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PROS AND CONS OF LEGALIZING
VICTIMLESS CRIMES

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PROS AND CONS OF LEGALIZING VICTIMLESS CRIMES

There is currently a debate underway on the wisdom of removing from the statute books those criminal laws which punish the so-called "victimless crimes" such as prostitution, public drunkenness, vagrancy, use of marihuana, etc. Advocates of abolishing these laws argue that the regulation of moral behavior is an area that is not the law's business. Generally, they say, the law is ineffective in altering people's habits. Moreover, the only real victim of these "crimes" is the offender himself; no one else's life or property is threatened. Finally, enforcement of these laws places an enormous burden on the criminal justice system whose resources could be more effectively used for the control of violent crime. On the other hand, those who oppose abolition of the laws on victimless crime argue that to do so would encourage an upsurge of anti-social behavior and would foster illegal activity in general. One of the vital functions of the law as they see it is to embody society's ethical standards. And they argue that these crimes are often not "victimless" at all; society at large is injured through lowering of community standards, and the families and friends of offenders suffer from such destructive conduct.

Among the proponents of legal reform in the area of victimless crime there is yet a further debate -- whether to legalize such behavior outright or merely to "decriminalize" it by repealing penal sanctions. Advocates of decriminalization do not urge blanket legalization but favor instead stronger regulation through a variety of methods designed to discourage people from victimizing themselves through engaging in socially unacceptable behavior.

For example, the National Commission on Marihuana and Drug Abuse recommends allowing the private possession of small quantities of marihuana for personal use while forbidding its manufacture and sale.

The following is a summary of the arguments most often advanced by those in favor of legalization/decriminalization of certain victimless crimes and by those opposed to both legalization and decriminalization.

A. Gambling

1. Arguments for legalization/decriminalization

(a) U.S. News and World Report estimated in 1970, in what is generally recognized as the best assessment available, that the organized crime "take" from illegal gambling is \$15 billion per year. These tremendous profits are used to finance other corrupt operations such as loan-sharking and heroin trafficking. In essence, the choice to be made is whether to leave such vast sums in the hands of criminals or to appropriate them for the public benefit through taxation of legal gambling profits.

(b) Even if legal gambling would not put organized crime completely out of business, it would eliminate the individual gambler's need to deal with the underworld thus making him less susceptible to organized crime tactics.

(c) Anti-gambling laws are a major source of police corruption and official graft. They account for a large measure of civil liberties violations by the police, such as illegal wiretaps, electronic bugging, and entrapment, which are themselves detrimental to the public good.

(d) Anti-gambling laws are often discriminatorily enforced, thus adding to friction between police and minority groups. Affluent people who play cards, billiards, etc., for high stakes are seldom arrested, while the ghetto resident who must go to his local bookie or numbers runner is the most likely to be arrested.

(e) Prohibiting gambling simply does not work; people gamble despite legislation against it. Anti-gambling laws are merely futile attempts to restrict personal choice, the result being that otherwise law-abiding citizens become participants in criminal activity.

2. Arguments Opposed

(a) Legal government-controlled gambling will never be able to compete with illegal gambling because it cannot offer the anonymity, credit, freedom from taxation, and unusual bets that illegal gambling can offer. Existing lotteries and off-track betting have not succeeded in wiping out illegal gambling in States where these are operated.

(b) If taxes on legalized gambling were high, the illegal would surely still thrive. If the taxes are low in order to compete, this is not consistent with the policy of maximizing revenues.

(c) If in fact legalized gambling were successful in cutting off organized crime funds for financing other activities such as loan-sharking and narcotics trafficking, it is likely that organized crime would merely intensify its activities in these areas to make them more profitable in their own right.

(d) Wholesale legalization of gambling is an unnecessarily drastic remedy for corruption and graft.

(e) Gambling addiction is known to be a serious problem. Very little is known about the psychology of addiction, so the possibility must be considered that it could develop into a major social problem.

(f) It is immoral to place temptations before persons who cannot afford to lose money. Readily available gambling would simply induce more people, many of them poor, to gamble money away.

B. Prostitution

1. Arguments for legalization/decriminalization

(a) Prostitution cannot be eradicated through the criminal law; it has persisted throughout many centuries and in many civilizations. The experience in most cities today has been that when the "heat" is on in one location, the pimps and prostitutes disappear from there, but turn up in another neighborhood or nearby city, and when the pressure lets up they promptly return.

(b) On a per case basis, prostitution is very expensive to control. San Francisco estimates run to about \$175 per arrest; in New York City, the estimated figure is more than \$100 per arrest. Extrapolated to the nation as a whole, these figures suggest that attempts to control prostitution cost some \$10 million a year. Such expenditures cannot be justified in light of recent increases in violent crime.

(c) Elimination of prostitution laws would put an end to an important source of police graft. The 1971 Knapp Commission findings are only the latest in a series of disclosures of bribery and police collaboration with houses of prostitution. Also, with this kind of crime the police are too often led to employ illegal means of law enforcement, such as entrapment or making harassment arrests to remove prostitutes from the streets.

(d) Anti-prostitution laws are most likely to be enforced against streetwalkers, who are often poor and black, but rarely affect call girls. The laws are also discriminatorily enforced against the women involved in that the prostitutes are punished while their male customers are often permitted to go free or are subject only to minor penalties.

(e) Legalizing prostitution would reduce the number of crimes committed by and against prostitutes. Under a closely supervised system, prostitutes would be unable to rob or blackmail clients and clients would be unable to harm or abuse prostitutes.

(f) Compulsory examination of licensed prostitutes would make it possible to detect venereal disease early and treat it before infections spread.

(g) The penal approach cannot "cure" a prostitute. Prostitution is a social, medical and moral problem. Prostitutes who are arrested, fined or even jailed almost inevitably return to their trade, creating a vicious circle of arrest, court appearance, conviction, and release.

(h) The anti-prostitution laws actually encourage women to remain in the trade by forcing them into association with others engaged in criminal activity. Lacking money, counseling or alternative jobs, prostitutes often have no choice but to return to the pimps who pay their bail and send them back to the streets. Reduced need for protection and bond money would likely break the economic power of the pimp. Also, current laws, by permanently labeling persons convicted of prostitution as criminals, increase the difficulty such women have in obtaining legitimate jobs.

2. Arguments Opposed

(a) A state-controlled licensing system would not necessarily eliminate prostitution as a source of income for the underworld. State supervised houses of prostitution could not offer the anonymity and privacy afforded by prostitutes now.

(b) Prostitution does not fully fall within the victimless crime category. The crimes of burglary, robbery, drug offenses and homicide are often associated with it. Two studies done in the 1940's in Terre Haute and Honolulu showed that after brothels

there were closed down, the incidence of all crimes went down.

(c) Due to the difficulty in accurately diagnosing venereal diseases, the long incubation periods, and the possibility of immediate reinfection, even mandatory physical exams would not prevent prostitutes from infecting dozens of clients between checkups.

(d) Regulated prostitution would not necessarily eliminate the many problems associated with unregulated prostitution. The experience of cities throughout the world that have experimented with regulated prostitution indicates that there would still be pimps and frequent incidents of violence. There would likely be large numbers of unauthorized workers, causing the whole machinery of regulation to break down. And there seems to be no effective way to restrict prostitution to one section of a community.

(e) Legalized prostitution would officially sanction the exploitation of women; and many women might be encouraged to take up prostitution by the fact that it is legal.

C. Public Drunkenness

1. Arguments for legalization/decriminalization

(a) The U.S. Department of Health, Education and Welfare, the American Medical Association, the National Council on Alcoholism, and other knowledgeable groups agree that alcoholism is a sickness, not a crime, and that those who succumb present a medical and social problem, not a criminal one.

(b) It has been estimated that American cities expend \$50 to \$70 including court costs per drunkenness arrest -- adding up to a national yearly cost of approximately \$100 million.

(c) The criminal justice system is ineffective in deterring drunkenness and in meeting the problems of chronic offenders. Enforcement is concentrated on the small percentage of hard-core drinkers who are arrested again and again without noticeable effect on their habit. Most are kept behind bars for a short time to "dry out," and then they are released to start the whole cycle over again.

(d) Laws against public intoxication are enforced discriminatorily against the impoverished and homeless alcoholic. Whether someone who is drunk in public winds up in jail or is driven home by the police depends largely on his economic or social status.

(e) The public can adequately be protected from any activity associated with drunkenness which endangers persons or property or which annoys other people through laws which strike directly at the unacceptable conduct in question.

2. Arguments Opposed

(a) Laws against public drunkenness should be enforced in order to assure the preservation of public order. Citizens have a right to be protected against disorderly behavior by rowdy drunks.

(b) The general public has a right to be shielded from the ugliness and inconvenience of stuporous drunks in streets and alleyways.

(c) Drunks who are not in control of their behavior constitute a danger to themselves and to the public at large.

D. Use and Possession of Marihuana

1. Arguments for legalization/decriminalization

(a) Prohibition of marihuana and the imposition of criminal penalties for its use have failed badly in deterring large numbers of people from using the drug. The National Commission on Marihuana and Drug Abuse estimated in 1972 that at least 24 million Americans had tried marihuana at least once.

(b) The attempt to enforce marihuana laws has been extremely costly; estimates run as high as \$600 million per year (according to Keith Stroup, Director of the National Organization for Reform of the Marihuana Laws).

(c) Persons whose only offense is to possess or use marihuana should not be stigmatized by a criminal record, which could make it difficult for that person to obtain a job and in many instances could bar admission to certain professions entirely.

(d) Respect for the criminal justice system is threatened by laws which are so clearly unenforceable and when conviction for a crime is perceived to be an injustice by large segments of the population.

(e) Enforcement of marihuana laws may especially lead to alienation of American youth who are angered that the law sanctions their parents' indulgence in alcohol or pills but bars their own use of marihuana. Also, marihuana laws are too often enforced selectively against those young persons whose life style, dress or length of hair is offensive to the majority.

(f) Any correlation between marihuana use and subsequent use of other dangerous drugs does not occur because of marihuana use per se but because of the user's gradual absorption into a drug-using subculture. Decriminalization would render use and users less distinctive and more a part of the mainstream.

(g) In 1972 the National Commission on Marihuana and Drug Abuse surveyed the research on the effects of marihuana and found no evidence that intermittent use caused physical or psychological harm. The Commission stated that in moderate amounts, the drug does not cause physical dependency, brain damage or genetic harm. Smoking it does not produce violent, aggressive or criminal behavior, nor is there any evidence that it leads to the use of more harmful drugs. At worst, the Commission found that marihuana use produced the same kind of craving that tobacco

use does. Actual psychological dependence and behavioral changes were found only in a tiny fraction of persons who could be described as heavy users of marihuana.

(h) Health problems and criminality should not be confused. In general, most studies have indicated that marihuana has fewer bad effects than nicotine, alcohol or caffeine, yet the government does not punish those who use these substances as it does those who use marihuana.

(i) If marihuana were legalized, a comprehensive regulatory system for production and sale of low concentration marihuana could be established, similar to that used for the sale of alcohol. Under such a system, quality could be controlled, thus assuring a standardized product and purity. Marihuana could be taxed like alcohol and cigarettes, creating a new source of government revenue. The black market would be squeezed out, thus making it easier to enforce a prohibition against sales to minors and also preventing the necessity of users being exposed to dealers who encourage escalation to harder drugs.

2. Arguments Opposed

(a) The 1972 findings of the National Commission on Marihuana and Drug Abuse have subsequently been challenged. Dr. Morton Stenchever of the University of Utah reported that he found

chromosome damage in heavy users of marihuana. Dr. Robert Heath of Tulane University has asserted that marihuana causes brain damage. Dr. Gabriel Nahas of Columbia University has reported findings that marihuana weakens the body's immunity to disease by inhibiting the production of virus-fighting white blood cells. Dr. Robert Kolodny has found that marihuana smoking may alter male hormone levels, possibly even to the point of sterility. Dr. Harvey Powelson of Berkely is of the opinion that marihuana use leads to deterioration of both mental and bodily functioning which is difficult, if not impossible, to reverse. Finally medical research now generally supports the view that marihuana and hashish smoke may bring about cancerous alterations in tissues just as does tobacco smoke.

(b) Marihuana research findings are at best, as characterized by Dr. Robert DuPont, head of the Special Action Office for Drug Abuse Prevention, "contradictory, inconclusive, and equivocal." We should not rush in and sanction the use of a substance the effects of which are so uncertain.

(c) Elimination of sanctions against marihuana use would constitute official acknowledgment, especially to the young, that it is all right to use the drug, and perhaps even other mind-altering substances.

(d) Legalization will lead to commercialization of the drug, resulting in advertising campaigns and other forms of organized pressure to use it.

(e) A person under the influence of marihuana finds it harder to make decisions that require clear thinking. He finds himself more easily open to the suggestions of others. Thus, for many people, especially teenagers, there is the danger that marihuana can become a crutch to avoid decision-making and facing reality.

(f) Tasks which require good reflexes and clear thinking are affected by marihuana smoking. Drivers under the influence of marihuana have proved to be dangerous, exhibiting slowed reaction time and poor judgment.

(g) There are already enough, if not too many, socially approved intoxicants. Just because we permit legal commerce in alcohol and tobacco, that is no sound reason or persuasive argument for allowing use of yet a third dangerous substance. We should not legalize every activity which attracts temporary experimentation by young people and faddists.

E. Obscenity and Pornography

1. Arguments for legalization/decriminalization

(a) Anti-obscenity laws violate the right of the individual to choose what he wants to read or see, even though his choice need have no effect on his neighbor.

(b) It is almost impossible to arrive at a consensus on what is offensive in sexual matters -- it is impossible to identify the "average person," and "contemporary standards" has little meaning in light of the tremendous change in sexual standards over recent years. In the past, censorship has resulted in the suppression of a number of works of literature and art.

(c) By declaring it illegal, the law makes pornography a "forbidden fruit" and increases its desirability. Once the free dissemination of pornography is permitted and initial curiosity is satisfied, the saturation point is quickly reached.

(d) The Presidential Commission on Pornography and Obscenity found no substantial basis for the assumption that such materials are a significant determinative factor in causing crime and delinquency; a Kinsey Institute study found that sex offenders had less contact with pornography and were less aroused by it than a randomly-chosen control group.

(e) The Commission found no evidence that obscene materials mislead the young or encourage sexual permissiveness among them.

(f) Securing fantasy release of prurient interests through pornography may actually provide satisfaction to those who would otherwise constitute a danger to the public. In Denmark, where the sale and distribution of obscene materials has been increasingly liberalized, arrests for voyeurism and exhibitionism have declined 50 percent, while the number of violent sex crimes has remained unchanged.

(g) Control of obscenity and pornography should be limited to providing protection for the immature and preventing affronts to public decency, e.g., prohibiting sale to minors or prohibiting the public display of pornographic materials in the streets.

2. Arguments Opposed

(a) The majority of the public, which does not wish to be exposed to obscenity, should be protected from "visual assault" by such materials.

(b) Pornography viewed by youngsters in the adolescent period may impede their development of sexual maturity and moral attitudes.

(c) The overt distribution of obscenity promotes moral degeneracy in society in general.

(d) The viewing of erotica and pornography could stimulate mentally unstable persons to commit sex crimes.

F. Consensual Adult Homosexuality

1. Arguments for legalization/decriminalization

(a) Private sexual behavior between consenting adults is a matter of individual morality, not criminality.

(b) If such laws were repealed, juveniles could still be protected under statutes covering offenses against minors, and solicitation might still be prosecuted if the offended citizen signed a complaint.

(c) The repeal of statutes outlawing homosexuality would likely have only negligible effect on the extent of the behavior. Society's moral and social pressures probably do more to stem homosexual behavior than fear of prosecution.

(d) Homosexuals are particularly vulnerable to blackmail, extortion, beatings and robbery -- often on the assumption that the victim will not be willing to resort to law enforcement agencies for assistance.

(e) Laws relating to sexual behavior are particularly liable to abuse by the police because of the wide discretion involved in their enforcement; entrapment and decoy methods are too often employed.

(f) Homosexuals are explicitly excluded from many jobs such as military service, law enforcement and teaching. As long as they bear the stigma of criminality, little progress can be made toward removing such discriminatory restrictions.

(g) The existence of legal penalties relating to homosexual acts exacerbates the mental health problems of homosexuals because of the emotional stresses arising from the need of concealment and the opprobrium of being in violation of the law.

(h) Among the large countries of the world, none punishes sodomy more severely than the United States, China and the Soviet Union. A large number of jurisdictions, including France, Italy, Mexico, Uruguay, Denmark, Sweden, Switzerland, Great Britain and Canada,

have excluded from their penal codes any laws forbidding private homosexual acts between consenting adults.

2. Arguments Opposed

(a) Many homosexuals are also prone to violence and other forms of sexual deviancy -- most notably, public lewdness, solicitation, and molestation of adolescents and children.

(b) Repeal of the laws would remove much of the pressure on homosexuals to seek medical help.

(c) Relaxation of moral standards through apparent condonation of homosexuality contributes to a relaxation of moral standards in general.

(d) Decriminalization of homosexual acts might lead some young people toward homosexuality who would otherwise remain straight.

(e) Permitting homosexual behavior in private would open the floodgates to more public displays of such activity, e. g., homosexual bars, magazines and displays of affection between members of the same sex.

(f) Medical science has not demonstrated conclusively that psychiatric treatment is a successful alternative to punishment.

G. Vagrancy

1. Arguments for legalization/decriminalization

(a) Vagrancy laws define criminality in terms of a person's status or a set of circumstances reflecting a judgment that such persons are apt to commit anti-social acts, thus raising questions of vagueness, equal protection and due process.

(b) It is unjust to structure law enforcement in such a way that poverty itself becomes a crime.

(c) Vagrancy statutes encourage arbitrary and erratic arrests and convictions and are subject to discriminatory use against poor and unpopular subcultural groups.

(d) Vagrancy laws are widely used by the police as justification for arresting, searching, questioning and detaining persons whom they do not have sufficient probable cause to arrest on other grounds. Often convictions are obtained on vagrancy grounds which could not be obtained on the real but undisclosed grounds for arrest.

(e) Vagrancy statutes work counter to the efforts of welfare and job training programs as it is difficult for convicted vagrants to find employment.

2. Arguments Opposed

(a) Vagrancy statutes are justified by legitimate needs of law enforcement, namely, those situations in which a person loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(b) Citizens are entitled to walk the streets, visit parks and patronize businesses without being subjected to the sight of derelicts or being accosted by them.