse of inhalants among youth has represented a serious problem since 1967.<sup>19</sup> Singapore's success reflects the capacity of a quasi-totalitarian regime to employ highly repressive measures in a relatively tiny geographical area.<sup>20</sup> Similarly, China's opium problem was not substantially curtailed until the communist regime implemented highly repressive measures after 1949.

In the United States, opiate addiction was declining before the Harrison Act was enacted;<sup>21</sup> indeed the Pure Food and Drug Act of 1906, which required only that patent medicine manufacturers list the ingredients, reportedly reduced patent medicine sales by a third.<sup>22</sup> The low levels of cocaine and opiate addiction in the United States and Europe between 1930 and 1960 were a consequence of many factors other than drug prohibition. The increases in illicit drug consumption in much of Europe and the United States thereafter did not, in most cases, coincide with any lessening of the criminal penalties attached to drug offenses.

The association of "legalization of use and possession of cannabis, cocaine, and heroin in Italy and Spain . . . with major epidemics of the use of these drugs" is largely spurious. On the one hand, countries with far stiffer penalties, such as Germany, Iran and Malaysia, evidence comparable or higher rates of use and drug-related ills.<sup>23</sup> On the other hand, the Netherlands, which does not apply criminal penalties to mere drug possession, has lower rates of illicit drug use, new drug users, drug overdose deaths, and drug-related AIDS cases than most other Western European countries. Illicit drug "overdoses," it must be stressed, are largely a consequence of the criminalization, and hence unregulated nature, of the drug supply.

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19. Suwanwela & Poshyachinda, *Drug Abuse in Asia*, 38(1 & 2) BULL. ON NARCOTICS 41 (1986); Kumagai, *Drug Abuse and Counter-Measures in Japan*, 29 MED. J. MALAYSIA 136 (1974).

20. McGlothlin, *The Singapore Heroin Control Programme*, 32(1) BULL. ON NARCOTICS 1 (1980).

21. D. COURTWRIGHT, *DARK PARADISE: OPIATE ADDICTION IN AMERICA BEFORE 1940* (1982).

22. D. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* (1987).

23. Ibrahim, *supra* note 18, at 3; Richardson, *Asians Plan Crackdown on Drug Trade*, Int'l Herald Tribune, September 22, 1989 at 5; Droge, *Als Hättest du eine Rakete im Kopf*, DER SPIEGEL, November 21, 1988, at 142-50.

Even as the governments of Italy and Spain are now attempting to enact tougher anti-drug measures, support for alternatives to prohibition is growing throughout much of Europe.<sup>24</sup> In Italy, a Radical Party member was elected in April 1989 to the European Parliament on a drug legalization plank. In Germany, Mayor Henning Voscherau of Hamburg and the former federal health minister, Rita Suessmuth, are among those insisting that the drug laws be reexamined.<sup>25</sup> In Spain, the movement to legalize drugs is attracting support from diverse sectors of society.<sup>26</sup> In Zurich, officials have established a legally sanctioned "free zone for drug addicts."<sup>27</sup> In the United States, growing numbers of prominent officials are speaking out in favor of alternatives to drug prohibition.<sup>28</sup> These trends seem likely to continue.

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24. Dickey, *A Common Market of Crack?*, NEWSWEEK, September 18, 1989, at 37.

25. Milde für süchtige, Härte gegen Dealer, DER SPIEGEL, November 7, 1988 at 22-24; Voscherau, *Sie können mir ja ein en Kranz Schicken*, DER SPIEGEL, July 17, 1989 at 27-30.

26. Pizano, *El Movimiento para Legalizar la Druaga Crece en España*, CAMBIO 16, October 2, 1989 at 12-17.

27. Cody, *In a Zurich Park, Addicts Find a Haven*, Int'l Herald Tribune, August 30, 1989 at 1.

28. Shultz, *Schultz on Drug Legalization*, Wall St. J., October 27, 1989, at A17; Moore, *Dissenters in the Drug War*, NAT'L J., November 4, 1989, at 2692-95; D. Lazare, N.Y. Observer, November 6, 1989, at 1.