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## Taking Drugs Seriously: Liberal Paternalism and the Rationality of Preferences

Ann E. Cudd

" . . . it is clear that it is a Good Thing for the individual to have what he prefers. This is not a question of satisfaction, but freedom. . . . But drug-fiends should be cured; children should go to school. How do we decide what preferences should be respected and what restrained unless we judge the preferences themselves?" Joan Robinson, *Economic Philosophy*.

**T**HE War on Drugs has made very pertinent (though curiously taboo) the question of whether people ought to have the right to take drugs. The reasoning of the administration is rather unreflective: it regards all and only the already illegal drugs as targets in its war. Its reasons are hazy and anecdotal, but backed up by the very real threat of prison. However, the claim that it is immoral or irrational to take drugs is neither obviously right nor wrong, and since it involves some interesting problems for the theory of rationality, as well as for those who are inclined to indulge in the use of drugs, it is worthy of serious consideration.

### 1. LIBERAL PATERNALISM AND DRUGS

In this essay I argue that in a liberal society citizens have the right to take most drugs. I argue that the infringement of that right for almost all drugs is legitimate in a liberal society only under special circumstances, namely those circumstances in which what I call "liberal paternalism" is justified. I will argue that there is only a small and very special class of drugs which fall under this category. My argument analyzes choices from the perspective of rational choice theory, in an attempt to specify precisely the senses in which a choice to take drugs

may be irrational. I shall consider all questionable uses of drugs, not only illegal ones (marijuana, opiates, psychedelics, etc.), but also legal drugs such as 'designer drugs', and abused prescription drugs, as well as alcohol and nicotine. They all have two things in common that make them interesting test cases for theories of rationality and liberalism: they may, in at least some uses, cause significant problems for the user, and they may, in at least some uses, provide significant satisfaction.

On a plausible conception of liberal paternalism, interference with a person's liberty is justified when the person acts irrationally, either because she miscalculates the consequences of her actions, or she acts on irrational preferences. It would be impossible to have irrational preferences on a Humean view of desire, since on that view preferences are uncriticizable; it is not *irrational to* "prefer the destruction of the whole world to the scratching of my finger."<sup>1</sup> I maintain that, *pace* Hume, preferences can be rationally criticized, but that the preference for taking drugs is not irrational in every case, and that the society at large is not in the proper position to sort out individual cases.

I assume, for the purposes of this essay, the Millian liberal ideal that individuals have the right to do whatever they want, provided that they are not thereby failing to take normal care to avoid physically harming another, nor failing to perform their legal contracts, nor failing to perform their legal duties as parents or citizens (excepting, for now, the taking of drugs, of course).<sup>2</sup> Liberals hold that there are self-regarding acts, and that society may not determine whether or not individuals may perform them. The requirements of morality may go further than this. For example, we may want to say that parents are morally required to provide their children with the most emotionally secure home they can. This moral requirement goes beyond what liberal states can legitimately require of people, since it requires more than normal care. The notion of normal care is difficult to define. We could make it more precise by introducing a system of threshold probabilities, such that if someone commits an act which will result in some harm with a probability greater than that threshold, then she will have failed to take normal care to avoid the harm.<sup>3</sup> For the purposes of this essay we will not be interested in the moral issues that go beyond the simple right to take drugs in a liberal society. I will assume that taking drugs is permissible if there are no grounds for liberal paternalism, so long as one is not operating a car or performing some other licensed or sensitive duty. In other words I assume that there is no significant harm-to-others issue here. There are arguments one could marshal against this claim, such as that taking drugs causes (a sufficiently high proportion of) users to do anything necessary to ensure a future supply of drugs, and hence is a cause of violence, or that taking drugs illegitimately increases the tax burden on the rest of society by raising the probability that one will require

medical care. But in the first instance one could argue that the criminalization of drugs is largely to blame, and in the second football would face the same objection. If I am wrong about this, however, it will not affect my argument about outlawing drugs on grounds of liberal paternalism. So I assume for now that we could defend the right to take (at least most) drugs against these harm-to-others objections, as a full defense would take us too far afield here.

It is not beyond the bounds of liberalism, however, to require that people behave (more or less) rationally. Mill justifies liberalism by arguing that each individual's plan for her life is the best plan because it is hers.<sup>4</sup> Mill makes two claims here: one is that individuals are in privileged information situations with respect to their own desires, and the other is that autonomy is to be valued in itself. Mill thought there should be an exception to our freedom to choose: we may not sell ourselves into slavery since that is a renunciation of all future autonomy.<sup>5</sup> I would argue that another exception he would have to admit is that one may be prevented from choosing if one is clearly irrational, since one is then neither autonomous, nor in tune with one's desires. Ronald Dworkin's justification of liberalism is that it is a consequence of the requirement that government have equal concern for all persons.<sup>6</sup> If a person is irrational, incompetent, or infirm then the requirement of equal concern entails that the government provide her with some care. Other justifications of liberalism would allow paternalism in cases of involuntary or irrational choices or incompetence.<sup>7</sup> Thus the ideal of liberalism does not prohibit paternalism on the part of the state when an individual is judged incapable of making a rational choice.

I am not proposing to argue for a particular conception of liberal paternalism here, rather I am concerned with how the drug issue is resolved on one plausible understanding of liberal paternalism. In this paper, then, I will assume that on a liberal theory paternalism is justified to prevent people from making choices which are clearly and necessarily irrational, or in which rational people would have to agree to a constraint on their liberty. Rational choices are, minimally, choices which give the individual a satisfactory (to her) level of expected utility in the situation. So minimally we can say that desires which are self-defeating, in the sense that if one were to satisfy them one would thereby lower one's expected utility level, are irrational. Rationality may involve more than this, however. We may want to argue that there are certain desires which rationally cannot be held. It is then a further question to ask whether we want to prohibit acting on these desires. I shall assume that if we can show that an action is necessarily irrational then it legitimately may be controlled by the state.<sup>8</sup> I proceed by analyzing the ways in which drug taking is arguably irrational, and hence susceptible to liberal paternalist objections.

2. STRATEGIC IRRATIONALITY

One way that a choice may be irrational is if it leads to a socially and individually suboptimal outcome. In this case law may be useful to coordinate actions to bring about an optimal outcome. Legal restrictions on actions which do not cause harm to others can be divided into two categories: (1) laws which coerce individual self-regarding actions for special strategic considerations; and (2) paternalistic laws, or laws which coerce an individual's actions for that individual's good. The liberal accepts all laws that are clearly of the first kind, i.e. those which protect us from physical harm of some sort. She can accept some paternalist laws too; remember, even Mill claimed that we may not sell ourselves into slavery. But she can accept the second kind of laws only when they amount to a liberal paternalism. Do drug laws constitute liberal paternalism or illegitimate interference?

Of the actions which liberal laws coerce for special strategic considerations there seem to be three cases. The most well discussed case consists of laws to prevent free-rider problems. A free-rider may plausibly be considered to be causing harm to others, thus it is not an issue of paternalism. It may be argued, however, that drug users are "free-riding" on the social benefits of other people's refraining from using drugs. But this is, at worst, the same sort of free-riding that anyone who does not develop her talents commits, and that is not something that a liberal society can outlaw.

The second case consists of laws which serve to coordinate social actions for a socially and individually better outcome. Insofar as they justified by promoting the individual's own good they are paternalist. An example of this situation, presented by Thomas Schelling in *Choice and Consequence*, was the NHL hockey players who refused to wear helmets because they thought they would not look macho enough wearing them. As long as there were some who would not wear the helmets, or even they thought others might not wear them, no one wanted to look like a wimp, even if it meant a great risk to their well being. However, all of them, according to Schelling, would prefer to be required to wear helmets, since in that case they would not be wimps for wearing the helmets, and they could protect their heads. This situation can be represented by the familiar assurance game. We can represent these cases by the payoff matrix given below. (Payoffs are given by ordinal ranking.)

		Wayne	
		HELMET	NO HELMET
Mario	HELMET	1,1	4,3
	NO HELMET	3,4	2,2

If we take it that liberals may insist that people do what they prefer, then laws which only insure that they are doing this are not coercive, and hence legitimate. This represents fairly well the situation of “peer pressure,” in which people choose to perform actions for reputation effects of the action, rather than for any intrinsic value of the action. So if we suppose that people take drugs only because others do, and that they would prefer not to take drugs if others also refrained, then this would be a situation in which the kind of liberal I am imagining would accept laws against drugs. Since we assume that peer pressure might very well be the motivation for children and especially teenagers to take drugs, it would be justifiable for a liberal to take coercive measures to prevent them from doing so. This analysis is appealing to the liberal, since any rational person in this situation would voluntarily choose the coercive measures, and unlike in the prisoner’s dilemma, would have no reason to cheat. However, we cannot assume that the payoffs to drug taking commonly present this pattern. Too many people seem to choose drug taking apart from others, in spite of the risks, even the risk of censure by their peers. We will examine cases in which people do prefer taking drugs for reasons other than reputation. Thus we cannot suppose that in general people’s preferences for taking drugs constitutes an assurance game.

The third case<sup>9</sup> consists of the laws which prevent prisoners’ dilemmas from arising. The use of anabolic steroids in athletics constitutes a prisoners’ dilemma. It has frequently been noted that the pressures to succeed in athletics, and the rewards reaped by those who do, cause many athletes to seek advantage in every possible way, even if it requires some sacrifice of present or future health. Anabolic steroids clearly increase an athlete’s chances of success.<sup>10</sup> In the absence of an effective law against it each player faces a dominant strategy to take the drug. Thus they face the indicated payoff matrix.

		<i>Ben</i>	
		USE STEROID	DON'T USE
<i>Carl</i>	USE STEROID	3,3	4,1
	DON'T USE	1,4	2,2

In this situation it is rational for players to agree to have a coercive power which will force them to play the cooperative strategy (don’t use). Thus this is also a case of paternalist intervention to which rational players would agree. In this case it is legitimate for a liberal society to pass laws against the athletic use of steroids, provided that there is a reasonable enforcement mechanism. Any citizen who thinks that this is an

illegitimate infringement on his rights is either irrational, or has not properly understood the strategic nature of the situation, since anyone who understands it would choose to have the coercive laws against its use.

There appears to be only one kind of drug, then, which a liberal state can outlaw for adults on grounds of its strategic considerations alone, and that is anabolic steroids used by athletes. All other paternalist drug laws are to be justified, if they are justifiable at all, by the claim that it is individually irrational to take them. Thus the question I will be addressing in the rest of this essay is whether taking drugs (which we shall henceforth understand to exclude steroids) is irrational, and so, whether it can on those grounds be made illegal in a liberal society.

### 3. THE INSANITY PLEA

People do not come equipped with rationality indicators, and it is notoriously difficult to attribute irrationality to someone with any certainty. Rational choices depend holistically on beliefs and desires, so that if an action appears to be irrational given one set of beliefs and desires it may be rational given another set. Since we can never be sure of another's beliefs and desires, it is difficult to attribute irrationality to someone. One *prima facie* example of irrational behavior would be inflicting serious wounds on oneself; one cannot rationally desire to hurt oneself, since it reduces one's utility now and into the future. If we agree that wounding oneself is irrational, then it would be legitimate, though perhaps unnecessary, for our liberal state to take some actions to prevent it.

Now one might want to say that taking drugs is a kind of self-inflicted wound. But it seems that there may be significant advantages to the person taking the drugs which do not exist in the case of self-inflicted physical wounds. There are effects which we can intersubjectively identify and agree that are positive. For example, many artists have found drugs to be an aid to creativity. I am thinking of people like Ken Kesey and Alan Ginsberg, but there are probably many others. Also, since so many people desire the effects of drugs, while we do not find many people intentionally inflicting wounds on themselves, we should not be so quick to find the cases analogous.

Taking drugs sometimes has the result of making people temporarily or permanently insane. Might we want to outlaw it on these grounds alone? Surely a liberal society would not want to do so on the grounds that it may make one insane, since there are many things which also increase the chances that one will become insane which we would not want to outlaw. For example, becoming a psychiatrist, or taking up a competitive and stressful occupation, working hard, moving to a new place, trying new things, taking up a cult religion, or watching too much TV, all have



the potential for making one crazy, even certifiably so. Yet these are all clear cases of things a liberal society would not want to outlaw, since liberals believe that the right of people to make their own choices overrides the right of the state to be paternal in all but the most clear cut cases of irrationality. The case of taking drugs, I would argue, is similar to these examples; though one may increase one's chances of mental health problems, the right of the individual clearly overrides any right of the society to protect its citizens from themselves.

One might claim that it is necessarily irrational to take drugs *in order* to make oneself insane. But it is not true that one should prefer to be rational all the time. Derek Parfit has argued that one can rationally choose to make oneself irrational. In *Reasons and Persons* he gives an example in which a person makes himself insane in order to make himself immune to the threats of a robber.<sup>11</sup> This shows that it can be rational to relinquish one's sanity. One might object that this case is too far-fetched, but it is not far-fetched to suppose that one might want others to think is so crazy that one will carry out a sub-optimal threat, or be a constrained maximizer in one's final days.<sup>12</sup> Also, in many instances it is nice to see life from a different perspective. Drugs are often taken because they make us perceive reality differently. But isn't that also the case with art or philosophy?

One might argue that the examples I have given all have the potential for making one's life better, even for increasing the probability of long-term mental health. Taking drugs may also have this effect. Imagine the life of a person trapped in a depressing social situation from which there is no realistic chance of escape, such as a member of a discriminated class who cannot find meaningful work and who has no realistic chance of ever doing so.<sup>13</sup> Taking drugs may allow that person an escape from the daily drudgery that nothing else, short of suicide or insanity, could. In such a case taking drugs would be conducive of better long-term mental health than any feasible alternative. One might respond that there is no such situation which cannot be overcome given sufficient diligence: the illiterate can learn to read, the uneducated can become educated, the inexperienced can work their way up the work ladder, the uninspired can inspire themselves. We should not allow people to make second best choices when their mental health is at stake. This response violates the spirit of liberalism in two ways. Part of the ideal of liberalism entails the notion that there exist supererogatory acts, and no one can be required to perform them. Furthermore, liberalism does not require one to take the best possible care of oneself, or even good care of oneself. To require that the person in our example pull himself up by his bootstraps is to require not only that he take good care of himself, but also that he work harder at it than most people would have to, since his social situation makes his boots that much heavier. Hence there is no direct argument from the fact



that drugs may make one insane to the conclusion that taking drugs may be made illegal in a liberal society.

#### 4. NARROW INDIVIDUAL IRRATIONALITY

A better alternative is to argue that the preference for taking drugs is necessarily irrational. This might be argued for in two ways. One might argue that taking drugs is self-defeating in the sense that one can only decrease one's utility, now and into the future, by acting on a desire to take drugs. Or one might argue that the desire to take drugs, while not self-defeating, is irrational on other grounds. We will examine these possibilities in turn.

Is the desire to take drugs directly self-defeating, i.e. is there an intransitivity in the desire to take drugs? To say that there is an intransitivity in someone's preferences is to say that the person has a set of preferences  $a, b, c$  such that  $a$  is strictly preferred to  $b$  (we shall write ' $aPb$ '),  $bPc$ , and  $cPa$ . The well known problem with such a set of preferences is that they lead one to become a money pump,<sup>14</sup> and this is taken to be irrational no matter what else you prefer.

Taking drugs, it might be argued, has the same problem. In the short-run you realize some satisfaction, but in the long-run you end up with the same problems with less money and time (and perhaps lost health). Now you are able to satisfy fewer of your desires than before, hence taking drugs is self-defeating. But this assumes that one gets nothing out of the experience of the drug high, and that is a bad assumption for many people. Just as some people will pay a great deal for a restaurant with very good food and special ambience for the sake of the experience, some may want to spend a good deal of money and time, and even risk ill health, for a good drug experience. This does not show that no one's preferences for taking drugs are intransitive, just as it does not show that no one's preferences for fancy restaurants are intransitive. It does suggest the possibility of transitive preferences for taking drugs. Thus taking drugs is not necessarily irrational on these grounds.

The possibility of addiction to drugs, however, raises more difficult problems for a defense of the right to take drugs. Since addiction often comes with a sort of schizophrenic preference for the drug on the one hand, and for freedom from the drug on the other, it leads to intransitive preferences of the worst kind, i.e., taking  $x$  to mean "having drugs" and  $y$  to mean "not having drugs,"  $xPy$  and  $yPx$ . But addiction does not lead to straightforward intransitivities, since it makes one have ever stronger preferences for the drugs at the time one prefers them, so that it is not the case that one holds  $xPy$  and  $yPx$  *at the same time*. Furthermore, the addict may not actually hold that  $yPx$ , but rather  $yPx'$  where  $x'$  means "being addicted to drugs." Thus one does not, at those times when the person

prefers the drug, prefer anything else to the drug, although an addict's preferences may oscillate rapidly over time. In this case the addict's preferences are not intransitive, but we might not want to say they are perfectly rational either. We shall return to the problem of addiction in the next section.

To this point I have been assuming a particularly narrow conception of rationality. On this conception rational preferences are simply consistent preferences, there are no substantive requirements about the content of the preferences. A belief in the supernatural is as rational as the belief in tables and chairs, so long as these beliefs are consistent with any other one holds. And as we just saw, there are no requirements on the way preferences develop over time. On this conception of rationality it is not too surprising that preferences to take drugs are not necessarily irrational. But this is not the only conception of rationality consistent with liberalism, and on other, more substantive conceptions it may turn out that the desire to take drugs is an irrational desire.

## 5. BROAD INDIVIDUAL RATIONALITY

Jon Elster provides what he calls a "broad conception of the rationality of desires" in *Sour Grapes*. He argues that desires should be evaluated by considering the way in which they are shaped.<sup>15</sup> Respectable preferences must be autonomous, which means that they have been formed through a process over which the agent had sufficient, and the right kind of, control. Elster discusses several non-autonomous preference formation processes. I shall discuss just the two processes which are directly relevant to the drug case: adaptive preference formation and wishful thinking.

Adaptive preferences change with changes in the feasible set, that is, with the states of affairs the agent considers achievable for him. Adaptive preference formation is the phenomenon of "sour grapes," which makes anything outside the feasible set seem undesirable. The case of taking drugs may involve adaptations to the feasible set by causing the person to prefer those states of affairs in which one could be a drug taker. Now if one is an addict, then one's feasible set is considerably different from what it would be if one were not an addict; one could not also be in positions of responsibility for others and one would have to have some secure source of drugs and money to buy them. An addict might come to prefer those states of affairs, and ask that his state respect his preference. Does this constriction of the feasible set make being an addict irrational? Or, in other words, can one rationally choose a course of action which restricts one's feasible set? We can think of the alternatives in one's feasible set as the opportunities one has, and the restrictions on those alternatives as opportunity costs. Choices always have opportunity costs.

choices, or when one decides to commit oneself (monogamously) to another person one rules out other potential mates. Thus we have at most a difference of degree to which the feasible set is altered between addiction and other choices.

Elster claims that there are other problems with adaptive preference formation which makes the preferences formed in this way less respectable. First, it is a causal process which goes on behind the back of the person and over which she therefore has little control. Many other causes operate on us to form our preferences, without our conscious approval. For example, I suspect that there is something causal and uncontrollable about the forces that helped me to form my preference for eating chocolate, but I do not resent it, nor do I think it is less worthy of respect than most preferences I and others have. Second, adaptive preferences typically downgrade the inaccessible options, and this does not increase utility. Elster holds that this is irrational because one could choose instead to upgrade the available options, thereby increasing one's utility. But the states of affairs which are downgraded here are, by hypothesis, infeasible, and so one will not lose any utility by rating those states of affairs lower. Furthermore, this may make the available options more attractive and even more valuable, which would mean that one actually gets more satisfaction from what one can achieve after the adaptation process. It seems to me that anything which helps one to be happier with one's lot in life is worth having. Elster points out that this sort of preference change is essentially a by-product; one cannot *choose* to believe the grapes are sour. But that does not mean that the process is irrational—since in my view one should want to choose it if one could—rather it is at worst non-rational.

Wishful thinking involves mistakes in the conception of the feasible set itself. It occurs when one fails to consider the steps necessary to bring about the preferred state of affairs. One may then come to have a preference over some state of affairs which is impossible, or one may just fail sufficiently to realize what bringing about that state of affairs would entail. To come to recognize these preferences as mere pipe dreams one needs to go through a thought experiment to see if the fully imagined intermediate states of affairs involved in getting what one wants are possible and desirable.

Many people argue that it is wishful thinking to believe that one can take drugs without becoming addicted to them. If the only rational preference for taking drugs involves this belief, then one could argue that these preferences are irrational. If, on the other hand, one knows that drug use usually leads to addiction and one still prefers it, then the preference is not irrational on these grounds. I take it that there are drug users who fall under this category. Of course, there are many people who do not sufficiently understand this fact of drug use, and for the sake of these

people a good society and their friends ought to educate them and lead them to perform the required thought experiments which would make clear to them what life as an addict might be like. But we cannot condemn as irrational the preferences of those who have made the thought experiments because we can imagine circumstances under which rational people would choose addiction over abstinence.

Elster's objection to non-autonomous preferences in general is that one is less free when a causal process manipulates one. Lack of freedom does not mean that a preference is irrational. However, the claim forces us to ask whether liberalism demands that our preferences be autonomous. Elster's claims about the non-autonomy of preferences challenge the foundation of liberalism itself. Liberalism holds the individual to be the final arbiter of what she wants, and gives her maximal liberty to achieve it. If individuals' preferences are not autonomously formed, but rather formed by some causal process operating behind their backs, then by allowing the agents' preferences to be the ultimate guide for individuals the society is allowing these causal mechanisms to manipulate them. It is plausible to suggest that autonomy is what Mill wanted to respect when he claimed that we could not sell ourselves into slavery. One might say that whether the master is another human being or some other source of non-autonomy, we must not be allowed to become a slave to it.

According to Elster, autonomous preferences do not change when one's feasible set changes. The formal condition for autonomous preferences is:

If  $S_1$  and  $S_2$  are two feasible sets, with induced preference structures  $R_1$  and  $R_2$ , then for no  $x$  or  $y$  (in the global set) should it be the case that  $xP_1y$  and  $yP_2x$ .<sup>16</sup>

Here ' $R$ ' symbolizes weak preference orderings, and ' $P$ ' means "is strongly preferred to." In other words, one cannot have autonomous preferences which reverse themselves in two different feasible sets. I want to argue that this condition is too strong as a condition on respectable preferences.

Suppose that David is a talented and kind-hearted professor. In world  $w$  David has a small family and is married to a woman who works part-time and takes primary care of their two children. In  $w$  David prefers working long hours at his office and spending many days away from home giving papers to working at home and rarely travelling. In world  $w^*$  David is married to a successful athlete, who must be on the road often for competitions, and they have two children. In  $w^*$  David prefers working at home and rarely travelling and having a wife who travels to competitions to working long hours at his office and giving many papers at distant schools and having a wife who stays home. Suppose that from  $w$  to  $w^*$  at

least one item of the feasible sets have changed: in  $w$  David could have an exciting lifestyle, a fulfilled wife, and children who were well-taken care of by a parent, in  $w^*$  this is infeasible.<sup>17</sup> Suppose also that David's preferences changed with the change in his feasible set, so his preferences are non-autonomous by Elster's condition. Would we have to say that David is a victim of his circumstances?

There is certainly a sense in which the answer is yes, but this is not a very disturbing sense of "victim." We are all in that sense victims of our circumstances: everyone would prefer something different if they had some different feasible alternatives. But our feasible alternatives provide the constraints within which we build our lives. David is not a victim; we might even imagine that he is happy in either world. The point is simply that he reevaluated his preferences in the light of what is feasible for him. Our feasible alternatives certainly constrain our freedom, but if preferences are suspect whenever this condition holds, then everyone's preferences are suspect. The formation of one's preferences is inevitably affected by one's conditions of life, some of which are imposed by one's conception of the options one has. One might even argue that it would be irrational not to do what one can to alter one's preferences in the face of different feasible sets, because in the face of severe limitations preferences for great performances would set one up for bitter defeat. If that requires allowing or encouraging adaptive preferences to form, that too is rational.

The notion that there is clear distinction between autonomous and non-autonomous preferences is, I think, a mistake. All preferences come about in a community and have causal and other forces on them, or are traceable to some causal force. Many of our preferences come at mother's knee, and many others are trained into or out of us as we go to school and make friends and gradually become part of the larger society. Peer pressure is a strong force in the formation of preference, as are many other uncontrollable causal forces. Only a relatively small number of our preferences come as a result of our conscious control, such as learning to dislike meat when deciding to become a vegetarian. And even these can usually be traced to some non-autonomous preference, such as wanting to impress one's friends. Autonomy, in Elster's sense cannot be the test of a respectable preference.

The real problem with addiction is that it seems to restrict one's future choices and abilities in a way that just does not seem prudent. Thomas Nagel, in *The Possibility of Altruism*, presents what he calls a timelessness condition for evaluating preferences as to their prudence. On his view we are rationally required to regard each moment of our lives as equally real in evaluating actions. We can have some preferences for the present over the future, but only because we are uncertain about when we might die; I should discount the future according to my best estimate of

the probability that I shall be alive.<sup>18</sup> If when all future times are considered, discounting appropriately for the possibility of death, the overall utility effect of taking drugs is negative, then one should not take drugs. If this is the principle of timelessness, then I need only argue that some people do not regret having taken drugs in order to argue that it is not necessarily irrational to take drugs. But perhaps this principle is not yet clear enough to apply in this case, for what is a utility effect? The problem with taking drugs seems to be not just that they are explicitly regretted, but that they reduce people's possibilities for fulfillment in the future without their being aware of it.

The timelessness principle asserts a duty to one's future selves. It seems that to properly evaluate the utility effects one has to evaluate the counterfactual utility function representing the utility that future selves would have enjoyed had one not taken the drugs. In other words if one's future selves' utility given that one has taken drugs is less than their utility if one were not to take drugs, then one should not take drugs.

Now evaluating the drug case one might argue that addiction leads to exactly this situation. But we have difficulty determining this with any degree of certainty, since there is nothing less law-abiding (in the sense of scientific law) than the course of human lives. This uncertainty has important implications for social and political theories. It is part of the justification of liberalism that each individual is in the best position to determine what course of action she will take to realize her plans. That is, liberalism takes the position that we are in the best position to know our own future selves' desires. If *the present individual* recognizes that the future utility will be reduced, then she is irrational to take drugs, but whether the condition holds must finally be up to her to decide. We (friends) may want to argue the point with her, but since we can imagine situations in which future utility would not be lessened by taking drugs, a liberal must hold that the individual is the final court of appeals on this decision.

## 6. CONCLUDING REMARKS

In the cases of anabolic steroids and peer pressure among young people to take drugs we saw that there is an important strategic consideration which makes laws necessary for people to be able to get what they really want. Namely, these are situations in which people's preferences interfere with what they would choose in the absence of others; the situation is one of mutual harm. Thus liberals can allow that such laws are legitimate.

When there are no such strategic considerations, however, laws prohibiting the use of drugs restrict people's rights to do what they may rationally prefer when they do not thereby harm others. We can imagine



than the alternatives. The example of the person who is trapped in the horrible social or economic situation is just such a situation in which someone might believe this. It is also true that many people may wrongly believe that the life of an addict is better than their alternatives either because they misunderstand the miseries of addiction or because they incorrectly estimate their alternatives. For this reason kind and gentle liberal societies ought to provide good education for all, and counseling for those who wish to explore alternative lifestyles. And among friends we should examine and question desires to perform risky actions, such as taking drugs. But because some people can rationally evaluate the alternative of drug use as preferable, it should not be made illegal. It is not wrong to say that preferences can be rationally criticized, but the individual who has the preferences is the final judge of which criticisms are good ones, and what her preferences ought to be.

Thus a liberal society cannot legitimately or consistently outlaw the taking of drugs, other than anabolic steroids, on paternalist grounds. To be sure, the reader might respond that that is a *reductio* on liberalism.<sup>19</sup>

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## NOTES

1. David Hume, *A Treatise of Human Nature*, Oxford University Press: Oxford, 1978, p. 216.

2. I am using the harm principle, rather than the offense principle, because there seem to me to be no significant ways in which drug use offends others which is serious enough to warrant its regulation. However, the argument doesn't hang on this; the offense-to-others defense of drug laws is separable from the liberal paternalism defense.

3. This would require the citizen to take into account the subintentional effects of drug-taking, e.g. making her crazy enough to commit crimes as PCP is alleged to do, but not things like the probability of committing crimes because she needs to have money to support her habit. The difference in these cases is that there is an intervening cause in the latter case which is what we really want to prevent, namely the will to harm others.

4. John Stuart Mill, *On Liberty* (Indianapolis Hackett Publishing Co., 1978), p. 64.

5. *Ibid.*, p. 101.

6. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977).

7. See Rolf Sartorius, ed., *Paternalism* (University of Minnesota Press: Minneapolis, 1983). This anthology includes Joel Feinberg's essay "Legal Paternalism", in which he argues that paternalism is justified to prevent involuntary choices, Gerald Dworkin's "Paternalism", in which he argues that paternalism to prevent irrational choices is legitimate, and David Wikler's "Paternalism



and the Mildly Retarded” in which he argues for paternalism for the incompetent.

8. Of course, the consequences of the actions must be important enough to warrant action, that is, the state need not interfere when one is irrational only with respect to entirely trivial matters.

9. Jean Hampton, in “Free Rider Problems in the Production of Collective Goods”, *Economics and Philosophy*, vol. 3 (1987), pp. 245-274, shows that prisoner’s dilemmas are not equivalent to free rider problems.

10. Any other clearly performance enhancing drug, or one which is believed by athletes to be performances enhancing, should be treated like steroids.

11. Derek Parfit, *Reasons and Persons*, (Oxford: Oxford University Press, 1984), pp. 12-13.

12. I am referring here to the use of non-subgame perfect strategies of various sorts, which can be useful for establishing a reputation. An example of a suboptimal threat is the threat to retaliate in a nuclear war. Constrained maximization, of the sort David Gauthier discusses in *Morals by Agreement*, is also non-subgame perfect, especially if it is clear that one’s future interactions are strictly limited.

13. For some statistics on, and an analysis of, poverty see Michael Harrington’s *The Other America*. I can think of many housewives, especially in my parents’ generation, who would fit this description as well.

14. Money pump arguments are explained and criticized by Fredric Schick in “Dutch Bookies and Money Pumps”, *The Journal of Philosophy*, vol. 83 (1986), pp. 112-119. Even if Schick is right there to cast doubt on the legitimacy of the money pump argument, one could argue that intransitive preferences make decisionmaking very difficult.

15. Jon Elster, *Sour Grapes*, (Cambridge: Cambridge University Press, 1985), p. 22.

16. *Ibid.*, p. 131.

17. In fact, many other elements of the feasible sets have changed with the differences in the two wives. But this is allowed by Elster’s criterion. We must define ‘x’ and ‘y’ carefully, however, to be sure that they are both part of the global set. We need to say that David prefers his life in the first case to his life in the second in the first case, and vice versa in the second.

18. Thomas Nagel, *The Possibility of Altruism*, (Oxford: Oxford University Press, 1970).

19. I would like to thank Neal Becker, Ed Green, Jean Hampton, Tamara Horowitz, Paul Hurley, the “Ethicists for Lunch” group at the University of Pittsburgh, and the University of Kansas Philosophy Club for comments on earlier versions of this essay.