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Reconciling Drug Policy and Paternalism

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I. Abstract

In cases of non-violent illicit drug offenses, people should be sentenced to mandatory rehabilitation or therapy rather than being punished via incarceration. By mandatory rehabilitation or therapy, I mean that the person who would otherwise be punished by law is sent to a rehabilitation center or attends therapy sessions for a set time instead of being incarcerated. The rehabilitation would only apply to drug users who are shown to be addicted to the given substance. If someone is found only to be in possession of the substance without signs of addiction, they will be mandated to attend a set quantity of therapy sessions rather than being sent to rehab. Within this system, offenders will not be given a criminal record upon completion. This change would be worthwhile because incarcerating drug users ultimately goes against the offender's best interests in the long run, which does not consistently align with the paternalistic nature of drug laws. The current means of enforcement cause more problems than they solve, and punishment or decriminalization without further action does not address issues surrounding dangerous drug use. The stance I will set out to support is more of a middle ground between these two standard means of addressing drug offenses.

This project begins by defending paternalism as a broad concept and, subsequently, its role in drug policy. Then, I will discuss how 1) decriminalization without further intervention and 2) punishment are not the best strategies, as they bring about their own problems that could be largely avoided. Finally, I will go into more depth regarding the details of my alternative suggestions.

In this project, I will only focus on offenses surrounding drugs like cocaine and heroin, as they do not have direct medical benefits similar to drugs like marijuana. My view ultimately

helps reconcile paternalistic drug policy while also treating excessive drug use and addiction as health issues rather than punishable offenses.

II. Paternalism

1. Definition and Stances

To tackle this topic, I will first define and defend paternalism and explain why it should apply to laws around illicit drugs like heroin and cocaine. Paternalism is when someone's freedom is restricted in their best interest. This best interest is determined by someone with authority over the governed party, like parents with their children. Straightforward examples of this practice in the law are prohibiting swimming without a lifeguard present and motorcycle helmet requirements. In these cases, people have a rule imposed on them that is supposed to protect them from their own potentially poor decision-making. For example, suppose someone were to ride a motorcycle without a helmet for any reason (e.g., to look cool, because it is uncomfortable, etc.). In that case, they leave themselves highly vulnerable to traumatic brain injury in the event of an accident. With this policy, the government says they must wear a helmet, regardless of their confidence in operating a motorcycle. One could liken this to a parent making their child wear a bike helmet even if the child has been an avid bicyclist since a younger age. Under paternalism, the government acts as a parent of sorts, understanding that you may be capable of being safe but enforcing a rule just in case.

There are two main types of paternalism: hard paternalism and soft paternalism. Hard paternalism is when someone's freedom is restricted against their will. This means that the person does not have the option to choose the next course of action. It stops or prevents an action and imposes the governing party's will. Soft paternalism is when someone's involuntary actions are restricted for their own good. This is limited to when people are unaware or unable to make

an informed decision. It is a means of making sure someone is fully aware of the decision they are about to make. To illustrate this distinction, I will use a variation of J.S. Mill's damaged bridge-walker example.¹ Let us say that someone across a crowded, loud room is about to eat a poisoned piece of fruit. The environment makes it difficult for you to scream at them to put it down. Soft paternalism would say you can stop the person by grabbing their wrist and informing them the fruit is poisoned. From there, it is the person's choice to bite into it or set it down. You have done your part by informing them of the risk. Hard paternalism would say that you can take the fruit away from them altogether. Regardless of whether they want to eat it or not, you prevent them from making that choice.

In society, there are some examples of soft paternalistic policies, such as the necessity for warnings on cigarette labels. These inform people of the decision they are about to make in purchasing and using cigarettes. In this project, I will be focused on hard paternalism, as drug policy is traditionally framed this way in the law. Some drugs are illegal, and the act of using or being caught with them is punished, regardless of whether one understands the risks.

2. Arguments in Favor of Paternalism

In this section, I will defend paternalism in a general sense before expanding its application to drug use and policies. Specifically, I will focus on arguments favoring hard paternalism, as it forces someone to take or refrain from taking an action rather than only informing someone about a course of action as soft paternalism does.

In her book *Against Autonomy: Justifying Coercive Paternalism*, Sarah Conly argues that paternalistic legislation is still necessary overall since it helps those who need it, even if it does not apply to everyone. Moreover, although paternalistic intervention for things like drug use may

¹ In the original example, an unknowing man is about to walk on an unsafe bridge. See more in *On Liberty* (1859).

not be necessary for everyone, not having it effectively abandons those who do need it (Conly, 2012). There are two points from Conly that I will use to defend paternalism. Paternalism helps meet people's realistic capacities and leaves us room to worry about other things.

First, paternalism can help us remain pragmatic regarding people's capacities to look out for themselves. Although we would like to think every adult can act in their best interest, this is not the case. People overestimate their ability to look out for themselves more often than we would like to admit. For example, someone could be a great swimmer who has never had issues wading into deeper water. Given this track record, they assume they can swim without a lifeguard present at the beach, and they do. Now, let us say they end up having difficulties and nearly drowning. With paternalistic rules like "no swimming without a lifeguard," we can keep ourselves in check and be realistic about our capacities. These rules can also help us assess risk and consider whether these rules are worth breaking.

Second, paternalism can make choices for us, leaving room to think about other things in our lives. One example of this that Conly brings up is food regulations. The fact that our food is grown for us and others decide whether it is safe to eat is a luxury. It takes away some of the stress of verifying that what you are ingesting is safe every time you eat. Not constantly worrying if our food is safe enough to eat allows us to focus on what we will make with it or how to make it last. Our choices become more meaningful by having specific regulations decide for us.

Another author who argues in favor of paternalism is Peter de Marneffe. Specifically, he argues in favor of paternalistic drug policy and against legalizing heroin. In his paper, "Against the Legalization of Heroin," he begins by arguing that heroin should not be legalized because doing so would likely harm the "life prospects of young people in poor communities" (Marneffe,

2003, p. 34). He follows this by saying that a policy only violates a person's moral rights if it violates the burdens principle. This principle means that governments cannot impose a coercive policy unless the burden would be higher without the policy, and there is enough epistemic reason to believe the person would be burdened if the policy was not in place (Marneffe, 2003). To be "burdened by a policy is to say that there is good reason for her to prefer her situation without this policy..." (Marneffe, 2003, p. 36). When applied to heroin laws, a government can impose a coercive policy against heroin use as long as the burden on people would be greater without it. He ultimately argues that the government is justified in restricting heroin use specifically, given there are many other sources of enjoyment, only if restricting it "is necessary to secure goods of greater moral importance" (Marneffe, 2003, p. 39). By this, he means that things like emotional and intellectual development count as goods of greater moral importance and, thus, are to be protected by not making heroin legal and can justify the loss of this form of enjoyment.

He also claims that the seemingly low effectiveness of drug laws is not a good enough reason to abolish them (Marneffe, 2003). In his view, we are not meant to aim for perfection in these laws but to be paternalistic. In general, these laws are in place to prevent people from making poor decisions, even if they do not always succeed. Furthermore, it is arguable that removing these restrictions would do more harm than good. Marneffe believes so, as he discusses the potential for drug abuse to increase if heroin was legalized (Marneffe, 2003). So, in this instance, utilizing paternalism to restrict people's freedom could help them do better for themselves in the long run. Although this is not an exhaustive list of arguments favoring paternalism, they will be most pertinent to this project's aim.

3. Arguments Against Paternalism

A significant argument against paternalism is that it inherently infringes upon autonomy. Autonomy, generally understood, is a person's ability to make their own choices. This is typically an important value to people because having autonomy is seen as central to being a human being.² Since hard paternalism takes some autonomy away, some may argue that paternalism should not be utilized. It treats adults like children, which is condescending and undermines the human capacity to assess what is best for themselves. For example, if an adult is of sound mind and makes a medical decision, most would argue that the medical staff does not have the right to tell them what they can and cannot do. As people with agency, we should be able to make our own decisions, especially regarding our bodies and physical states.

Another concern about paternalism is that governments can go overboard. Giving the government more say in what we do can open the door to controlling other aspects of our lives. The idea suggests an almost dystopian government where most choices are not ours. This ties back to the overarching concern about autonomy, as the government can use paternalistic laws to control and oppress people further. For example, let us say that a government passes a law banning all recreational drugs but not alcohol. At first, people are upset that they are unable to legally access drugs, but eventually get used to it as the years pass. Then, the government moves to ban alcohol. The prohibition is met with outrage, but again, people adjust. That is, at least until the government bans caffeine. This snowball effect, although hypothetical, is another concern when paternalism is involved in government. Governments can have too much control and will only try to build on whatever control they already have.

Daniel Hirst is one author who opposes paternalism, mainly when applied to drug policy. In his paper, "Drug Policy, Paternalism and the Limits of Government Intervention," he argues

² See the entry on "Autonomy in Moral and Political Philosophy" from the *Stanford Encyclopedia of Philosophy* for more details.

that the criminal system is not acceptable from a paternalistic perspective because it punishes people for self-harm when the system is supposed to address violations of others' rights. The point is to punish and deter rights violations and put "self-regarding actions outside of the limits of criminal law" (Hirst, 2020, p. 14). So, by prohibiting and punishing drug use, governments go against human flourishing and punish people for doing what they believe would help them reach that state. Punishing people for a self-regarding act like drug use violates Mill's harm principle, as it is an act that is only, at best, indirectly harmful to others.³ So, Hirst claims that people should never be criminalized for drug use or any other self-harm that only causes indirect harm to others. Thus, he argues that criminalization for drug use is unjust because it stands in the way of *eudaimonia* and punishes people for self-harm. To remedy this, there would need to be an advancement of other "essential human goods" to balance the harm imposed by restricting human flourishing (Hirst, 2020, p. 14).

This comes back to autonomy, as people's inability to do what makes them happy violates it. One could argue that not doing what makes them happy goes against one's best interest, which opposes the aim of paternalism. In this instance, not allowing people to obtain this form of happiness through whatever means they want, in this case via drug use, is doing a disservice to the person themselves.

Finally, one could argue that drug laws and paternalistic laws generally do not effectively stop the behavior they aim to prohibit. Plenty of people manage to do illicit drugs despite the laws in place. So, if the laws do not significantly lessen or eradicate illegal drug use, then there is no point in having such restrictive laws. Effectiveness is an important metric, considering paternalism is based on looking out for the best interest of whoever is governed. If they are not

³ See Mill (1859).

better off, then it could be argued that this application of paternalism did not work and is thus unjustified.

4. Responses to Arguments Against Paternalism

The autonomy argument is an important one to consider. Denying people their autonomy could be detrimental to their well-being and in violation of their rights. This can also come off as condescending and ignorant of a person's wishes. However, it can also be argued that paternalism taking some autonomy away is not always to an extreme degree and can sometimes be justified. Taking autonomy away may sound inherently negative, but there are instances where you lose some autonomy, but not to a crazy extent. For example, let us say that an 18-year-old wants to ride a roller coaster at a theme park. They were excited to get there and were perfectly healthy and able to ride the ride. However, they are slightly under the height limit. So, the ride conductor does not allow them to ride due to safety concerns. Although this may upset the person and is in opposition to them exercising their autonomy, this is not as negative as simply saying "their autonomy was violated" would make it sound. This person also has other options to serve the same function going on that specific ride would have. They could go on another ride or go somewhere else with different attractions. It seems that arguments from an autonomy aspect do not consider that there are typically other choices one can make. Losing autonomy in one respect does not mean losing it in all respects. Instances of total autonomy loss are, of course, bad. However, what the average person deals with daily is not to that extent. Also, the function of living in a society is to give up some control over autonomy as a means of living in the collective. Relinquishing autonomy, in some essence, is required to live. Moreover, paternalistically, being barred from acting in specific ways, I think, comes with the territory.

Still, one could say that the rollercoaster example is not sufficient. People being restricted spatially, for example, is a seemingly worse autonomy infringement. I would agree; however, I think this can be justified in instances where someone is made better off by being restricted for a short period. As I will discuss in a later section, restrictions like being in the hospital limit autonomy but still function to impose some good in the aftermath.

The view of the government going too far is a valid concern on paper. But it takes paternalism to a totalitarian extreme, wherein everyone is constantly made to do or not do things based on someone else's will. However, as there are very few instances of paternalistic policy that have gone this far, this is not as valid of a concern. Rather, it is an overinflated hypothetical of what we already see in the world today. Things like taxes, food regulations, and gambling limits constrain everyone, but things like this come with their own benefits alongside the apparent loss of autonomy. People who take this stance against paternalism seem to be stuck on the fact that many losses of autonomy via paternalistic policy do not apply to every aspect of one's life, and they are very unlikely to. The government is unlikely to get very far with this line of reasoning, as people are willing, and usually able in democratic societies, to push back against the government's increasingly excessive interference.

My response to Hirst's concern about infringing on happiness ties into the previous point, as people could realistically do something else that brings them happiness other than drugs. In effect, if one road is closed, then you take another one. However, it could be argued that nothing else will bring the same level or type of happiness that doing drugs would. It is like giving someone carrots when they really want kettle chips — people do not receive the same type of happiness from every activity. However, it could also be said that satisfying different types of happiness is less important than overall life satisfaction in the long term. For example, it could be

argued that not exercising regularly would make someone happier in the short term but not in terms of long-term happiness. Someone would likely be unhappy due to health conditions that result from lack of exercise.

Another aspect is that having drug laws will not always diminish happiness. The objection here is that it is a violation of autonomy to restrict drug usage for people who are not currently hurting themselves. However, limiting people's access to substances that could lead to long-term harm could ultimately be in their best interest and would still contribute to the preservation of eudaimonia. Part of being happy is being well, and it is unlikely that doing drugs like heroin or cocaine, in particular, would positively contribute to well-being in the long term. It could be argued that short-term happiness is worth the potential future unhappiness. However, if one wants to reach a state of well-being, I will argue that doing these drugs, at least often, is not in their best interest.

In response to the concern around the effectiveness of drug laws, the same argument could be made for things like film piracy, speed limits, and other policies meant to stop a behavior yet fail to do so. This view on drug policy effectiveness is more perfectionist than paternalist. No law will stop every behavior, so it is unfair to hold paternalistic drug policy to the same standard.

Paternalism concerning drug use is highly controversial. However, I aim to show that it is not controversial in the sense that people cannot do the drugs they want without government limits, but rather the severity of punishment when the drug laws are violated. I have found that the biggest issue with drug regulation is not always the regulation on its own but rather the tendency to punish people harshly for violating the regulation. This project proposes a means to reconcile paternalistic policy with less harsh consequences.

III. Paternalism's Role in Drug Policy

1. Definitions, Stances, and Application

Now that I have addressed paternalism as a concept and arguments against it, I will move into how paternalistic laws apply specifically to drug policy. Most obviously, paternalism applies to drug use based on the way the law bans the use and possession of certain drugs. If one is caught with illicit drugs or has taken them, they are liable to serve time in jail. In this case, the government forces people in possession of drugs to not continue making that choice by sending them to a place that, ideally, is drug-free. My view will advocate for a form of coercive paternalism, as I will suggest mandatory rehabilitation and therapy as a replacement for incarceration. This means that the current legal parameters for possession amounts or multiple offenses will remain, but the means of addressing the crime will change in the event someone is going to be incarcerated.

2. Arguments in Favor of Paternalism in Drug Policy

Going back to Conly, coercive paternalism can act as a benevolent interest in someone else's development. In the case of drug regulation, it has its flaws. Still, ultimately, it is supposed to prevent people from harming themselves or others via drug use and subsequent actions, especially with drugs like heroin and cocaine, which arguably have no genuine medical benefits. By having these laws in place, governments can try to quell the use and abuse of these drugs. If we connect it to an example of a parent preventing their child from eating sugar, the parent is typically just trying to look out for their health. The same sort of thing can happen in our governments, where we are not allowed to have certain amounts of ingredients like dyes or additives in some food items. It is a means of looking out for people's health, even if we really want it. Paternalism does not always have to be from a place of malice.

An author who agrees with coercive paternalism regarding drug addicts is Arthur Caplan in his paper, "Ethical Issues Surrounding Forced, Mandated, or Coerced Treatment." In this paper, he discusses how temporarily restricting autonomy can help people regain it later down the line (Caplan, 2006). For example, if a person is addicted to cocaine, they could receive mandatory treatment. In this instance, their autonomy would be limited by being in a rehabilitation facility. However, they would be better off in the future by not having to deal with the harms of addiction. The argument behind this is that a person is already coerced by their substance addiction, so their autonomy is not really being infringed upon. And helping them recover from their addiction via mandated treatment would allow them to have more autonomy once they are starting to recover.

At this point, something to consider is that not every person who does drugs is addicted to them. In my view, I am willing to accept that people who do not need addiction treatment may be inconvenienced by having to go to therapy, but I do not think it imposes that severe of a harm on them to do so. This is mainly given that incarceration would impose a much steeper burden in comparison. On top of this, other means like fines only serve to take away from people, while therapy, at least marginally, would give them something of value.

In "Criminal Rehabilitation Through Medical Intervention: Moral Liability and the Right to Bodily Integrity," Thomas Douglas discusses the matter of consent in medical intervention, which is a significant concern. For example, if someone is going to be incarcerated on drug charges and they are forced to go to rehab, they would then have to consent to the rehabilitation. However, Douglas argues that there would not need to be consent to rehabilitation on the part of the drug user as they would not need to consent to be incarcerated (Douglas, 2014). Incarceration is a mandatory action if one is sentenced by law to go. Douglas discussed medical injections

specifically in his paper, which is arguably more invasive than mandatory rehab. But I think this could apply to mandated rehab for convicted drug users. It does not seem that there is a relevant difference between being incarcerated and being rehabilitated, as both force someone to do something they otherwise would not have done.

Another consideration is the view that both incarceration and forced rehab are not a good idea. This is a valid viewpoint, but I would argue that there is no other viable means of incentivizing people to get help that does not leave people behind. On the decriminalization side, sparing people from prison and all it entails is great. However, it is unclear what solid solution could follow. Of course, funding could be used for addiction treatment, but without an incentive to seek out such treatment, it is unlikely to have much use. And, as far as having no forced rehabilitation, one could argue that having something like paying a fine in its place does not do much for the person facing addiction or who is found to be in possession of a given substance. If anything, it adds a further burden on them by asking that they pay money to the government in exchange for not being incarcerated. Although one outcome may be better than the other, the person affected still loses.

3. Arguments Against Paternalism in Drug Policy

With regard to Conly's view, it could be argued that having a benevolent interest in someone else's development, especially adults, treats that person as you would a child. It implies that the people cannot think of their own best interests. It communicates a condescending view of people and does not treat them with dignity. Control over others does not have to be, and is often not, from a place of benevolence. Also, even though the paternalistic attitude may start out as benevolent, it does not have to remain that way. Governments can take excessive action towards those they deem as lesser than, which is problematic. When applied to drug policy, being

restricted hardly ever helps the person who uses drugs or is addicted. So, this action, which could be viewed as helpful, still has an adverse effect.

Not to mention, using coercive paternalism in this context does not limit the behavior meaningfully enough to still be worthwhile. If someone goes to prison for drugs or some other crime, there is still the issue of recidivism, where the person will commit the same illegal act once they are released. Restrictions against drugs and how they are enforced do not communicate a benevolent interest as they stand today.

For Caplan, one could say that autonomy loss of any kind is negative, especially at this level. In his plan, the addict's autonomy is further lost on top of their addiction (Caplan, 2006). Taking away more autonomy from someone to, ideally, have it returned to them is risky when talking about addiction. It implies that people with an addiction are completely unaware and unable to make decisions for themselves just because they have an addiction. For example, if someone is addicted to something like social media, they are not completely incapacitated or unable to make decisions like going to work, hanging out with friends, or caring for their health. Like usual concerns around paternalism, it treats them as children who do not know any better because of a health issue. Intention is also often crucial in addiction recovery. So, if a person with an addiction is forced into rehabilitation, they could still end up having no significant change or even end up in a worse position than when they started.

A direct objection to Douglas' piece is "The Right to Bodily Integrity and the Rehabilitation of Offenders Through Medical Interventions: A Reply to Thomas Douglas." In it, Elizabeth Shaw argues in response to Douglas' claim about consent, claiming that incarceration merely interferes with the right to free movement, while medical interventions interfere with the right to bodily integrity. Again, the original paper talked about medical injections, but this

objection could still stand for cases of mandatory rehabilitation. Prison, generally, only restricts the movement and freedom of the convicted, while rehabilitation could involve interfering with bodily integrity.

Another possible argument against this is that the current regulation around drugs does not have a paternalistic effect. By this, I mean the system itself is arguably not set up to be paternalistic but rather punitive. So, keeping drug policies around on paternalistic grounds does not work. For example, if someone is grounded because they stayed out too late, their parents could argue that they grounded them as a means of looking out for them. By grounding them, they have instilled a value that will be important going forward. However, effectively, being grounded only served as a punishment for disobeying the rules. This action did not have the effect it may have been said to have and ended up not positively impacting the child. If we apply this to the way drug policy is currently addressed, it is a punitive act disguised as wanting the best for someone. Thus, it could be argued that we should move away from where we are to more decriminalization or drug legalization.

4. Responses to Arguments

Regarding the possible objection to Conly, one could say that all of us, as long as we live and operate within a legal framework, are being treated as children. We are effectively parented by our governments, even though it is not always benevolent. This is not in a paternalistic sense, but it does so by placing restrictions on us and trying to interfere with disputes between parties. Instead of allowing parties to come to agreements independently about property or similar matters, the government must get involved. There are benefits to this, but this practice does still seem to treat citizens as less capable of handling things themselves. But we often do not consider

this to be a negative thing. One's interests can be looked out for without necessarily being condescending.

For example, laws against gambling prohibit people from gambling away their money. Bans on certain types of foods are meant to help people maintain healthy bodies. These things, although they inhibit people, do not have to be viewed from a condescending perspective. It does not always need to be communicated that people cannot look out for their best interests but rather that they have the potential to fail at doing so. By this, I mean that looking out for our own best interests is a fallible ability. Although someone may be capable of deciding not to gamble away their money or not swim without a lifeguard present, humans are incredibly flawed. Hard paternalistic laws and policies could be seen as wanting to look out for each other, regardless of one's position or status. It seems that the objection assumes that the person imposing paternalism on another necessarily sees them as lesser or inferior, which is not an innate function of paternalism as a concept. By lesser, I mean seeing them as generally inferior or less intelligent, not so much less capable of making a rational decision. There could be a difference between seeing someone as lesser and seeing them as being in a "weakened" state. The latter could be considered as seeing someone as they are realistically and opting to help them. For example, let us say you are caring for a loved one in the hospital who broke their leg. Due to this, you prevent them from standing up to go get something. This action does not imply that you think less of them but that you understand they are in a different state at that moment. Of course, these types of laws have the potential to cause real harm if applied incorrectly, but that is not unique to paternalistic policies.

Regarding drug policy, it may be true that being restricted does not do anything to limit people's behavior. Usually, at least in the U.S., people can find some way to get a hold of illicit

drugs if they want to. However, this is not a good enough reason to not at least try. Although actions made in good faith can still have adverse effects, without hindsight, it is usually okay for people to act in a way they think is best for another person. I will agree that drug offenses are met with a punitive response that is not benevolent and often does not have the offender's best interest in mind. That is why there needs to be a change in how these law violations are dealt with. And hopefully, finding a new solution can help reduce the recidivism issue brought up by this objection.

Regarding the concern around Caplan's view, I agree — this view may seem dismissive of addicts and their capacity to look out for themselves. However, this view could instead help us look at addiction as a health issue first and foremost. Sending addicts to mandatory rehab could function similarly to someone staying at a hospital. In a traditional hospital stay, someone is sick, injured, or otherwise outside of a state of normal health. When this happens, they are usually given care plans, strict diets, limits on where they can go and if or when people can visit, etc. We could say that their autonomy is restricted since they are not entirely free to eat what they want, see who they want, or go where they want. But ideally, they are better off after their stay than they were coming in. Of course, there is a difference given the fact that people can opt out of treatment, while they would not be able to simply opt out of the mandatory rehab. Although this is true, the point here is that compared to being incarcerated, which is another mandatory state, being sent to rehab provides a higher chance of being beneficial.

So, in a similar fashion to Caplan's view, someone temporarily loses some of their autonomy but regains it later. We could apply this to the mandatory rehab idea, where the rehabilitation center functions like a hospital. The person does not have as much autonomy as they normally would during that time, but it would not be a permanent situation. They would be

able to go back to their normal lives once they have spent the allotted amount of time on the path to recovery.

Regarding the final argument around enforcement, I agree with it, but I believe the view that hard paternalism in drug policy is useful and that punishment should not be so harsh can coexist. As my solution suggests, there can still be a coercive paternalistic aspect without the severe prison sentences witnessed in our current setup. The rest of this project will be aimed at evaluating two solutions that are usually raised about drug use and my proposal for what to do instead.

IV. Two Stances

A. Do-nothing

1. Explanation

First, the “do-nothing” stance entails not making people who are addicted to or in possession of illicit drugs do anything further. This encompasses decriminalization and legalization. For decriminalization, some stances claim that taking away the criminal aspect can make the situation better for drug users, as they will no longer have a criminal record attached to their name if they are found to be in possession of drugs. Of course, there can still be limits on how much someone can have in their possession and fees for being caught. However, it does not disenfranchise or separate people from society via a criminal record. This view can also include legalization, where certain drugs are legalized to have access to and use.

2. Arguments in Favor

The benefits of this stance are considerable, as many of the issues with the current system can be solved. Without drug criminalization, people would no longer be criminally punished for possessing or using certain drugs. In the paper, “Bars Are Bad for You: Why Paternalists and

Social Welfarists Should Oppose Criminal Drug Laws,” Andrew Jason Cohen and William Glod argue that the enforcement aspect of criminal drug laws is highly flawed and generates more harm than good. So, criminal drug laws should not exist, as the costs of incarceration would not exist if no one was incarcerated (Cohen & Glod, 2017). They also claim that the only positive of incarceration for drug offenses is that the person no longer does drugs. The subsequent negatives, like disenfranchisement, disconnection from the community, and isolation, mean that people are better off not being incarcerated. I agree with part of this point, as our current drug policy does not align with paternalism’s goals. Incarceration has only made the problem of drug use and its consequences worse, which I do not disagree with.

A real-world example of decriminalization efforts is the state of Oregon, as they no longer criminally punish, and they do not force addicts to do anything beyond either paying a fine or getting a health screening to waive the fine. This still allows drug users to have a choice in what they do but holds them accountable for their actions. There have been concerns about whether the state jumped the gun by going straight to decriminalization without a plan of action to treat and care for those who have drug usage issues (Westervelt, 2021; Schick & Wilson, 2024). However, the act of decriminalizing itself has saved money on arrests, which the state now diverts to addiction treatment services.

There is also an appeal to autonomy embedded within many decriminalization arguments. Essentially, people are criminalized for utilizing their autonomy to do drugs. These laws unfairly infringe on the user’s autonomy and treat them as incapable of weighing the costs and benefits of their own bodily decisions. I also see the point in this, as it is a common opposition to paternalism.

3. Arguments Against

Despite the good aspects of these perspectives, there are flaws within them that cannot be ignored. First, as stated in “Bars Are Bad for You,” decriminalization would likely address many of the issues we have with current drug policy — I do not have any qualms with that. My main issue comes with the second aspect of the argument, wherein the paper suggests getting rid of paternalistic drug laws altogether. I do not think this would be wise, as not having restrictions for substances that can be dangerous could yield more problems down the line if we are not careful. Regardless of how drug laws operate now, having restrictions in place is not the core issue. It is how we handle the enforcement of restrictions.

Many arguments around decriminalization fail to address the aftermath of decriminalization. By itself, it does not do much to help those who may be struggling with addiction or who cannot pay if a fee-based regulation system is put in place. People who struggle with drugs would need stable support within the government and a streamlined way to get help. Decriminalization alone will not address these issues without a separate system to pick up the slack. Not having it will leave people behind and ultimately still be inconsistent with paternalism.

As the criticism about Oregon’s handling of drug decriminalization shows, there must be consideration of what comes next. Ballot Measure 110 sought to decriminalize possession of small amounts of certain drugs like cocaine, heroin, and fentanyl (Schick & Wilson, 2024). In the state, law enforcement is meant to act as a means of getting people to pursue treatment via tickets and cards with information about how to access addiction treatment. There has been an increase in people seeking treatment, but deaths related to overdose are on the rise as well (Schick & Wilson, 2024). State officials have been largely blamed, as law enforcement was not properly trained on how to approach and implement this measure. This also includes not having a

specialized citation ticket for Measure 110 that includes access to a treatment center. Oregon Senator Floyd Prozanski admitted that having proper infrastructure and incentives from the start likely would have helped avoid the issues that took place (Schick & Wilson, 2024). Those who still support the measure believe there should be some sort of consequence that does not include jail time. The problem is that there are no real incentives for people to seek out treatment, as it is an option between paying a citation fine or calling a hotline. Regardless of the best intentions for this measure, there must be more involvement in order to pick up the slack and incentivize people to utilize the available resources.

In the same vein as Cohen and Glod's paper, the only benefit of incarceration is not doing drugs. Typically, putting someone in prison without addressing their addiction is a terrible idea. This is why I think it makes more sense to provide them with rehabilitation. If they must be held accountable in the first place, I think it is better if they receive some kind of potential for positive improvement from it.

As far as the autonomy argument, autonomy can be present in some instances while not being present in others. This appeal to autonomy from this stance does not work well, as all laws infringe on autonomy in some capacity. And the aftermath is likely going to infringe on autonomy as well, no matter how we go about it. As we covered in the second section, autonomy can still be present in a variety of respects, even if we are restricted. The problem is that people are being punished too harshly for doing drugs, not necessarily that they are not allowed to fully exercise their autonomy.

B. Punishment

1. Explanation

The second stance I will address is punishment, which is the primary stance on drug use enforcement. The U.S. has its own history of incarcerating people for drug use, with one of the biggest reasons being to retribute and act as a warning for other people. Being in possession of or being found guilty of using illicit drugs has led to lengthy prison sentences and an increased prison population since the War on Drugs began in the 1980s. In this section, I will cover some arguments in favor of punishment and some against it.

2. Arguments in Favor

There are a few stances behind the punishment argument. I will focus on the popular ones: that drugs themselves are wrong and that using them can cause one to harm others or themselves. The first argument for punishment builds on the idea that drugs are illegal because doing them is generally wrong. Chris Meyers, in the chapter “Is It Morally Wrong to Use Drugs” in *Drug Legalization: A Philosophical Analysis*, provides arguments for why drugs are viewed as wrong to use. He cites people like John Ashcroft, Edwin Delattre, and William Bennet as proponents of seeing drug use as morally wrong. One possible reason comes from the assumption that drug use does not only harm the user but also others. For example, Meyers uses Bennet’s anecdote of severe violence at the hands of people on drug-crazed rampages.⁴ However, this framing is not as compelling since it is rare for drug users to violently harm others. And with this, the harm is not usually the drug use itself but something that is assumed to have stemmed from the drug use, like violence, theft, neglect, etc.

A different and more interesting way of looking at it is that using drugs makes a person more dangerous, and just like we punish drivers for endangering themselves and others when they are under the influence, people should be punished for making themselves dangerous.

⁴ See Bennett (1990).

3. Arguments Against

In response to the argument that doing drugs should be punished because it makes people dangerous, I would say that there does not need to be punishment involved for drug use because it is the activity they do while under the influence that makes them a danger at that time. Doing the drug by itself is not going to make the person more dangerous automatically, just like drinking by itself will not make someone dangerous. In the case of drunk driving, the driving aspect makes the person dangerous, not the alcohol itself. And, driving drunk gets punished for endangerment, not simply being drunk.

For example, let's say that a person is under the influence of some illicit substance. Let's also say that they are just sitting at home alone, watching TV. In this instance, the person is not endangering anyone by being under the influence on their own. However, if they were to leave and participate in an activity like driving, they would become dangerous.

To address a possible self-harm perspective, the same rules would have to apply to drinking and being in possession of alcohol or even having caffeine. Drinking is no doubt a form of self-harm based on what can happen to your body if it is done excessively. Based on this line of thought, even eating unhealthily would be a form of self-harm. Aside from the legality aspect of using drugs versus using alcohol, the body can have adverse reactions to each activity. So, it is not as compelling to appeal to self-harm as justification for punishment.

It seems that these arguments for punishment, while interesting, still do not tackle the root issues that come with incarceration for drug use as it is today. In the final section, I will pull together the different aspects we have discussed so far to reconcile paternalistic drug policy and the goal of paternalism.

V. My View

Instead of decriminalization without further action or punishment in response to criminal drug offenses, governments should take a mandatory rehabilitative or therapeutic approach. This could operate as sending people with heroin or cocaine offenses to rehab rather than imprisoning them as the current system does. The current system locks people who simply use drugs or have an addiction behind bars in a punitive fashion, which ultimately harms them in the long run. This strategy would function as a replacement for the incarceration aspect of drug offenses. Things like probation would still be in play, as people are allowed to be outside of prison if they follow the guidelines. This strategy is aimed at addressing people who would otherwise be isolated from society via prison.

Here, it would be helpful to give an idea of what this would look like. Let's say that someone is found to be in possession of cocaine and they are on their third possession offense. From here, they would undergo a health screening of some kind to establish whether they are showing signs of addiction. If they are, they would be directed by a judge to spend 1-2 months in a rehabilitation facility, where they are cared for by medical professionals, just like a standard rehab center. During this time, they could have visitors but must stay within the facility for monitoring. They also would be connected to resources and receive medical treatment during this time. The specific types of rehabilitation would have to be up to local governments but would ideally be a mix of cognitive-behavioral and holistic therapy, along with medication, if granted by a health professional.

If offenders do not show signs of addiction, they will attend a set number of hours of court-ordered therapy sessions. Within this, they are able to leave and just come to the sessions for an hour every week, for example. But if they do not attend therapy, they are subject to further hours

being added or some other solution handed down by a judge, like a fine. They will not be jailed or punished in this instance, as that would essentially put us back to square one. I make the distinction between these circumstances since people who are just caught for drug possession are not necessarily addicts. Treating them as such by sending them to rehab would ultimately be unreasonable.

This model would be a form of paternalistic intervention, which could raise concerns for people who are against paternalism. Primarily, the mandatory rehab aspect would be the most problematic. Forcing someone to go to rehab understandably makes people uneasy, as rehabilitation largely depends on the consent of the person who needs to rehabilitate. However, in a battle between imprisonment and rehab, where the person does not really have a choice either way, I argue that sending someone to rehab is better than imprisoning them. If paternalism is truly the aim, then people who are imprisoned for drug charges can be given mandatory rehab or therapy instead of mandatory prison time. It is trading one forced action for another.

An upside is that this adjustment can help our government address heroin and cocaine use and addiction as medical issues rather than issues of punishment or resulting in people being left alone. Incarceration, as it stands, usually does nothing for a person with an addiction other than separate them from their support systems and possible resources to get help. Some prisons do have rehab programs, but they still operate within the prison system, which largely restricts them beyond just keeping drugs away. Sending addicts directly to rehabilitation instead of prison can help avoid some of the current issues with the prison system. Among these are things like social isolation, the criminal label and the subsequent stigma, prison violence, and disenfranchisement.

Based on my discussion about decriminalization, it may seem that my view does not work within an argument for decriminalizing drug possession and use. However, my view does

not require that criminal drug offenses remain, but it does require that people who commit the offenses must do something extra as a result of being caught. This factor tends to be missing in discussions around decriminalization, often brushed off as just having rehabilitation be more widely available. My view entails that extra work has to be done to keep people who may be struggling with heroin or cocaine use safe without the added consequences that come with punishment as it stands today.

Another important aspect is that people who are struggling with what is ultimately a health issue would not be met with punishment, in my view. Although there are options for receiving treatment in prison, these still operate within a model of people being prisoners. Regardless of whether the rehabilitation is effective, it avoids the negative consequences of punishment as it traditionally stands.

VI. Conclusion

Ultimately, the justice system should adopt a more rehabilitative, paternalistic standpoint about drug offenses. Paternalism is supposed to be about looking out for people's best interests, and reconciling the current rules around drug possession and use with different means of enforcement can help us achieve that goal. Although many may still have reservations about sending people to rehab, it is important to keep in mind that this solution stands in opposition to incarcerating people who are dealing with a health issue. This method helps us reconcile the benefits of decriminalization with the underlying need for accountability from the punishment perspective. In this instance, people can be held accountable while not being set back by the legal system.

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