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Prohibition Harms the Weakest

Does Consumer Irrationality Justify the War on Drugs?

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Introduction

When—if ever—is state control of individual decisions better than self-control?

In the rational consumer model, the answer is never. That paradigm assumes that consumers know their own preferences, possess all relevant information, process that information correctly, and make consistent decisions over time. Government interference with individual choices—the substitution of state control for self-control—can therefore only harm individuals, who would make optimal decisions on their own.

The rational model has a long history. Many economists still view that model as one useful approach to positive and normative questions. Other economists and non-economists, however, believe many consumers are not fully rational. Their alternative assessment arises both from casual observation of human behavior and from experimental research in behavioral economics and psychology that appears to challenge the rational consumer model.[1]

If consumers are not fully rational, the case for self-control rather than state control might seem less compelling. Government interference would not automatically reduce the well-being of non-rational consumers, since those non-rational consumers might be making sub-optimal decisions on their own behalf.

I argue, however, that consumer irrationality strengthens, rather than weakens, the case for self-control. I make that argument in the context of the "War on Drugs"—the US government's century-long attempt to eliminate marijuana, cocaine, heroin, and other intoxicating or mind-altering substances. If consumers are rational about drug use, prohibition makes them worse off. If consumers are not necessarily rational, prohibition might prevent some "bad" decisions to use drugs unnecessarily, so prohibition may seem worth considering.

As I will explain, however, the War on Drugs is still bad policy — indeed, it's an even worse policy if some consumers are non-rational. Prohibition might deter some ill-advised drug use, but its overall consequences harm irrational consumers more than rational consumers. Self-control as the approach to drugs might not be perfect, but state control is almost certainly worse.

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A Framework for Debating the War on Drugs

Before discussing how consumer rationality affects the merits of prohibition versus legalization, I present what economists call a "positive" analysis of prohibition, meaning one that describes prohibition's effects without addressing whether prohibition is desirable overall.

Prohibition does not eliminate the market for drugs. Evidence from the study of drugs, alcohol, gambling, prostitution, and other services and commodities demonstrates that markets persist even under strongly enforced prohibitions. Instead of eliminating drug markets, prohibition drives drug markets underground.[2]

Prohibition may, however, reduce drug use relative to legalization. On the demand side, prohibition imposes penalties for possession, and some consumers might abstain out of "respect for the law." Others might abstain because of the fear of being caught and punished. On the supply side, prohibition raises production and distribution costs since suppliers must invest resources to avoid detection by law enforcement; that implies higher prices and less use.[3] The net impact of those demand- and supply-side impacts, however, need not be large. Prohibition might spur demand by adding a "forbidden fruit" quality to drugs; if they're forbidden, they must be really good, some seem to think. Because they operate in secret, black market suppliers face lower costs of evading tax and regulatory burdens, which offsets some prohibition-induced secrecy costs. And differences in drug sellers' ability to advertise, the payoffs from advertising, and the extent of market power under prohibition versus legalization might also limit prohibition's impact on use.[4]

Existing evidence indeed suggests that prohibition's impact on use is modest.[5] That holds across different drugs and alcohol and across countries and time periods. The evidence on this question is incomplete, since few societies have moved from prohibition to full legalization, but many have moderated their prohibitions substantially. Those "de-escalations" are associated with small or almost undetectable increases in use. Regardless of the impact on use, moreover, prohibition has numerous unintended effects.

Prohibition increases violent crime. Legal market participants resolve disputes using courts and related non-violent mechanisms. Black market participants use violence instead, since complaining to authorities would reveal their identities and activities and since courts do not enforce contracts involving illegal goods. Relatedly, legal suppliers compete for market share via advertising, but black market suppliers rely on violent turf battles.

Substantial evidence confirms that prohibition generates violence.[6] The use of violence to resolve disputes is

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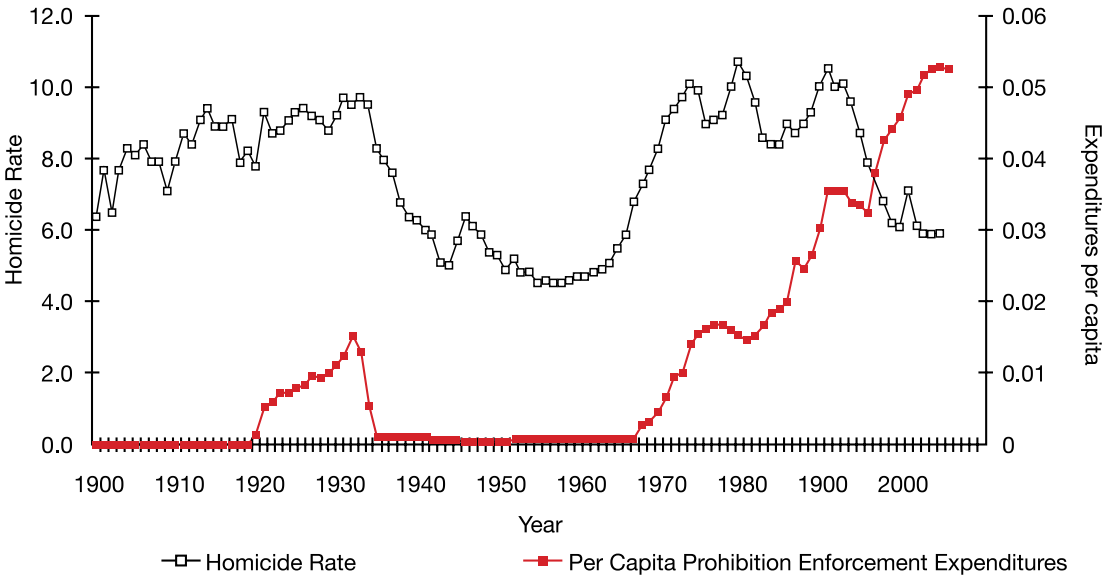
common in drug and prostitution markets, as it was in gambling markets before the advent of state-run lotteries and the expansion of legalized gambling during past decades. Over the past century, violence has increased and decreased with the enforcement of drug and alcohol prohibition, as illustrated in Figure 1.[7] Across countries, violence is elevated especially in countries that grow and ship illegal drugs such as cocaine and heroin.[8]

Prohibition also encourages income-generating crime such as theft or prostitution, since prohibition-induced increases in drug prices mean users need additional income to purchase drugs.[9] Prohibition diverts criminal justice resources from deterrence of all kinds of crime.[10]

Figure 1. Expenditures on prohibitions per capita and homicides per 100,000: 1900 to 2006



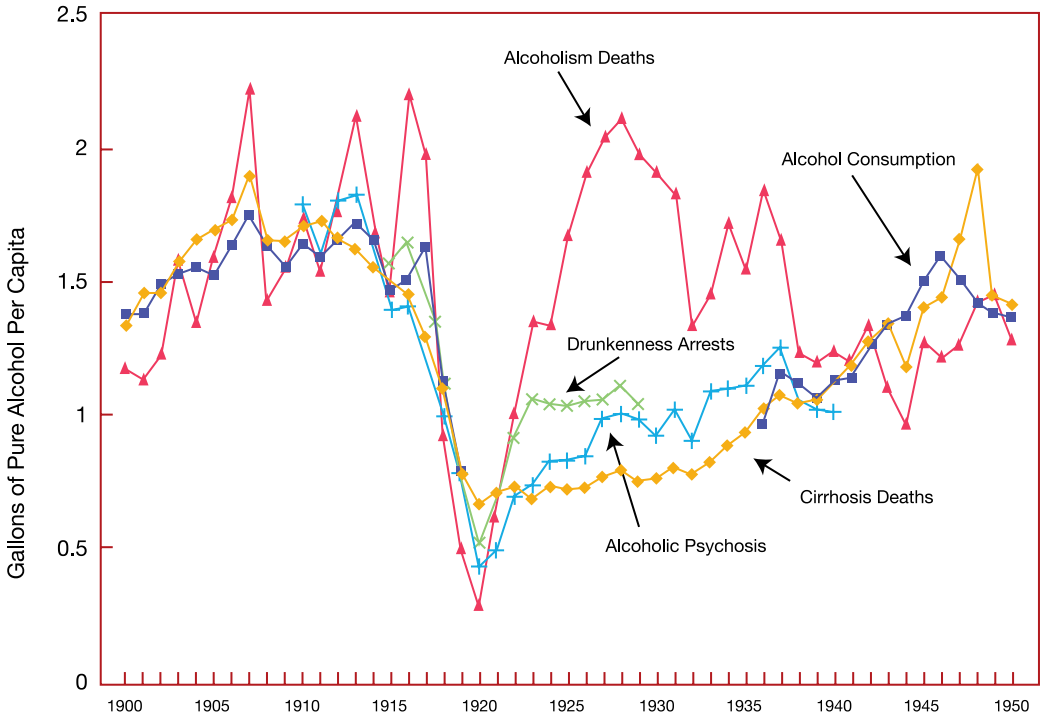
Source: Homicide rate from FBI UCR (Various years). Projected prohibition enforcement expenditures based on Miron (1999) with data from Budget of the United States Government (various years).

That conclusion—that prohibition causes crime—contrasts with the claim advanced by prohibitionists that drug use causes crime. Little evidence, however, confirms the claim that drug use per se promotes violence or other criminal behavior.[11]

Prohibition also lowers product quality and reliability. In legal markets, consumers who purchase faulty goods can punish suppliers via liability claims, bad publicity, avoiding repeat purchases, or complaining to private or government watchdog groups. In black markets, those mechanisms are unavailable or ineffective, so prohibition causes accidental overdoses and poisonings.[12] US alcohol prohibition provides a classic example, since deaths from adulterated alcohol soared; see Figure 2.[13] Similarly, marijuana users were sickened in the 1970s after the US government sprayed the herbicide paraquat on Mexican marijuana fields but the marijuana was still harvested and shipped to US consumers.[14]

Prohibition generates corruption. In legal markets, participants have little incentive to bribe law enforcement, and they have legal mechanisms such as lobbying or campaign contributions for influencing politicians. In black markets, participants must either evade law enforcement or pay them to look the other way. Similarly, standard lobbying techniques are more difficult.[15]

Figure 2. Estimated Gallons of Pure Alcohol Consumed per Capita



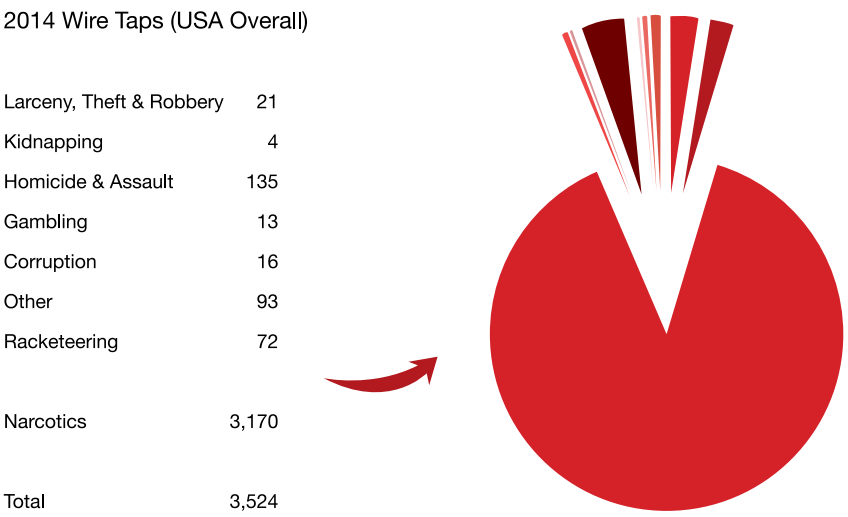
The graph displays data on measured alcohol consumption per capita for the non-Prohibition years along with estimated alcohol consumption per capita for all years. The estimates come from regressions of each proxy series (e.g., the cirrhosis death rate) on a constant, a linear trend, and actual alcohol consumption per capita. The data graphed are then the implied values of alcohol consumption per capita for all years implied by inverting the estimated regression to estimate alcohol consumption for the Prohibition years based on the proxy and the estimated relation between the proxy and alcohol consumption. The estimation and inversion procedure converts the units of each proxy into units of gallons of alcohol consumption per capita.

Prohibition enriches those most willing to violate society's laws. In a legal market, the income from drug production and sale is taxed, and the revenue affects everyone via lower other taxes or higher government spending. In a black market, suppliers capture that revenue as profit. Existing estimates suggest that federal, state, and local governments could collect roughly $50 billion per year from legalized drugs.[16]

Prohibition has additional adverse consequences. Because drug crimes involve mutually beneficial exchange, participants do not report them to police, who therefore rely on undercover buys-and-busts, asset seizures, no-knock warrants, stop-and-frisk, and racial profiling, all of which strain accepted notions of civil liberty.[17] More broadly, the drug war has fueled a broad range of privacy-invading law enforcement tactics, such as domestic wiretaps.[18] (See Figure 3) Because of prohibition, many state governments ban over-the-counter sale of clean syringes, which increases needle-sharing and thus promotes the spread of HIV and other blood-borne diseases.[19] Because of prohibition, marijuana is more tightly controlled than morphine or cocaine and cannot be used for medical purposes.[20] Similarly, doctors face loss of their medical licenses or even jail time for "excess" opiate prescribing, which encourages under-treatment of chronic pain.[21]

Prohibition means that foreign policy and free trade negotiations are intertwined with decisions about drug policy.[22] Widespread non-compliance with prohibition, despite draconian enforcement, signals users and non-users that laws are for suckers, undermining the spirit of voluntary compliance that is essential to a free society. And expenditure on police, judges, prosecutors, and prisons to enforce prohibition, summed across all levels of government, totals about $50 billion per year in the United States alone.[23]

Figure 3. Major Offenses for Which Court-Authorized Intercepts (Wiretaps) Were Granted, 2014



Source: uscourts.gov

To summarize, prohibition may reduce drug use relative to legalization. But whether that reduction is large or small, prohibition has many other effects compared to legalization, including increased crime, reduced health, greater corruption, diminished civil liberties, foregone tax revenues, and substantial expenditure costs.

Is Prohibition Desirable Policy?

With that positive analysis as background, I ask whether prohibition is a good policy. This is what economists call a normative analysis: one that asks whether prohibition is preferable to legalization, taking as given a particular positive analysis of the differences between the two policies.

The positive analysis indicates that most effects of prohibition are undesirable. The possible exception is prohibition's impact, if any, in reducing drug use. So, analysis of prohibition versus legalization might appear to turn on how policy should regard that potential reduction and thus on whether consumers make rational decisions about drugs. In fact, the right normative conclusion does not rest on whether consumers are rational.

If all consumers are assumed to be fully rational, then normative analysis of drug prohibition is trivial.[24] In that case, prohibition's effects are all undesirable, since any reduction in use would be a cost, not a benefit, of prohibition. In particular, under full rationality it would not matter whether people consume drugs for the psychopharmacological effects, or the medicinal properties, or to look cool; all that matters would be that consumers voluntarily choose to use drugs. Similarly, under that view, it does not matter whether drugs are addictive or if use negatively affects health or productivity; if rational people choose to accept such risks, they must think the benefits exceed the costs.

The rational model of consumption was long believed to be inconsistent with many observed behaviors related to drug consumption, such as addiction, withdrawal, relapse, and the like. Theoretical work by Gary Becker and Kevin Murphy shows the rational model is potentially consistent with those phenomena, and empirical work has had some success in fitting the model to data.[25] That work does not prove that the rational model describes all drug consumption, but it undermines the presumption that drug use is irrational. Stated differently, it is hard to deny that at least some drug use fits the rational model. Many people claim to enjoy the pleasure associated with marijuana consumption; others value the pain relief or mental calm produced by opiates; still others appreciate the stimulation of cocaine, much as others appreciate the stimulation of caffeine. Thus, at least some drug use is plausibly rational, implying prohibition-induced reductions are a cost of prohibition.

If some consumers make irrational decisions about drug use, prohibition might generate one benefit: preventing such consumers from using drugs. While the harms from drug consumption are often exaggerated, some decisions to use drugs may indeed be ill-advised.[26] That's possible for any good, but the risks maybe greater for potentially addictive goods that carry non-trivial health risks. For example, short-sighted consumers might ignore the possibility of addiction and underestimate any associated health risks. A policy that prevents such consumers from trying drugs could, in principle, make them better off.[27]

This argument for prohibition might seem plausible, but further inspection exposes deep flaws. Even if irrationality is rampant and even if policy can prevent irrational drug use, the question for any proposed policy is not just whether it generates benefits but whether these outweigh the policy's costs. So any benefit from policy-induced reductions in irrational drug use must be

weighed against the costs of the policy used to achieve that reduction. One potentially large cost is any policy-induced reduction in rational drug use, but there are many others, as well.

The evidence is robust that prohibition has numerous adverse side effects, such as increased crime and corruption, greater HIV infection, diminished civil liberties, forgone tax revenues, and significant direct costs for police, judges, prosecutors, and prisons. Plus, prohibition does not appear to have substantial impacts in reducing drug use. And while hard data are not available, it is plausible that rational users are the ones most likely deterred by prohibition, while irrational consumers ignore prohibition. So it is almost inconceivable that the one possible benefit of prohibition could plausibly exceed its costs. Even if irrationality warrants policies to reduce drug use, prohibition is almost certainly the worst choice among such policies.

Beyond those concerns, the harms from drug use are not only routinely exaggerated but are also not obviously different from those of legal goods such as alcohol, tobacco, saturated fat, and more; indeed, the currently legal substances are the ones whose long-term side effects cause serious illness or death (e.g., cirrhosis, lung cancer, emphysema, heart disease). Yet outlawing marijuana, heroin, cocaine, and other illegal drugs suggests those goods are unacceptably "bad" while legal goods such as alcohol and tobacco are at least "tolerable." Further, policy-induced reductions in irrational drug consumption might induce substitution toward the legal goods that have similar or even more harmful effects.

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Perhaps most importantly, prohibition almost certainly harms irrational users more than rational users, given that many irrational users consume anyway. Prohibition means that users must purchase from criminals who are likely to victimize them, often in dangerous neighborhoods. Prohibition means users face not just health risks but also arrest, loss of professional licenses and eligibility for student loans, and more. Prohibition means users face heightened difficulty in assessing the quality of the drugs they purchase, since in underground markets, consumers cannot sue sellers of manufacturers for faulty products, or complain to government watchdog groups, or consistently patronize sellers with reputations for quality, or generate bad publicity for purveyors of adulterated or mislabeled products; thus, prohibition generates increased accidental overdoses and poisonings. Prohibition raises production and selling costs, and therefore also drug prices,[28] so users face elevated incentives to consume via unsafe ingestion methods, such as needle-sharing, and therefore face a greater risk of HIV and hepatitis.

All those negative effects of prohibition harm both rational and irrational consumers, but rational users are more likely to recognize the risks and adjust their behavior to minimize the adverse impacts. To minimize risk of arrest, rational consumers will grow their own marijuana or buy other drugs from known, repeat suppliers. To avoid the risks of impurities, rational consumers will again purchase from reliable suppliers, or try small doses initially, or avoid illegal drugs and substitute legally available and thus reliable alcohol instead. Rational consumers will avoid sharing needles, either ingesting via other methods or substituting other drugs, or they will be more successful in obtaining clean syringes from legal and illegal connections.

Prohibition may also harm irrational consumers by glamorizing drug use in the eyes of those too young, naive, foolish, or myopic to consider the long-term consequences; rational users discount such imagery. Under prohibition, the monetary rewards for working in the drug trade are high, but this is merely compensation for an elevated risk of injury, death, and imprisonment. Rational persons understand that and accept such risks only if the total compensation equals that available in other sectors. Myopic teenagers, on the other hand, focus on the up-front cash and thus expose themselves to excess risk of death or prison. Prohibition suggests to less rational parents that policy can prevent youth drug use; rational parents realize that prohibition has minor impacts on availability, so they must still intervene to protect their children from foolish choices and dangerous influences.

Thus while prohibition may prevent some users from consuming drugs in the first place, prohibition makes use more dangerous and costly for those who consume despite prohibition, and those negative effects are far worse for irrational consumers. And since prohibition's overall impact on use appears modest, it's unlikely that the benefit from reduced irrational use could plausibly outweigh the increased negatives for those who use despite prohibition.

Conclusion

In comparing self-control to state control the conclusion applies broadly. In many contexts, some consumers make poor decisions, but state control is a blunt instrument for improving those decisions. Rational consumers understand the implications of government policies and can therefore adjust their behavior to moderate the impact. Irrational consumers, however, may respond in ways that make their irrationality more costly. Self-control is not always perfect; nothing guarantees that all individuals make good decisions about their own well-being all of the time. But substituting state control for self-control generally yields far worse outcomes; that approach imposes sub-optimal choices on rational individuals and creates perverse incentives that harm precisely the irrational individuals the state control is attempting to protect.

ENDNOTES

1. I take no stand on whether "non-rational" behavior is best described as irrational, myopic, behavioral, or just "less than fully rational." These concepts overlap but are not equivalent; the differences, however, are not important for the discussion here. For a recent review of these issues, see: Matthew Rabin, "Incorporating Limited Rationality into Economics," Journal of Economic Literature 51, no. 2 (2013): 528–543, http://dx.doi.org/10.1257/jel.51.2.528.

2. Jeffrey A. Miron, "The Economics of Drug Prohibition and Drug Legalization," Social Research (2001): 835–855.

3. Higher costs might partially cause lower profits, rather than just higher prices, if entry barriers (such as aversion to working in an illegal industry) have not already prevented profits (adjusted for risk, danger, and so on) from being driven to zero.

4. Jeffrey A. Miron, "The Effect of Drug Prohibition on Drug Prices: Evidence from the Markets for Cocaine and Heroin," Review of Economics and Statistics, 85, no. 3 (2003): 522–530.

5. Jeffrey A. Miron and Jeffrey Zwiebel, "Alcohol Consumption During Prohibition," American Economic Review 81 (1991): 242–247; Suren Basov, Jeffrey Miron, and Mireille Jacobson, "Prohibition and the Market for Illegal Drugs," World Economics 2, no. 4 (2001): 113–158; Angela K. Dills and Jeffrey A. Miron, "Alcohol Prohibition and Cirrhosis," American Law and Economics Review 6, no. 2 (2004): 285–318; Angela K. Dills, Mireille Jacobson, and Jeffrey A. Miron, "The Effect of Alcohol Prohibition on Alcohol Consumption: Evidence from Drunkenness Arrests," Economics Letters 86, no. 2 (2005): 279–284; Chris Feige and Jeffrey A. Miron, "The Opium Wars, Opium Legalization, and Opium Consumption in China," Applied Economics Letters 15, no. 12 (2008): 911–913; Jeffrey A. Miron, Marijuana Policy in Colorado (Cato Institute, October 23, 2014).

6. Jeffrey A. Miron, "Violence, Guns, and Drugs: A Cross-Country Analysis," Journal of Law and Economics 44, no. S2; "Guns, Crime, and Safety: A Conference Sponsored by the American Enterprise Institute and the Center for Law, Economics, and Public Policy at Yale Law School" (October 2001): 615–633.

7. Milton Friedman, "The War We Are Losing," in Searching for Alternatives: Drug-Control Policy in the United States, ed. Melvyn B. Krauss and Edward P. Lazear (Stanford, California: Hoover Institution Press, 1991): 53–67; Jeffrey A. Miron, "Violence and the US Prohibitions of Drugs and Alcohol," American Law and Economics Review 1, no. 1–2 (Fall 1999): 78–114. Figure 1 is reproduced from Figure 8.17 of Angela S. Dills and Jeffrey A. Miron, "What Do Economists Know About Crime?" in The Economics of Crime: Lessons for and from Latin America, eds. Sebastian Edwards, Rafael Di Tella, and Ernesto Schargrodsky (Chicago: University of Chicago Press, 2010).
8. Miron, "Violence, Guns, and Drugs: A Cross-Country Analysis," Journal of Law and Economics (2001).

9. Miron, "The Effect of Drug Prohibition on Drug Prices," (2003) argues that prohibition's impact on drug prices is probably smaller than estimated in earlier work, but still substantial.
10. Bruce L. Benson and David W. Rasmussen, "Relationship between Illicit Drug Enforcement Policy and Property Crimes," Contemporary Policy Issues IX (October 1991): 106–115; Bruce L. Benson et al., "Is Property Crime Caused by Drug Use or by Drug Enforcement Policy?" Applied Economics 24 (1992): 679–692.

11. Steven B. Duke and Albert C. Gross, America's Longest War: Rethinking Our Tragic Crusade against Drugs (New York: G. P. Putnam's Sons, 1993): 37–42, 53–54, 64–66, 73–74; US Department of Justice, Drugs, Crime, and the Justice System: A National Report for the Bureau of Justice Statistics (Washington DC, 1992): 5.

12. Steven B. Duke, "Drug Prohibition: An Unnatural Disaster," Connecticut Law Review 27 (1994): 571. See also http://www.independent.co.uk/news/world/europe/portugal-decriminalised-drugs-14-years-ago--and-now-hardly-anyone-dies-from-overdosing-10301780.html.

13. John P. Morgan, "The Jamaica Ginger Paralysis," Journal of the American Medical Association 245, no. 15 (October 15, 1982): 1864–1867. Figure 2 is reproduced from Figure 1 in Jeffrey A. Miron and Jeffrey Zwiebel, "Alcohol Consumption during Prohibition," American Economic Review (1991): 242–247.

14. Duke and Gross. America's Longest War: Rethinking Our Tragic Crusade against Drugs.

15. William J. Chambliss, "Another Lost War: The Costs and Consequences of Drug Prohibition," Social Justice (1995): 108–111; Randy E. Barnett, "The Harmful Side Effects of Drug Prohibition," Utah Law Review (2009): 29–31; Jeffrey A. Miron and Jeffrey Zwiebel, "The Economic Case against Drug Prohibition," The Journal of Economic Perspectives (1995): 175–192.

16. Jeffrey A. Miron and Katherine Waldock, "The Budgetary Impact of Ending Drug Prohibition," (The Cato Institute, September 2010), http://ssrn.com/abstract=1710812.

17. Eric Schlosser, "Reefer Madness," Atlantic Monthly (August 1994): 45–63.

18. Andy Greenberg, "Two Charts Show How the Drug War Drives Domestic Spying," Wired (July 17, 2015), http://www.wired.com/2015/07/drug-war-driving-us-domestic-spying.

19. Samuel R. Friedman, Theresa Perlis, and Don C. Des Jarlais, "Laws Prohibiting Over-the-Counter Syringe Sales to Injection Drug Users: Relations to Population Density, HIV Prevalence, and HIV Incidence," American Journal of Public Health 91, no. 5 (2001): 791.

20. Lester Grinspoon and James B. Bakalar, Marijuana: The Forbidden Medicine (New Haven: Yale University Press, 1993).

21. James Zacny et al., "College on Problems of Drug Dependence Taskforce on Prescription Opioid Non-medical Use and Abuse: Position Statement," Drug and Alcohol Dependence 69, no. 3 (2003): 215–232.
22. Robert J. Barro, "To Avoid Repeats of Peru, Legalize Drugs," Wall Street Journal (April 27, 1992).

23. Miron and Waldock (2010).

24. This statement ignores the possibility of externalities from drug use, which might occur even if consumers were rational. Many goods cause externalities, however, and the appropriate policy response targets the externality generating behavior (e.g., driving under the influence) rather than banning the good entirely. Thus, externalities aside, all of prohibition's effects are negative if consumers are rational.

25. Gary S. Becker and Kevin M. Murphy, "A Theory of Rational Addiction," Journal of Political Economy 96 (1988): 675–700; Donald S. Kenkel, Robert R. Reed III, and Ping Wang, Rational Addiction, Peer Externalities, and Long Run Effects of Public Policy, no. w9249 (National Bureau of Economic Research, 2002); Michael Grossman and Frank J. Chaloupka, "The Demand for Cocaine by Young Adults: A Rational Addiction Approach." Journal of Health Economics 17, no. 4 (1998): 427–474.

26. Miron and Zwiebel, The Journal of Economic Perspectives; Jeffrey A Miron, "Drug Prohibition" in The New Palgrave Dictionary of Economics and the Law, ed. Peter Newman (London: The Macmillan Press, 1998): 648–652.

27. The possibility of addiction does not, by itself, create special concerns for policy. Caffeine, for example, is addictive, yet few people want to ban coffee, tea, and cola drinks. The risk—for irrational consumers—comes from addictive goods that have serious side effects, especially if those materialize only after long-term use.

28. See footnote 84 above on whether higher costs imply higher prices or lower profits.

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