Should cigarettes be made illegal and currently-illegal drugs be made legal?

Defenders of cigarettes used to joke about such a scenario coming to pass, but with smoking bans becoming more popular and the idea of medical marijuana gaining some ground, it doesn't seem like such a far-fetched, mirror-universe idea anymore. And much as I hate to sound like my own thinking is on the cutting edge of absurdity, that outcome doesn't sound as unreasonable to me as it once did.

I've been mulling these and related matters in preparation for my public discussion tonight (11/5/03) at Columbia with Jacob Sullum, an editor at Reason magazine and author of the pro-drug legalization book Saying Yes: In Defense of Drug Use. Sullum argues that one reason to feel confident drug legalization can work is that most people who use drugs do not end up like the hard cases we see on the streets, in homeless shelters, and in jail cells. The overwhelming majority of drug users use responsibly and in moderation like users of alcohol and thus never attract the attention of police or policymakers.

Consequences Matter

That's a very important, possibly even decisive point but the very fact that such an argument has resonance ought logically to raise some foundation-shaking questions for libertarians such as Sullum and me. If the practical consequences of policy truly matter and I agree they do doesn't that mean that one ought to stop being an a priori libertarian, at least on some issues, and instead observe what happens when the policies are enacted? Doesn't it even suggest that perhaps we, like many thinkers in the era the Founder Fathers, might want to take the position that a people can be judged more deserving or less deserving of freedom depending on how they actually behave? If, as Sullum hopes and expects, an America with legal drugs looked and behaved pretty much like the America we know now, then fine, keep drugs legal. But if it turned out perhaps for historically-contingent cultural reasons we don't foresee that the streets filled with glassy-eyed heroin addicts and the emergency rooms filled with the injured and overdosed, might we not want to restore prohibition, without thereby feeling obliged to endorse paternalism and big government across the board?

Don't get me wrong: at heart, I'm a freedom-loving anarchist. If I had my way, government would be abolished and privately enforced law would be used only to retaliate against physical assailants and murderers. Even property violations would be dealt with through etiquette rather law if everything worked the way I'd like it to but that would require a cultural transformation akin to the whole world turning Amish. There would have to be harsh non-legalistic social sanctions for transgressions (such as individuals being "shunned" by virtually everyone across the globe). Unless and until that happens, we need a bit more law than I might like, in my heart of hearts.
That's another (circuitous) way of saying that what laws we have must to some degree be contingent upon how people are behaving (or are likely to behave) in the here and now, in the present social context.

So what are the conditions on the ground right now, with regards to controversial drugs?

**The Real Substance Abuse Problem**

Studies suggest smoking is more addictive as measured in part by withdrawal symptoms than cocaine, marijuana, or alcohol. While only tiny percentages of the users of those drugs, according to admittedly imperfect survey data, end up being heavy or daily users, most smokers end up with roughly pack-a-day habits and virtually none are able to stick to just one or two cigarettes a day though many teenagers imagine they will when they pick up the habit (or imagine they'll use for a few years and then quit). While few users of cocaine, marijuana, or alcohol become heavy or irresponsible enough users to die from the habits, nearly half of lifelong smokers die prematurely from it, along with some 10-37% of ex-smokers, according to the best statistics we have on smokers' elevated disease rates.

Given these health consequences and given the fact that, as drug war proponents often point out, minors will be more likely to acquire substances if those substances are legal for adults how unreasonable would it be to ban cigarettes? As I noted on the occasion of singer (and smoker) Robert Palmer's death, we tend to think of cigarettes as more moderate, less counter-cultural, than "hard drugs" but which do more real damage?

I'm not endorsing smoking bans, not yet (though a few of my ACSH colleagues might) and I still prefer a world where the power of law is hardly ever used at all, not one where people with health problems and self-destructive habits are hounded, fined, or jailed. But I will at least say that if we are going to regulate anything at all, we could do far more absurd things (and indeed we do) than regulate the world's only legal, widely used, addictive, subtly-deadly substance with a vast and naive teen market.

I keep hoping, though, that we'll come up with voluntary solutions: better techniques for helping people quit and more persuasive arguments to keep them from starting nice, civilized, anarchist solutions instead of a barbaric legislative ones, you might say.

**The Tobacco Road and Tragedy**

One final, somewhat tangential note about moral dilemmas like the smoking problem: Wherever one comes down on the issue, we would do well to acknowledge the tragic trade-offs involved and the real tension here between well-being and liberty, resisting the temptation to which all political and philosophical factions are prone to simplify the arguments by denying the negative side effects of their own position (as, for example, by dismissing the immense negative health effects or addictive power of cigarettes if you're a libertarian, by exaggerating the relative dangers of "hard drugs" if you're a conservative who refuses to rethink current policy, or by dismissing the importance of individual freedom if you're a regulation-favoring leftist). Book publisher and theatre aficionado Glenn Young (my ex-boss) once commented that there is no room in American art for real tragedy, since real tragedy springs from insoluble conflicts, and Americans won't admit that
there are any. In the U.S., there must be a way, at least in theory, for good to triumph unequivocally over evil, and everyone with a terrible personal problem is supposed to get a second chance, possibly even a third or fourth, to make everything right. (Our tendency to make things black-or-white is so strong it even bleeds into science reporting, and not just about public policy controversies: a recent New York Times article about the discovery of the skeleton of a 1,500-pound prehistoric rodent took the time to assure readers that the creature had been more like the good giant rodents in C.S. Lewis novels than like the evil giant rodents in H.G. Wells novels.)

I have in my office a copy of the book Tobacco Road: Hamburg, Kentucky, Shanghai, which reprints the diary-like letters of Herbert van Son, a young, German, Jewish man who came to America to work in the tobacco industry and shortly thereafter took his own life. His intelligent observations about American cultural idiosyncrasies occasionally reveal the loneliness and economic hardship that were eating away at him (he notes on April 14, 1928 that "there is no place for a kind heart in a tobacco factory").

Perhaps the most extraordinary passage in the book, though, is the following paragraph, from May 27, 1928, a disturbing one in light of van Son's later suicide but an amusing piece of evidence for the argument that Americans won't readily admit the existence of insoluble problems. If you'll indulge me for a moment van Son writes:

"This week I saw an advertisement in the paper: "Love (Anna Karenina). Now with happy ending." So I went to see the film again. After all, a love story with a happy ending is such a rare thing that one has to see it. It was the same movie, with the same heart-rending farewell scene, and the tortured journey to the railway station, with the same expression of agony on Anna's face and in her eyes as the train enters the station. But wait a moment. The attendant opens the door and Anna boards the train. The next scene shows Vronsky in a happy mood riding his horse. He reads in the paper that Anna's son has won a prize for outstanding sporting prowess (of course!), at such-and-such a school. The count starts going there, because until now he has hated the boy, but according to the script, his heart is now full of love for him. He hastens to meet him, in order to embrace him, full of love and pride. Suddenly Anna appears at the edge of the frame, you can almost hear the director giving his instructions as the boy disappears (Anna's husband has also naturally passed away meanwhile), and we see Anna and Vronsky playing tag around the table, and eventually falling into one another's arms. No comment needed.

Van Son also notes that he went to see the hit 1920s musical No, No, Nanette (the play notoriously funded in part by the Red Sox's ill-advised sale of Babe Ruth to the Yankees), depicting a wacky love affair between a Bible salesman and a chorus girl, which cannot have helped convince van Son of Americans’ intellectual depth, though it did give us the song "Tea for Two." [For more about van Son or a copy of his book, you can write to: dorothea@shefer.com] For a more profound staged event, though and one that will, I hope, wrestle with uncommon honesty with the tough issues join me and Jacob Sullum tonight at Columbia for talk of drugs and consequences. And if you can't make it, at least take a moment to reflect on all the public policy problems that will likely be left unsolved at the end of the evening.
For more on cigarettes, see ACSH's books Kicking Butts in the Twenty-First Century: What Modern Science Has Learned About Smoking Cessation [4], Cigarettes: What the Warning Label Doesn't Tell You [5], and perhaps most important of all coming this month, the teen version of our Warning Label book. Check back for it soon.

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