

**Why should we punish drug users?
Which drug users should be punished?
Submitted by Eric E. Sterling**

Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare under President Carter, and a top White House adviser to President Johnson, has been one of Washington's most distinguished lawyers. In 1992, Califano founded the National Center for Addiction and Substance Abuse (NCASA), and is Chair and President. A few months ago, he published his book about drugs in America, *High Society: How Substance Abuse Ravages America and What to Do About It* (New York: PublicAffairs, 2007) and is touring the nation to promote it. He opposes drug legalization.

I have excerpted, below, from the prologue and first chapter, some of his descriptions of America's drug problem and drug users. He identifies a number of persons who have had substance abuse problems. I ask, which of them deserves to be punished by the government for the fact of they have used drugs for non-medical purposes? What is the moral principle that warrants their punishment by the state? It is not an answer that the law forbids such drug use, for I am challenging the moral basis for such a law. I am not challenging the power of the Congress or a state to pass such a law; I am challenging the morality of punishing persons for non-medical drug use. I am indebted to Douglas Husak, Professor of Philosophy and Law, Rutgers University, for his analysis in *Legalize this!: The case for decriminalizing drugs* (Verso, Practical Ethics Series, New York, 2002).

“Substance abuse and addiction is a chronic disease of epidemic proportions, with physical, psychological, emotional, and spiritual elements that require continuing and holistic care.
From the Prologue

“What do Judy Garland, Mickey Mantle, President George W. Bush, Snoop Dogg, many mothers on welfare, Elton John, Rush Limbaugh, Natalie Cole, Jamie Lee Curtis, Don Imus, U.S. Supreme Court Justice William Rehnquist, most incarcerated felons and arrested juveniles, Janis Joplin, Frank Sinatra, Mel Gibson, millions of children and teens under twenty-one, Billy Joel, Joe Namath, Robert Downey, Jr., Robin Williams, and former First Lady Betty Ford have in common?
(p. 1)

“On any given day, 100 million Americans are taking some stimulant, antidepressant, tranquillizer, or painkiller; smoking; inhaling from aerosol cans or glue bottles; or self-medicating with alcohol or illegal substances like marijuana, cocaine, heroin, methamphetamines, hallucinogens, Ecstasy, and other designer drugs.

“Chemistry is chasing Christianity as the nation's largest religion. The millions of Americans, who *daily* take some kind of mood-altering, pain-killing or mind-bending prescription drug, abuse alcohol and illegal drugs, and smoke cigarettes likely exceeds the number who *weekly* attend religious services. Indeed, millions of Americans who in times of personal crisis and emotional and mental anguish once turned to priests, ministers, and rabbis for keys to the heavenly kingdom now go to physicians and psychiatrists, who hold the keys to the kingdom of pharmaceutical relief, or to drug dealers and liquor stores, as chemicals and alcohol replace the confessional as a source of solace and forgiveness.

“We have learned that chemistry makes parenting easier for Mom and Dad and teaching easier for Miss Brooks. Over the decade ending in 2005, the number of kids on Ritalin, Adderall, or some other drug to treat attention deficit disorder exploded. The number of children taking antipsychotic pills has soared since 2001. The age at which children begin to smoke, drink, and use marijuana has dropped below thirteen years. It is no longer surprising to read of nine- or ten-year-olds smoking, drinking, inhaling, swallowing, or even injecting some substance to get high. *(pp. 1-2)*

“Physicians promiscuously prescribe mood-altering pills to patients, particularly girls and women. The medical profession has pharmaceuticalized the normal stages of female life by prescribing mood-altering drugs for problems related to menstruation, marriage, motherhood, and menopause. Psychiatrists replace the couch with chemistry, pushing pills to squelch patient guilt and anxiety. *(p. 3)*

“The medications that aim to perfect the human condition are miracles of modern pharmacology. I applaud the scientific geniuses who have discovered them and the health care, marketing, and distribution systems that have made them available to help millions of our people. The fault lies not in these medications, but in ourselves – in how we view these pharmaceuticals and use them. We see them not just as palliative when we, as fallible human beings, overindulge or suffer physical or mental illness despite our best efforts to stay healthy. Rather, they have become a means to allow further abuse of mind and body. We use them to eat, drink, work, play, and perform with abandon, uninhibited by a sense of personal responsibility – as students cramming for exams or partying through the night, Wall Street bankers deal-making around the clock, athletes chasing records, and parents and teachers trying to calm rambunctious children. If Moses were an American at the dawn of the twenty-first century, the tablets he would bring down from the mountain would be Vicodin and Valium, not a set of commandments to guide our conduct. *(pp. 3-4)*

“The anecdotal evidence is everywhere, even among society’s most successful members: in the addiction to alcohol and pills of megastars like Elizabeth Taylor and Liza Minelli; in the collapse of the athletic careers of professional superstars like all-pro Lawrence Taylor and Cy Young Award winner Dwight Gooden; in the destructive cocaine and heroin dependence of Eugene Fodor, the first American to win the Tchaikovsky Violin Competition in Moscow; in the problems of teen movie queen Lindsay Lohan and the antics of celebrities like Charlie Sheen and Paris Hilton; in the life-threatening alcohol and drug addiction of Tim Allen and the overdose deaths of John Belushi, Chris Farley, and pop cultural icons Marilyn Monroe and Elvis Presley.

“Those who work the halls of national and state legislatures know how treacherous the lure of alcohol and pills can be in the corridors of political success. We’ve seen this in the political wives, Betty Ford, Kitty Dukakis, Joan Kennedy, and Cindy McCain, and in the long line of alcohol-abusing politicians, including Congressmen Patrick Kennedy, Jim Ramstad, and Mark Foley, and at the peak of their influence two of the most powerful congressional committee chairmen in history, Wilbur Mills and Russell Long, as well as Texas governor Ann Richards, Iowa governor and senator Harold Hughes, D.C. mayor Marion Barry, and Reagan administration cabinet officer Drew Lewis and top White House staffer Michael Deaver. Working as Lyndon Johnson’s chief domestic aide, I smoked four packs a day, with regular cigarettes in one pocket and mentholated in another so I could keep getting my nicotine hit even when my throat was raw.

“Is there an American without a family member or friend who smoked himself to premature disability and death from emphysema, lung cancer, or heart disease? The celebrity morbidity list here begins with Humphrey Bogart, Joe DiMaggio, and Nat King Cole and gets longer each day, in 2005 claiming the lives of American comedic icon Johnny Carson and ABC news anchor Peter Jennings. (pp. 4-5)

“Substance abuse and addiction visit a special savagery on America’s poor and minorities. But they spawn tragedies far beyond the black and Hispanic urban ghettos, migrant workers, and rural pockets of poverty. Three-quarters of illegal drug users work either full or part time. Heroin wrenched life away from Ethel Kennedy’s son, David, in a luxurious Palm Beach hotel at age twenty-eight, and alcohol and drug addiction has touched many other members of that royal American family, including Robert Kennedy, Jr., Matthew Kennedy, Michael Kennedy, Patrick Kennedy, Ted Kennedy, Jr., Michael Kennedy, Patricia Kennedy Lawford, and her son Christopher. Alcoholism has devastated the Barrymore family, stunting the careers of patriarch John, his son John, Jr., and threatening the third-generation Barrymore, Hollywood actress Drew. Reality television has brought into American homes the battle with alcohol, drugs and painkillers of Ozzy Osborne, daughter Kelly, and son Jack.” (p. 6)

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Can we assume that drug use is immoral? Are all of the people named above immoral? If so many people in America engage in this behavior, is there even a consensus that it is immoral? Even if we assume that drug use immoral, that, in itself, is not a basis for state punishment. We do not use the criminal law to punish adulterers, those who cheat in school, those who lie to their friends, or breach contracts. Would we be comfortable to make it a crime to eat meat on the ground that vegetarians believe that meat eating is immoral?

Is it immoral to get “high?” If so, why is it immoral to get “high” on certain drugs and not others, nor from experiences like exercise or listening to music?

James Q. Wilson says “cocaine alters one’s soul.” Is this an empirical statement or a religious claim? Are the souls of the persons listed above who used cocaine available for examination to demonstrate the truth of this claim?

Assume drug use is unwise and bad for our health. That is not a basis for state punishment. There is much conduct that we might judge unwise that we do not punish in the criminal law.

Assume that a child may get the wrong impression about the safety of drug use from the fact of an adult’s drug use. Is that a legitimate basis for state punishment of the adult?

N.B., Mr. Califano opposes “decriminalization” and “legalization.” My excerpts from his book should not be construed as suggesting that he, in any way, supports my critique.

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