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Why Does America Have a Drug War?

by Jacob G. Hornberger

Given that most people agree that the drug war has failed to achieve its supposed purpose after decades of warfare, an important question arises: Why is the drug war still being waged, especially when we consider all the collateral damage that this federal program has produced? Hasn't the time arrived for Americans to demand an immediate end to the war on drugs?

Let's first consider the concept of freedom. There is no way to reconcile drug laws with the principles of a free society.

Under basic principles of freedom, a person has the fundamental right to live his life in any way he chooses so long as his conduct is peaceful and doesn't violate the equal right of everyone else to do the same.

Thus, most people support laws against such actions as murder, theft, fraud, burglary, robbery, and rape because they involve the initiation of force by one person against another. They involve one person's violating the right of another person to live his life in a peaceful manner.

But there is a wide range of actions that are risky, dangerous, and even harmful to the person engaging in them, actions that do not involve coercion or aggression against another person but that oftentimes involve severe injury to the person engaged in them.

Consider mountain climbing, which can be very dangerous. Every few years, people are killed climbing Mount Everest, K-2, and other mountains around the world.

The same goes for scuba diving, race-car driving, and even cycling. There are higher-than-ordinary risks to life and limb when people engage in certain activities.

Should the government have the authority to make those activities illegal, in order to protect people from loss of life? An advocate of freedom would say no. Freedom entails the right to engage in high-risk activities, even if most people choose not to do so.

What about activities in which people place their money at higher-than-ordinary risk? For example, investing in start-up companies, the futures market, or oil drilling. Gambling would be another example. Should the government make such activities illegal, in order to protect people's savings?

Again, most of us would say no. Freedom entails the right to do what one wants with his own money, even if he chooses to risk it all on a spin of a roulette wheel.

What about ingesting harmful substances? Here is where some people's attitude changes. Somehow they've come to the conclusion that freedom should simply be tossed out the window in favor of government protection from one's peaceful choices when the choice involves the ingestion of a harmful substance.

Yet what is considered destructive or harmful is a highly subjective matter. There are people who consider the consumption of meat to be harmful. Should the government have the authority to outlaw the eating of meat? How about sugar? Fatty foods?

Why shouldn't people be free to make those choices on their own? Why should a person's consumption habits be subject to the vote of the majority? Why isn't the exercise of such choices a fundamental right with which no one can legitimately interfere?

The principle is really no different with respect to the consumption of most products, including alcohol, cocaine, heroin, and tobacco. While most of us would consider the consumption of such things to be unhealthy, the fact is that some people are willing to incur the potential adverse effects of drugs for reasons that are important to them. Why shouldn't they be free to make that call? Under what moral authority do governmental officials incarcerate them, fine them, or otherwise punish them for making that choice?

Drug-war proponents often argue that a person's drug use inevitably affects other people, especially his family. The argument is meant to suggest that the principles of freedom don't really apply here because the drug user is violating the rights of others.

That argument, however, reflects a woeful lack of understanding of freedom. Whenever a family member makes a choice, especially one entailing high risk to his life, limbs, or fortune, the choice has potentially bad consequences for the rest of the family. If a person gets killed climbing Mount Everest, that will adversely affect his family. The same holds true if he loses all his money investing in a start-up company or if he risks all his money at a roulette wheel in Las Vegas.

Thus, the issue is not whether people's choices adversely affect others. The issue is whether the choice is a peaceful one — that is, one that does not involve the initiation of force against another person (e.g., murder, rape, robbery). If the choice is peaceful, then a free society ensures that its exercise is protected regardless of its adverse effect on others.

The right to be left alone

State law-enforcement agents recently raided the home of Chye Calvo, the mayor of Berwyn Heights, Maryland. The agents had tracked a package containing marijuana that had been left on the front porch of Calvo's house. When Calvo got home, he picked up the package and carried it into his house. Armed with a warrant, the drug agents burst into the house without warning, shot and killed Calvo's two dogs, and bound Calvo and his mother-in-law.

As things turned out, neither Calvo nor anyone in his home had anything to do with the drug transaction, as law-enforcement officials later acknowledged. The delivery of the package was part of a scheme in which drugs were being shipped to addresses of unsuspecting people, where they would be picked up by others involved in the scheme.

Much of the hullabaloo in the press revolved around the fact that the search warrant did not authorize a no-knock raid, that the mayor and his family turned out to be innocent, and that his dogs were killed. Nearly everyone missed the much more important point: What business is it of the state that the mayor might have been consuming a harmful substance in the privacy of his own home? Why isn't that his personal business? Why should the government have the power to harass, abuse, and punish him for possessing or consuming marijuana or any other drug in his own home?

In other words, under what moral authority do they punish a person who is doing nothing more than ingesting substances that other people disapprove of?

Moreover, it's not as if there isn't a bit of inconsistency in all this. As everyone knows, it's legal for adults to consume alcohol and tobacco, two drugs that have killed many more people than marijuana, cocaine, heroin, or other illicit drugs. Why is it that people are free to ingest alcohol and tobacco and not free to ingest other harmful substances?

The perpetual, destructive war

When I began practicing law in 1975, the drug war was in full swing. In fact, my first trial involved a federal drug case in which I had been appointed to represent an indigent defendant. The assistant U.S. attorney and the drug agents who were involved in the case were committed, devoted, ardent enthusiasts of the drug war. They honestly believed they were serving their country by arresting and prosecuting drug-law violators. They honestly believed that their efforts would bring "victory" in the drug war.

Presumably, those agents are now retiring with their federal pensions. Many of the drug agents who are now serving in their stead are no doubt driven by the same level of commitment that characterized agents 33 years ago. However, there is one big difference: The agents of today have a difficult time arguing with a straight face that their efforts are likely to bring "victory" in the drug war sometime soon.

Most people now view the drug war as a permanent fixture of American life. The fact that it has proven to be such an utter failure seems irrelevant to most people. All that seems to matter is that law-enforcement agents continue making drug busts, raiding homes, arresting people, and filling the prisons. That has become the never-ending measure of drug-war success, even if all those actions do nothing to stem the consumption of illegal drugs.

We also shouldn't forget all the collateral damage from the drug war. Over the years, the illegality has caused prices and profits to soar, as they usually do in a black market. That has

attracted drug lords, drug gangs, and drug cartels, which have then proceeded to engage in deadly turf battles, mostly in Mexico and other parts of Latin America.

Drug addicts have gone on theft and robbery sprees to secure the money to purchase the higher-priced drugs, something that alcoholics or tobacco addicts never do, since the price of their addiction is comparatively lower. There is also corruption in the form of bribes paid to law-enforcement officers and judges.

Prisons are overfilled with drug-law violators. Moreover, the adverse consequences of the drug war fall disproportionately on blacks. As the Drug Policy Alliance Network [points out](#),

Although African Americans comprise only 12.2 percent of the population and 13 percent of drug users, they make up 38 percent of those arrested for drug offenses and 59 percent of those convicted of drug offenses causing critics to call the war on drugs the “New Jim Crow.”

Among the most important adverse collateral damage has been the massive infringement of privacy rights and civil liberties, especially through search and seizure of people’s bodies, homes, automobiles, personal effects, and financial records.

And all for what? Just to keep the drug war going, no matter how much a failure it is and no matter how much damage it causes.

Support for the drug war

Why do people continue to support the drug war after decades of failure and horrible collateral damage? I suspect that the answer is twofold.

First, many people feel that drug legalization would send a message to people, especially the young, that society approves of drug consumption.

How valid is such a reason? It’s not valid at all. After all, in some states adultery is legal and no one worries about whether society is sending a message that people approve of adultery. People have come to believe that freedom entails the right to commit the nonviolent sin of adultery without being punished by the state for it. The same holds true for the consumption of alcohol and tobacco.

Second, many people are still holding out hope that the continuing drug busts will finally produce “victory,” which will enable the state to end the drug war. But that’s just a pipe dream. For one thing, how much freedom would people have to surrender in order to achieve such a “victory.” A few years ago, the Thai government embarked on a deadly campaign to kill all the drug dealers in the country. After killing thousands of drug suspects, Thai officials are still waging a fierce war on drugs and catching lots of people in the process.

Perhaps many advocates of the drug war have good intentions. Perhaps they honestly want to rid society of the scourge of drugs. But what good are good intentions? What do they matter?

Even if we ascribe the best of intentions to drug-war proponents, the fact remains: the drug war is an utter failure and an engine of death, damage, and destruction.

Ending the drug war

What would happen if the drug war were ended and drugs were legalized? The first thing that would happen is that the drug gangs, drug lords, and drug cartels would go out of business instantaneously. Such people do well in black markets, when an activity is illegal, but they might well find it difficult to compete against legitimate pharmaceutical companies in a free-market setting.

Wouldn't putting drug giants out of business overnight be considered victory if it were accomplished through the drug war?

The second thing that would happen is that the number of robberies, muggings, burglaries, and thefts would plummet, because drug users would no longer have to pay the exorbitant and artificially high prices for black-market drugs.

Wouldn't a reduction in violent crime be considered a victory if it were accomplished through the drug war?

The third thing that would happen is that more drug addicts would be likely to seek treatment, because they would no longer have to hide their addiction for fear of being caught and sent to jail. Rehabilitation usually depends on frank and open discussion of one's addiction, something that the harsh penalties of the drug war don't encourage.

Wouldn't an increase in the number of people seeking drug rehab be considered a victory if it were accomplished through the drug war?

The fourth thing that would happen is that corruption among law-enforcement agents and judges would plummet, because the absence of drug prosecutions would dry up the payment of drug-war bribes.

Wouldn't a decrease in corruption be considered a victory if it were accomplished through the drug war?

The fifth thing that would happen is that a government program whose adverse consequences fall disproportionately on a racial minority would be removed from American society.

Finally, no longer would Americans have to deal with the constant assaults on privacy and civil liberties at the hands of drug agents, because one of the primary excuses for doing so — the war on drugs — would be non-existent.

It is impossible to reconcile the drug war with the principles of a free society. The war has accomplished nothing positive and has done horrific damage. Enough is enough. The time has come for the American people to lead the world out of the drug-war morass. The time has come to

repeal all civil and criminal penalties for possession and distribution of drugs. The time has come to end the war on drugs.

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This article was originally published in the November 2008 edition of *Freedom Daily*.