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THE ISSUE OF LEGALIZING ILLICIT DRUGS

*John C. Lawn**

Americans are accustomed to quick fixes for our problems. However, those of us who are concerned with both drug supply and drug demand reduction have long recognized that there are no quick solutions. The drug problem has been developing for a long time, and it will take a significant amount of time to correct. Americans must allow recent drug abuse prevention and education programs to take root.

The major flaw in drug legalization theory is that it misses the point. Drugs themselves, not drug laws, cause the most damage to society.¹ As I have said many times, drugs are not bad because they are illegal, they are illegal because they are bad. Consequently, I remain unalterably opposed to legalizing *any* illicit drug for general use.

I.

Americans can learn from the United States' involvement with alcohol. Indeed, it has been argued that "the [government's] experience with alcohol is the strongest argument against legalization [of illicit drugs]."² During Prohibition in the 1920s, alcohol-related mental and physical illness declined dramatically.³ The occurrence

* Former Administrator of the United States Drug Enforcement Administration, 1985-1990. Portions of the text of this Article have previously appeared in the prepared statement of John C. Lawn before the House Select Committee on Narcotics Abuse and Control. See *Legalization of Illicit Drugs: Impact and Feasibility, Part 1: Hearing Before the House Select Committee on Narcotics Abuse and Control*, 100th Cong., 2d Sess. 260 (1988).

1. See Kerr, *The Unspeakable Is Debated: Should Drugs Be Legalized?*, N.Y. Times, May 15, 1988, at 1, col. 1 (discussing the fundamental assumptions of legalization theory). The legalization argument, however "rests on the assumption that drug laws, not drugs themselves, cause the most damage to society." *Id.* But see *infra* notes 22-30 and accompanying text (discussing the problem arising from the abuse of prescription drugs which are highly regulated).

2. Kerr, *supra* note 1, at 24, col. 1 (quoting Professor Mark Kleiman of the John F. Kennedy School of Government at Harvard University).

3. *Legal or Not, Drugs Kill*, N.Y. Times, May 26, 1988, at A34, col. 1 [hereinafter *Drugs Kill*] (noting that although prohibition "failed as a social policy, it was a health tri-

of these illnesses, however, soared after the repeal of Prohibition in 1933.⁴ This historic perspective clearly illustrates a very important point—greater availability results in greater use and abuse.

Today's alcohol abuse statistics are frightening.⁵ Approximately one-fourth of American homes claim alcohol abuse has brought trouble to their families.⁶ Cirrhosis of the liver, a disease primarily attributed to alcohol, is the sixth most common cause of death in the United States⁷ and alcohol-related highway accidents are the number one killer of individuals who are fifteen to twenty-four years old.⁸

While these statistics dramatically illustrate the United States' current and past experience with alcohol, it is also important to learn from this country's earlier experiences with cocaine and heroin. At the turn of the century, these drugs were legal in the United States.⁹

umph." Studies indicate that in the 1920's, hospitalization for alcohol related disease plummeted. For example, New York mental hospitals reported a virtual disappearance of alcohol psychoses cases in 1922. Kerr, *supra* note 1, at 24, col. 1.

4. See *Drugs Kill*, *supra* note 3, at A34, col. 1.

5. See *infra* notes 6-8 and accompanying text.

6. NATIONAL COUNCIL ON ALCOHOLISM, INC., *FACTS ON ALCOHOLISM AND ALCOHOL-RELATED PROBLEMS I* (1987) [hereinafter *ALCOHOL FACTS*] (relying upon a Gallup Poll conducted in April, 1987).

7. *Alcohol Is No Remedy for Heart Disease*, N.Y. Times, Dec. 4, 1987, at A38, col. 3. Barry S. Kendler, Associate Professor of Biology at Manhattan College, also notes that "[a]lcohol abuse is a major public-health problem in the United States, responsible directly and indirectly, for the loss of tens of thousands of lives a year and involving a cost of more than \$40 billion." *Id.* Alcohol also promotes hypertension, an increased susceptibility to strokes and cardiac disfunction, and an increase in the incidence of certain cancers. *Id.*; see also Rankin & Ashley, *Alcohol-Related Health Problems and Their Prevention* in MAXCY-ROSENAU, *PUBLIC HEALTH AND PREVENTIVE MEDICINE* 1039, 1039-52 (J. Last ed. 12th ed. 1986) (setting forth a summary of alcohol-related physical, psychological and behavioral problems).

8. *ALCOHOL FACTS*, *supra* note 6. In addition, "[a]bout 2 out of every 5 people in the U.S. will be in an alcohol-related crash in their lifetimes." *Id.* (citing NATIONAL CENTER FOR STATISTICS AND ANALYSIS, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T. OF TRANSP., *DRUNK DRIVING FACTS* (1987)). "In 1986, there were 46,056 highway deaths, of which 23,987 (52.1 percent) were alcohol related." *Id.* (citing NATIONAL CENTER FOR STATISTICS AND ANALYSIS, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., *FATAL ACCIDENT REPORTING SYSTEM* (1986)).

9. The nineteenth century has been referred to as a "dope fiend's paradise." E. BRECHER & THE EDITORS OF CONSUMER REPORTS, *LICIT AND ILLICIT DRUGS* 3 (1972) [hereinafter *E. BRECHER*]. Opium was legally available throughout the century; morphine was commonly used during and after the Civil War; and heroin was marketed near the end of the nineteenth century. *Id.*

The United States' first cocaine epidemic lasted from 1885 to the 1920s. The epidemic went through three stages. Musto, *America's First Cocaine Epidemic*, WHARTON Q., Summer, 1989, at 59, 60. The first stage was the introduction of cocaine in the 1880s. *Id.* Second, a middle period developed where the use of cocaine spread and, consequently, its ill effects became apparent. *Id.* Lastly, there was a "repressive stage after the turn of the century, when cocaine became the most feared of all illicit drugs." *Id.*

Drugs such as cocaine and heroin were primarily sold and used for medicinal purposes.¹⁰ As the use of these drugs became more prevalent, the number of addicts significantly increased during this period.¹¹ In response to this growing crisis, the Harrison Narcotic Act was passed in 1914¹² to regulate the public's access to these drugs.¹³ In the years that followed, reports of cocaine and heroin addiction fell significantly.¹⁴

It is also important that Americans learn from experiences with legal systems of distribution. Within the United States, we currently have a system to distribute methadone, an analgesic used in heroin detoxification and treatment.¹⁵ Since the 1970's, free and low-cost methadone has been provided within the United States through treatment clinics.¹⁶ Although in many situations there are no

10. See E. BRECHER, *supra* note 9, at 3-7 (discussing various medicinal remedies offered in the late nineteenth and early twentieth centuries which contained cocaine, heroin and opiates); Musto, *supra* note 9, at 60-61 (noting that in the nineteenth century, "entrepreneurs quickly made cocaine an elixir for the masses."). Nonmedicinal use of opiates, although legal, was not respectable behavior. E. BRECHER, *supra* note 9, at 6; Musto, *supra* note 9, at 60. Cocaine, however, was used in many nonmedicinal substances including wines and several soft drinks such as Coca-Cola which contained minute amounts of cocaine until 1903. *Id.* at 61.

11. See Musto, *supra* note 9, at 62. "At first, there were few reports of chronic cocaine abuse," but by 1890 approximately 400 cases of habitual use were reported. *Id.*

12. Harrison Narcotic Act, ch. 1., 38 Stat. 785 (1914) (repealed 1970) [hereinafter Harrison Act]. In the early 1900s there was also an international concern over the drug problem—specifically concerning the use of opium in the Far East. Two international conferences were held. As a result of the second conference, the Hague Convention of 1912, an international opium agreement was signed. Opium Convention, Jan. 23, 1912, 38 Stat. 1912, T.S. 612. The primary purpose of this agreement was attainment of a solution to the opium problems in the Far East. The Harrison Act was passed by the United States two years later to fulfill its obligation under the Treaty of the Hague Convention. See E. BRECHER, *supra* note 9, at 48-49; Musto, *The History of Legislative Control over Opium, Cocaine, and Their Derivatives* in DEALING WITH DRUGS 37, 37-61 (R. Hamowy ed. 1987) (setting forth early drug legislation in the United States).

13. The purpose of the Harrison Act was the following:

[T]o provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes.

Harrison Narcotic Act, ch. 1, 38 Stat. 785 (1914) (repealed 1970).

14. See Musto, *supra* note 12, at 65-67. But see E. BRECHER, *supra* note 9, at 50-51 (reporting that narcotics use increased in twenty cities immediately after the Harrison Act was passed until Congress "tightened up" the Act).

15. See generally E. BRECHER, *supra* note 9, at 135-82 (discussing the development and use of methadone as a method to "cure" heroin addicts); see also Statement of Gene R. Haislip, Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration, Before the Select Committee on Narcotics Abuse and Control 1 (Aug. 2, 1989) [hereinafter Haislip Statement] (on file at the Hofstra Law Review).

16. Haislip Statement, *supra* note 15, at 1 (stating that "of the approximately 1444

problems, the system is by no means perfect.¹⁷ Very often, methadone recipients will sell the methadone received and use the proceeds to purchase other drugs, including cocaine and heroin.¹⁸ Consequently, many methadone users continue to abuse various drugs.¹⁹

The distribution of methadone is not this country's only experience with legal distribution systems. In 1970, Congress passed the Controlled Substances Act which is a government-regulated and controlled system of dispensing drugs.²⁰ As part of this system, all legitimate dispensers,²¹ distributors²² and manufacturers²³ of substances controlled under the Act²⁴ are required to obtain an annual

kilograms of methadone which were sold in 1988, 1296 kilograms were sold to [narcotic treatment programs].").

17. See *infra* notes 18-19 and accompanying text (discussing the problems associated with the distribution of methadone via treatment clinics).

18. See Haislip Statement, *supra* note 15, at 3. Methadone distributed from treatment programs on a take home basis was available on the black market in all five boroughs of New York City. *Id.* Many of the individuals selling methadone used the cash proceeds to obtain a more "preferred" drug, including cocaine, heroin, or crack. *Id.*

19. *Id.* at 2. Routinely, treatment programs ignore urinalysis results which indicate that the patients are not taking methadone but are abusing other drugs, particularly cocaine. *Id.*

20. Controlled Substances Act, Pub. L. No. 91-513, 84 Stat. 1242 (1970) (codified at 21 U.S.C. §§ 801-971 (1988)). Under this act, "[t]he Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances." *Id.* § 821.

21. *Id.* § 802(10). The Act provides that "[t]he term 'dispenser' means a practitioner who so delivers a controlled substance to an ultimate user or research subject." *Id.* The Act additionally defines "dispense":

The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

Id.

22. *Id.* § 802(11). In addition, "[t]he term 'distribute means to deliver (other than by administering or dispensing) a controlled substance . . ." *Id.*; see also *supra* note 21 (defining the term "dispense").

23. *Id.* § 102(15). "Manufacturer" is defined as "a person who manufactures a drug or other substance." *Id.* The term "manufacture" is defined as:

the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice.

Id.

24. The Act lists the controlled substances in five schedules within the statute. *Id.* § 812 (b)(1)-(5). Controlled substance is defined as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V . . ." *Id.* § 802(6). The term does not "include

registration from the Drug Enforcement Administration (DEA) acting for the Attorney General.²⁵ Dispensers, distributors and manufacturers of controlled substances include pharmacies, practitioners, hospitals, clinics, and teaching institutions.²⁶ Nevertheless, even within this government regulated and strictly controlled system, a major prescription drug problem still exists within the United States.²⁷ Prescription drugs have been identified in more drug-related deaths and emergency medical situations than all illegal drugs combined.²⁸ Over twenty million Americans use prescription drugs for nonmedical reasons.²⁹ This problem stems from the misuse of prescription drugs and the diversion of controlled substances to the illicit market.³⁰

distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986." *Id.* The following explanation of the five schedules is provided within the Act:

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

Id. § 812(a).

25. *Id.* § 822(a). The Act provides the following registration requirements:

(1) Every person who manufactures or distributes any controlled substance, or who proposes to engage in the manufacture or distribution of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(2) Every person who dispenses, or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.

Id.

26. *See supra* notes 21-23 and accompanying text (defining dispenser, distributor and manufacturer).

27. COMPTROLLER GENERAL, REPORT TO THE CONGRESS OF THE UNITED STATES, COMPREHENSIVE APPROACH NEEDED TO HELP CONTROL PRESCRIPTION DRUG ABUSE at i (Oct. 29, 1982). For purposes of this report, prescription drugs are defined as "legally manufactured and distributed drugs that are controlled under Federal Law . . ." *Id.*

28. *Id.* In "1980, prescription drugs accounted for 15 of the 20 controlled drugs reported most often to the Federal Government by hospital emergency rooms." *Id.*; accord Buzzeo, *The Pharmacist and the Illicit Drug Market*, U.S. PHARMACIST, Dec., 1987, at 31-32 (noting that "[o]f the top 20 controlled drugs reported . . . by emergency rooms and medical examiners across the United States since 1980, 15 have been legally produced substances normally obtained through prescriptions.").

29. Buzzeo, *supra* note 28, at 64 (referring to the findings of the President's Strategy Council on Drug Abuse and the National Institute on Drug Abuse).

30. *See id.* Ronald Buzzeo, Deputy Director of the Office of Diversion and Control of the Drug Enforcement Administration, made the following observation:

[m]illions in dosage units [of prescription drugs] are diverted to the illicit market

It is also possible to profit from the experiences of other nations. Many proponents of drug legalization point to the British system.³¹ Within Great Britain, specially licensed physicians are permitted to prescribe whatever drug they feel is necessary for their patient; this can include prescribing heroin to an addict.³² In reality, this system has not been a success.³³ The amount of heroin addiction in Britain has increased rather than decreased since the system was put in place.³⁴ In addition, an influx of cheap black market heroin has flooded Great Britain.³⁵ Since the 1970's, the drug problem within Great Britain has been aggravated rather than eliminated.³⁶

II.

As with the United States' earlier experiences with alcohol, cocaine, heroin, and legal distribution systems, it is important to learn from Great Britain's experience. The past is a great teacher.³⁷ History has shown that when addictive drugs are socially accepted and easily available, their use is associated with a high incidence of individual and social damage.³⁸ With this perspective in mind, it is nec-

through indiscriminate prescribing and dispensing habits of physicians and pharmacists, as well as through outright illegal sales by registrants, in-transit thefts and losses, computer fraud, laxity in drug security, manufacturer/distributor diversion, excessive uncontrolled sales, and most recently elaborate conspiracies by well-organized and well-financed groups who operate behind a thin veil of medical legitimacy.

Id. at 32.

31. See Lejeune, *No Quick Drug Fix*, NATIONAL REV., Mar. 24, 1989, at 21 (reporting on the worsening of the drug problem in Great Britain)

32. *Id.* It should be noted, however, that to prescribe heroine or cocaine regularly, a special license is required. *Id.* at 22. As a practical matter, the only physicians who receive such licenses work in drug treatment centers. *Id.* The Thatcher government, however, "wants to return responsibility for addicts to local doctors . . ." *British Clinics Are Struggling As Heroin Addiction Climbs*, N.Y. Times, Apr. 11, 1985, at A15, col. 1., col. 2 [hereinafter *British Clinics*]. Despite Thatcher's proposal, many clinic-based doctors oppose this and suggest that "it was overprescription of heroin by doctors that created an addicted population and led to the establishment of clinics in the 1960's." *Id.*

33. See Lejeune, *supra* note 31, at 23 (commenting that "[t]here are no easy answers, no absolute solutions, just as there is, unfortunately, no magical 'British system'—only a bitter common problem . . .").

34. *British Clinics*, *supra* note 32, at A15, col. 1.

35. *Id.*

36. Lejeune, *supra* note 31, at 22. "Prosecutions for possessing heroin increased by nearly 1,000 per cent between 1978 and 1985; seizures of cocaine at British ports were up from 14 kilograms in 1977 to three hundred kilograms in 1983 . . ." *Id.* Moreover, "Britain has become a source country for amphetamines . . ." *Id.* at 23; see also *British Clinics*, *supra* note 32, at A15, col. 1.

37. To paraphrase an old maxim: "We must learn from history or we are doomed to repeat it."

38. See *supra* notes 9-14 and accompanying text (recounting the impact of heroin and

essary to consider how drug legalization will affect this country's future. Legalization of drugs would send the wrong message to the rest of the world. If the United States created a legal market in cocaine, heroin, marijuana, or other dangerous drugs, it would also violate international treaties to which the United States is a signatory.³⁹ These include the Single Convention on Narcotics Drugs of 1961⁴⁰ and the Convention on Psychotropic Substances of 1971.⁴¹ Under these treaties, the United States is obligated to establish and maintain effective controls on those substances covered by the treaties.⁴² A violation of these treaties by the United States would destroy our credibility with drug source and drug transit countries that are now working with the United States in the global war on drugs.⁴³

cocaine when they were legal in the 1800s and early 1900s). *See generally* Musto, *supra* note 9 (discussing the impact of cocaine on society during the 1800s and early 1900s when the drug was legal).

39. *See supra* note 12 and accompanying text (noting that the Harrison Narcotic Act was passed to fulfill this country's obligation under the Treaty of the Hague Convention); *infra* notes 40-41 and accompanying text.

40. Single Convention on Narcotics Drug, Mar. 30, 1961, 18 U.S.T. 1409, T.I.A.S. No. 6928 (amended Mar. 25, 1972, 26 U.S.T. 1441, T.I.A.S. No. 8118), 520 U.N.T.S. 151. This treaty sought to (a) replace existing treaties, "(b) extend control to the cultivation of plants from which the 'natural narcotic drugs are obtained, namely opium, cannabis and coca leaves, and (c) simplify the international control machinery." U.N. OFFICE OF PUB. INFORMATION, THE UNITED NATIONS AND THE FIGHT AGAINST DRUG ABUSE (1972) [hereinafter FIGHT AGAINST DRUG ABUSE].

41. The Convention on Psychotropic Substances, Feb. 23, 1971, 32 U.S.T. 543, T.I.A.S. No. 9725. This treaty addressed the increased international concern over mood-altering substances, stimulants, and hallucinogens. *Supra* note 40, at 31. After the treaty was enacted, these substances were placed under international control. *Id.*

42. The control system set forth in the Single Convention on Narcotic Drugs of 1961 is relatively simple:

The use of narcotic drugs is authorized only on medical prescription, or by medical administration, or for scientific purposes. The economic activities prior to consumption—possession, trade, and distribution, and, especially, import, export, manufacture, and cultivation—can be carried out only by a government agency or under government license or other legal authority. Import and export require government authorization and all activities are subject to continuing governmental supervision and stringent record keeping systems. All persons engaged in regulated activities need adequate qualifications. There are restrictions on the number of countries permitted to cultivate the opium poppy and conditions under which cultivation may take place.

FIGHT AGAINST DRUG ABUSE, *supra* note 40, at 7.

The control system under the Convention on Psychotropic Substances of 1971, is substantially similar to the control system above. *Id.* However, the control system above, unlike that in the Convention on Psychotropic Substances, provides for greater flexibility in allowing the Government to apply its provisions to meet national needs. *See generally id.* at 31-33 (comparing the similar aspects of both treaties control systems).

43. In order to fulfill the United States' obligations under the Single Convention Treaty,

Legalization of drugs would also send the wrong message to our nation's youth. At a time when we have urged our young people to "just say no" to drugs, legalization would suggest that they need only say no until they reach an appropriate age.⁴⁴ It stands to reason that children would be confused about the real consequences of drug abuse when drugs are forbidden to them, but are readily available to others only slightly older.⁴⁵ If drugs were socially acceptable, it is likely that more children, anxious to act "grown up," would yield to peer pressure to use drugs.

As stated previously, the legalization of drugs would expand the drug problem.⁴⁶ Medical research with monkeys, for example, demonstrates that given unlimited access, monkeys will continue using cocaine until they die.⁴⁷ In more human terms, we can look at the countless stories of lives destroyed by the existing cocaine and crack epidemic.⁴⁸ Drug law enforcement deters drug use.⁴⁹ If these reinforcing drugs were freely available, we could reasonably expect that the current crisis we now face—particularly in our large cities—would increase substantially. A former director of the National Institute on Drug Abuse made a shocking prediction about cocaine

domestic legislation must be enacted and implemented. *Id.* at 7.

44. In a periodical published by the National Drug Information Center of Families in Action and the Scott Newman Center, Nancy Reagan noted the following:

As I have travelled across the nation and listened to thousands of children, occasionally someone will ask about legalization. The answer that comes back overwhelmingly from the nation's young people is, "No, please don't even consider it—it will send the wrong, wrong message."

Arguments Against Legalizing Drugs . . . And a Proposed Solution, DRUG ABUSE UPDATE, Sept. 1988, at 23 [hereinafter *Arguments*].

45. The results of one study suggests that high school seniors are avoiding drug use because they have received messages concerning the dangers of drug abuse. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., HHS NEWS 1-2 (Feb. 28, 1989) (press release). This study was sponsored by the Alcohol, Drug Abuse and Mental Health Administration. *Id.*

46. See *supra* notes 9-31 and accompanying text.

47. See Braden, *Seductive Cocaine Takes Monkeys On a 1-Way Trip*, Sun Times, Oct. 24, 1976, at 11, col. 1, col. 2. This study, conducted at the University of Chicago, found that when monkeys are given access to an unlimited amount of cocaine by pressing a lever: "They do become addicted. They do become seduced. They overdose. They develop convulsions and hyperthermia (high temperature). They die." *Id.*

48. See *infra* notes 51-75 and accompanying text (discussing the cost of legalization in terms of increased crime); see also Loken & Kennedy, *Legal Cocaine and Kids: The Very Bitterness of Shame*, 18 HOFSTRA L. REV. 567, 586-95 (1990) (discussing the cost of drugs on youths and their families and the probable impact of legalization).

49. For example, in a 1986 New Jersey survey, over 70 percent of the high school students within that state believed that the fear of getting in trouble with the law constituted a major reason not to use drugs. See *Arguments, supra* note 44, at 18 (Leroy Zimmerman, Attorney General of Pennsylvania, commenting about the New Jersey study).

addiction by basing his prediction on what is known about alcohol addiction, given its unrestricted access. He estimated that if there was no drug enforcement system to limit access to cocaine in the United States, there would be about eighty million regular cocaine users in the United States rather than the roughly six million now regularly using cocaine.

There should be a grave concern about the effect legalization of drugs would have on crime in this country. Legalization of drugs would not eliminate or decrease drug-related crime. A popular misconception is that drug users commit crimes solely to support expensive drug habits.⁵⁰ This misconception leads to the false conclusion that lowering the cost of drugs would reduce the level of crime.⁵¹ In reality, cheaper, legal drugs would probably increase the level of violent crimes and crimes to property.⁵²

Never before has cocaine been available in this country at such a low price and at such high potency levels.⁵³ Cocaine and its derivative, crack, have contributed significantly to the recent increases in violent crime within major metropolitan areas.⁵⁴ Statistics used by the Department of Justice to forecast drug use indicate that cocaine use by those arrested for non-drug felonies almost doubled from 1985 to 1988 in New York City.⁵⁵ Similarly, in Washington D.C., the number of non drug-related felons who tested positive for drug use tripled.⁵⁶

In addition, crimes which are committed by individuals under the influence of drugs, such as child abuse and assaults, would not

50. *Arguments, supra* note 44, at 17. Attorney General of Pennsylvania, Leroy Zimmerman, comments that "[t]he impact of legalized drugs on illegal drug trafficking, violent drug-related crime, drug demand and societal costs is the very opposite of what legalization proponents claim." *Id.*

51. *See id.*

52. For example, in areas where crack is available for only three dollars per dose, the amount of "violent crime has skyrocketed." *Id.*

53. *DEA Report on Crack*, NCTAP NEWS, June, 1988, at 4 (referring to a report by the DEA concerning crack availability and trafficking within the United States). The DEA report found that wholesale and retail prices of cocaine have declined while the purity level of cocaine being sold has increased. *See id.* Additionally, the abundant supply of cheaper, purer cocaine has made it possible and highly profitable for cheaper derivatives of cocaine, such as crack, to emerge on the drug scene. *See id.*

54. *See, e.g., supra* note 52.

55. *See High Percentage of Men Arrested for Crimes Test Positive for Drugs*, INT'L DRUG REP., Mar. 1988, at 2 (quoting United States Attorney General Edwin Meese III that "[f]rom 53 to 79 per cent of the men arrested for serious offenses in 12 major U.S. cities tested positive for drugs . . .").

56. *Id.*

decrease if drugs were legalized.⁵⁷ For example, state child welfare records have indicated that "substance abuse is a factor in as low as 20% to as high as 80-90%" of all reported cases of child abuse.⁵⁸ One researcher has found that "drug use [is] actually the cause of sociopathic and 'criminal' behavior."⁵⁹ Drug users commit crimes totally unrelated to the cost of purchasing drugs.⁶⁰ It stands to reason that the increased drug use caused by legalization would result in a surge in incidents of random violence and higher crime rates.

Those advocating legalization profess that such an action would eliminate the black market and organized crime's involvement with selling drugs.⁶¹ Taking such an argument to its logical conclusion, however, there must be universal availability. Furthermore, legalization of drugs must accompany allowing all individuals to have any drug of any potency, without any restriction whatsoever.⁶² The reality is, however, that even legalization proponents do not advocate that children have access to drugs, or that hallucinogens such as

57. In Washington D.C., for example, "about 80 percent of District children who required foster care [in 1988] 'came from homes where there is some kind of drug involvement.'" Norris, *Drug Crisis Fueling Need For Foster Care, Study Finds*, Wash. Post, Nov. 2, 1988, at A1, col. 1, col. 2. "The increase in drug use also has spawned a marked increase in related problems such as child battering, neglect, and children who test positive for the AIDS virus . . ." *Id.*; see Peterson, *Stop Legalization of Illegal Drugs*, DRUG AWARENESS INFORMATION NEWSL., July, 1988 (noting that "[i]n Philadelphia, 50% of the child abuse fatalities involve parents who heavily use cocaine. *Cheaper legal cocaine would result in more children murdered and more babies addicted.*" (emphasis in original)); see also TEXAS COMM'N ON ALCOHOL AND DRUG ABUSE, CHILDREN OF SUBSTANCE ABUSERS: ONE COMMUNITY'S ANSWER (Dec. 23, 1987) (press release).

58. NATIONAL COMM. FOR THE PREVENTION OF CHILD ABUSE FACT SHEET (FEB. 1989); see also sources cited *supra* note 57.

59. See Peterson, *supra* note 57 (referring to a study conducted by Dr. Robert Gilkeson, M.D., Director of the Center for Drug Education and Brain Research).

60. See *supra* notes 51-55 and accompanying text.

61. See Ostrowski, *The Moral and Practical Case for Drug Legalization*, 18 HOFSTRA L. REV. 607, 647-55 (1990).

62. See E. DELATTRE, CHARACTER AND COPS: ETHICS IN POLICING 128 (1989); *Arguments*, *supra* note 44, at 17 (noting that "[i]llegal drug trafficking would cease only if all drugs of all potencies were available at a price lower than the illicit market can offer."). Delattre makes the following observation:

Unless the government legalizes the purchase of every drug in whatever quantity and potency every user wishes, illegal trafficking will be largely untouched—particularly in drugs with the most dangerous and bizarre effects such as cocaine, crack, PCP, and LSD. Government could not conscientiously legalize a drug such as cocaine, which addicts use in binges that result in depression, paranoia, and violence. If cocaine were sold by prescription, users would buy quantities exceeding the prescription from illegal traffickers.

E. DELATTRE, *supra*, at 128-29.

PCP be freely available.⁶³

It is important to recognize that when a control or restriction (such as age, drug type or potency) is imposed, it is necessary to establish a regulatory system.⁶⁴ Once a regulatory system is achieved, a void would be created which would undoubtedly be filled by a black market. If the United States decides to establish a system which provides for the universal availability of drugs, the black market of drugs would disappear, but a "black plague" of drug addiction, overdose deaths and crime would take its place.⁶⁵ Many legalization proponents speak to the issue of how legalization would save the government money.⁶⁶ For example, the money that is now allocated to drug enforcement could be used in other areas.⁶⁷ If drugs were legalized, however, regulatory costs would increase substantially. In addition, if other crimes, especially violent crimes, were to escalate due to freer drug availability, law enforcement and criminal justice system costs would increase as well.⁶⁸ Legalization would undoubtedly increase those costs.

Drug abuse also causes increased costs to businesses. It is estimated that each year drug abuse costs businesses more than \$7,000 per drug-abusing employee.⁶⁹ All told, illicit drugs cost the United States more than \$60 billion a year in lost employment, prison and

63. Cf. *Arguments*, *supra* note 44, at 18.

64. See, e.g., Controlled Substances Act, 21 U.S.C. §§ 801-971 (1988); Harrison Narcotic Act, ch. 1, 38 Stat. 785 (1914) (repealed 1970); see also *supra* notes 20-26 and accompanying text (discussing the Controlled Substances Act); *supra* notes 12-14 and accompanying text (discussing the Harrison Narcotic Act).

65. See *supra* note 62.

66. See, e.g., Ostrowski, *supra* note 61, at 656-58. Congress appropriated approximately \$822 million for drug enforcement in the fiscal year 1989. See *Supplemental Appropriation Approved for Current Fiscal Year*, ENFORCEMENT REP., July 24, 1989. In addition, Congressional appropriations

includ[ed] \$125 million for the drug grants program, \$86 million for the Customs Service, \$70.4 million for the DEA, \$36.7 million for the FBI, \$246.6 million for the federal prison system, \$129.4 million for the federal judiciary, \$26 million for the INS and \$7.9 million for the U.S. Marshals Service.

Id.

67. See, e.g., Church, *Thinking the Unthinkable*, TIME, May 30, 1988, at 18. It has been suggested that "[s]ome of the \$8 billion spent on interdiction and local enforcement could be used for education and treatment, which receive less than \$500 million." *Id.*

68. See *supra* notes 51-60 and accompanying text (discussing the effect of legalizing drugs on non-drug crimes).

69. See Elliott & Hosty, *Drug Abuse in Industry*, in DRUG ABUSE NEWSL., Nov., 1985, at 3. Based on the Employment System Assistance Program referrals "the drug abusing employee costs his or her company \$7,261 per year in lost productivity, medical costs, crime related costs, destroyed property, and other costs . . ." *Id.*

other criminal justice costs and treatment programs.⁷⁰

It is also important to recognize that the legalization of drugs would jeopardize the safety of our society. Drugs, particularly cocaine, diminish an individual's ability to think and react quickly.⁷¹ Studies have estimated that drug users are three to four times more likely to be involved in on-the-job accidents than non-users.⁷² Furthermore, drugs and any form of transportation do not mix. The result has too often been deadly. How many more people have to die as a result of a train engineer who smoked marijuana⁷³ or as result of a pilot high on drugs?⁷⁴

III.

There is no real hue and cry from the American people for the legalization or decriminalization of illicit substances. Gallup and ABC News polls conducted in 1988 indicated widespread opposition to legalization proposals.⁷⁵ In the ABC News poll, for example, nine out of ten Americans rejected the decriminalization of all illicit drugs, with a majority saying that legalization would lead to increased drug use.⁷⁶

70. Churchville, *GAO Cites Cost of Drug Use in U.S.*, Wash. Post, Mar. 2, 1988, at A15, col. 1, col. 4 (citing to statistics for 1983).

71. See generally Estroff & Gold, *Medical and Psychiatric Complications of Cocaine Abuse and Possible Points of Pharmacological Treatment*, in *ADVANCES IN ALCOHOL & SUBSTANCE ABUSE* [page 3 in manuscript] (1985)

72. See Elliot & Hosty, *supra* note 69, at 5 (setting forth a profile of a drug abusing employee).

73. See Parker, *Drugs, Alcohol Widespread in Rail Industry, Ex-Workers Testify*, Wash. Post, Feb. 26, 1988, at A19, col. 2. In 1987, two former Conrail engineers testified before a Senate panel "that alcohol and drug use is widespread in the railroad industry . . ." *Id.* The two engineers "described a railroad industry riddled with [an] unsupervised and bored crew who consume[d] cases of beer on the job, and a management that coerces intoxicated workers to report for work to keep the trains moving." *Id.* These two engineers were involved in a crash, which injured 175 people and killed sixteen. The engineer, Rick L. Gates, admitted to smoking marijuana after reporting to work the day of the accident. *Id.*

74. See Witkin, *Cocaine Traces Are Found in Pilot Who Died in Crash*, N.Y. Times, Mar. 12, 1988, at 7, col. 5 (reporting that cocaine was found "in the body of an airline captain who was among nine people killed in the crash of a commuter airliner . . .").

75. Gallup, Jr. & Gallup, *Americans Are Not in Favor of Drug Legalization Proposals*, The Plain Dealer, Aug. 7, 1988, at 1, col. E; *Poll Finds 90% Favor Keeping Drugs Illicit*, N.Y. Times, Sept. 15, 1988, at A26, col. 5 [hereinafter *Poll*] (reporting on the ABC News poll). The Gallup poll found that 74% of all adults opposed the plan while only 16% favored legalization. Gallup, Jr. & Gallup, *supra*.

76. See *Poll*, *supra* note 75, at A26, col. 5. Seventy "percent of those polled said they wanted the Federal Government to increase spending to prevent drug abuse." *Id.* Fifty one percent "believed legalizing drugs would lead to increased drug use." *Id.* at col. 6. The ABC News poll was a telephone poll of 509 adults with a margin of sampling error of plus or minus five percentage points. *Id.*

Legalization is offered as a simplistic answer to an extremely complex issue. The real answer to the drug problem in the United States today is not legalization. Character reconstruction, not the dismantling of drug laws, is the answer. Rather than giving in to faulty approaches like the legalization of drugs, the focus must be to reduce the demand for drugs as well as the supply of drugs. By working together towards a system of comprehensive drug education and enforcement, we can win our nation's war on drugs.

