Criminal Justice Ethics

ISSN: 0731-129X (Print) 1937-5948 (Online) Journal homepage: www.tandfonline.com/journals/rcre20

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Petter Grahl Johnstad

To cite this article: Petter Grahl Johnstad (26 Mar 2026): Kantian Perspectives on Drug Use and Drug Criminalization, Criminal Justice Ethics, DOI: 10.1080/0731129X.2026.2644079

To link to this article: https://doi.org/10.1080/0731129X.2026.2644079

Published online: 26 Mar 2026.

Criminal Justice Ethics, 2026
https://doi.org/10.1080/0731129X.2026.2644079

Routledge
Taylor & Francis Group

RESEARCH ARTICLE

Kantian Perspectives on Drug Use and Drug Criminalization

PETTER GRAHL JOHNSTAD

This article discusses the merits of drug use and the policy of drug criminalization from a sovereignty perspective. Recognizing that drug dependence and commonly associated harms impose obvious constraints on personal sovereignty, at least in an intrapersonal sense and possibly also interpersonally, the article analyzes also the more radical proposition that intoxication degrades rationality and may therefore be unacceptable to a person who believes in maximizing sovereignty. Conversely, some people may believe that moderate drug use increases their sovereignty over the long run. In a second layer of analysis, the article discusses how the sovereignty-constraining effects of drug use may serve as a basis for drug prohibition. From a Kantian perspective, the fundamental question in this regard is whether a polity may legitimately seek to preserve citizens' sovereignty in an overall sense by limiting it with regard to drug use.

Keywords: drug use, drug criminalization, Kant, sovereignty principle

Drug use, as this article will understand it, refers to any use of intoxicants, while drug criminalization refers to the international regime of drug control as defined by the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances at the United Nations. This article employs Ripstein's *sovereignty principle*, which he based on the Doctrine of Right in Kant's *The Metaphysics of Morals*, to analyze the merits of drug use and drug criminalization.[1]

In Kant's formulation, the rightness of an action rests on whether or not it is compatible with reciprocal freedom:

> *Any action is right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with

Petter Grahl Johnstad Department of Philosophy, University of Bergen, Bergen, Norway. Email: Petter.Grahl.Johnstad@vlfk.no

everyone's freedom in accordance with a universal law.

> *If then my action or condition generally can coexist with the freedom of everyone in accordance with a universal law, whoever hinders me in it does me wrong*; for this hindrance cannot coexist with freedom in accordance with a universal law.[2]

In order to enjoy civil rights, citizens also have a duty to subject themselves to lawful coercion, and the resulting public right is a condition that secures their private rights. Thus, the private rights of citizens have a counterpart in a public right. Furthermore, since the "legislative authority can belong only to the united will of the people," the individual citizen implicitly has a duty not to abdicate their sovereignty as a rightful contributor to the united will:

> *The only qualification for being a citizen is being fit to vote. But being fit to vote presupposes the independence of someone who, as one of the people, wants to be not just a part of the commonwealth but also a member of it, that is, a part of the commonwealth acting from his own choice in community with others. This quality of being independent, however, requires a distinction between active* and *passive* citizens.[3]

Kant's list of passive citizens, which includes servants, minors, and women, is of little concern here, but, stretching the notion of passivity somewhat, it seems possible to argue that (excessive) drug use is an example of an activity that tends to render citizens passive and deprive them of their independence. A particular problem in this regard is drug dependence, as it seems clear that such dependence reduces personal freedom and thereby arguably threatens the rights of the state by depriving the commonwealth of affected citizens' independent contributions. Accordingly, it may be necessary to preserve citizens' sovereignty in general by limiting their sovereignty as it specifically pertains to drug use.

Ripstein's formulation of the sovereignty principle rests on the idea that "the only legitimate restrictions on conduct are those that secure the mutual independence of free persons from each other."[4] Understanding freedom in terms of mutual independence, Ripstein's formulation of the sovereignty principle insists upon "each person's ability to set and pursue his or her own purposes, consistent with the freedom of others to do the same."[5] Thus, as a framework for criminalization theory, Ripstein's sovereignty principle finds that

> *the only grounds for interfering with one person's ability to set and pursue his or her own purposes is the need to protect the freedom of others. People will be free to do as they want, without legal interference, except where those hindrances are instances of other people's freedom. […] [A]ny criminal prohibition that does not protect sovereignty is a despotic violation of it.*[6]

While this formulation emphasizes the preservation of other people's freedom as the only legitimate basis for interfering in a person's activities, it presumably allows for the possibility that freedom may be threatened both directly and indirectly. As such, if a person abdicates their sovereignty and thereby deprives the community of their independent contribution, this may constitute a threat to the freedom of others. From this line of thinking, sovereignty on an interpersonal level may not be entirely separable from sovereignty on an intrapersonal level, as limitations to internal sovereignty would appear to entail limitations also to external sovereignty. Such extension of the

sovereignty principle is not philosophically uncontroversial but arguably constitutes the only viable path to a defense of drug criminalization in a Kantian perspective; the discussion below will demonstrate that even this extended sovereignty principle does not succeed in legitimizing the criminalization regime.

The article will proceed to discuss how drug use might impact on personal sovereignty and, secondly, how such an impact might affect our assessment of drug criminalization from a rights-based perspective. It should be clear, however, that the questions of whether drug use is morally wrong and whether such drug use can be legitimately criminalized are largely distinct issues, in the sense that one might consistently hold drug use to be immoral yet find its punishment unjust. One relevant example from Kantian ethics is that failing to develop one's talents is seen as morally wrong, yet it would be unjust to punish people for such a failing. Despite this distinction, Kant's retributive theory of punishment would seem to imply that a negative answer to the first question entails a negative answer also to the second, as only a person who does something morally wrong can deserve punishment. More briefly, the article will also discuss the positive argument for how the Kantian Doctrine of Right does not open for the legitimate criminalization of drug use.

1. Drug Use and Sovereignty

In the discussion of how drug use might impact on the user's sovereignty, three distinct issues stand out. The first involves dependence or addiction, which is a condition that may be said to constrain intrapersonal sovereignty in the sense that it impels or compels a person to engage in repeated drug use at the expense of other activities. The second issue relates to long-term medical consequences resulting from drug use. To the extent that drug use causes harm to one's body and (especially) brain, such drug use may impede personal sovereignty. Finally, the third issue relates to the state of intoxication itself. A person who is intoxicated may experience a temporarily diminished level of rationality that effectively constrains their sovereignty. While distinct, these three issues are also related and might exacerbate one another. To the extent that drug use causes medical harms, for instance, such harms are generally aggravated by the kind of highly repetitive use characteristic of drug dependence.

1.1. Dependence

If we understand the condition of being dependent on something to mean that one is impelled or compelled to engage in a certain activity at the expense of other activities, such dependence clearly reduces a person's sovereignty. As we shall see, however, it is hard to maintain that dependence formation in and of itself constitutes a meaningful threat to sovereignty unless the activity one is dependent on is especially debilitating or harmful. This conclusion is congruent with several previous philosophical discussions of addiction, including those by

Husak, Watson, and Lovering, although the present discussion will establish the point on a basis of empirical literature.[7] Kant himself recognized dependence as an especially problematic consequence of excessive intoxicant use because, in Perkins-McVey's interpretation, such use risks subordinating "rational freedom to an irrational cycle of bodily dependence."[8]

Nevertheless, a fundamental difficulty with counting dependence formation as an ethical problem in and of itself is that dependence is ubiquitous. Psychologists have talked about *positive addiction* to activities such as exercise and meditation since the 1970s, and today conditions including brand addiction and digital addiction are recognized as highly prevalent.[9] In principle, it seems that any activity which a person identifies as enjoyable will invite repeated engagement and thereby lay a foundation for dependence formation.[10] In psychological terms, such an activity triggers the brain's reward system and is thereby reinforced.[11] Since it would seem unreasonable to ask people to refrain from any activity they may regard as enjoyable, exposing oneself to the potential of dependence formation cannot by itself be regarded as unethical.

Nevertheless, some activities have a higher likelihood of dependence formation than others. I am not aware of any explicit comparisons between drug use and non-drug activities with regard to their potential for addiction, but given Meng et al.'s estimate of a 27% global prevalence of smartphone addiction and Praxedes et al.'s and Yekaninejad et al.'s estimates of a 15–20% food addiction prevalence, it seems unlikely that intoxicant use will distinguish itself as exceptionally problematic in this regard.[12] For comparisons between different drugs, the classic study by Anthony et al., which has subsequently been replicated with generally congruent results by Lopez-Quintero et al. and Schlag, found that tobacco was the most addictive substance, causing dependence formation in 32% of the people who ever tried it.[13] Comparable figures were 23% for heroin, 17% for cocaine, 15% for alcohol, 9% for cannabis, and 5% for psychedelics. In terms of their potential for addiction, drugs that are generally available for purchase in the Western world therefore seem as problematic as illicit drugs. Furthermore, assuming universal exposure to smartphones and ultraprocessed foods in the populations drawn from in the abovementioned studies of behavioral addictions, addiction to smartphones and unhealthy foods appear to be at least as prevalent as substance addiction.

Although tobacco may be more addictive than any other commonly used drug, dependence on a debilitative drug seems more problematic from a sovereignty perspective. People dependent on tobacco may have to go outside for a cigarette a number of times per day, but the pharmacological effect from nicotine is not especially limiting in terms of its impact on personal freedom and it seems hard to argue that being addicted to it might render one a passive citizen in a Kantian sense. A person who is dependent on depressant drugs such as alcohol and opioids, by contrast, may spend much of their time either in a drunken stupor (an equivalent term for opioid use is "nodding" or

"nodding off") or in a state of hangover, constraining their sovereignty in a more serious way. With alcohol and heroin also being among the most harmful drugs according to comparative harms assessments, addictive use of these drugs will more commonly cause debilitating medical conditions that may in turn serve to constrain personal freedom.[14]

One further issue to consider is that dependence on a drug, or in principle on any activity, is often costly, and people with addictions may find it hard to raise money legally. Some instead engage in criminal activities, as per Goldstein's economically compulsive model, and thereby threaten the freedom of other citizens.[15] In a sovereignty perspective, the prospect of increasing crime makes dependence of any kind seem problematic, but, as per the previous discussion of the ubiquity of the potential for dependence formation, we cannot reasonably ask people to avoid rewarding activities because (possible) dependence may strain their finances and tempt them into crime. We should also note that the constant need to raise money in order to maintain one's addiction is sovereignty-constraining for the affected person, who is thereby addicted not only to the rewarding activity but also to the pursuit of money. While monetary costs may seem to be a more serious problem with regard to drug dependence than to some other forms of dependence, one might argue that the primary reason illicit drugs are expensive to buy is that they are illegal. The drugs themselves are cheaply made and would not be very expensive if legally available at prices determined exclusively by the market. (In practice, legalized drugs are often subject to special taxation in order to reduce consumption and may end up being as expensive as before legalization.)

To conclude this section, addiction must be understood to reduce intrapersonal autonomy, but generally not to such an extent that people with addictions become passive citizens in the sense that the commonwealth is deprived of their independent contribution. Since dependence may form over any kind of rewarding activity, furthermore, it seems unreasonable to characterize engagement with potentially addictive activities as unethical. Kant's misgivings over dependence were related to excessive use, but he was obviously not acquainted with modern psychological insights into the brain's reward system and the related ubiquity of behavioral addictions. Dependence on debilitating drugs such as alcohol and opioids imposes especially strong constraints on sovereignty, however. Such forms of dependence also seem more likely to lead to economic destitution, and from there perhaps to crime. Nevertheless, we might note that drug addiction is associated with various forms of psychological trauma and social misery.[16] As such, many people with drug addictions engage in frequent drug use as a form of coping behavior with difficult life situations, which at least explains and to some extent may excuse their engagement with sovereignty-diminishing activities.

1.2. Medical Harms

Some forms of drug use may harm one's body or brain. Such harms are often a consequence of the highly

repetitive drug use characteristic of addiction, but harms related for instance to overdosing may also affect infrequent users. The argument that drug use harms one's brain and therefore one's rationality, with implications for autonomy and morality, has been voiced by Sullivan and Austriaco as well as Hsiao, all of whom singled out cannabis as problematic in this regard.[17] While their focus on cannabis is quite off the mark, as we shall see, this section will discuss their general point that drug use may cause debilitating medical harms which in turn diminish sovereignty. Harm-based arguments have previously been assessed (and found wanting) especially by Husak and Lovering, but, as with the above discussion of dependence, this section will analyze the matter on the basis of empirical literature.[18] For Kant, the prospect of harm "can establish only a rule of prudence, never a duty," although he was obviously not familiar with twenty-first-century research on drug harms, and the debilitating long-term effects for instance of chronic alcohol abuse and their impact on sovereignty may not have been entirely clear to him.[19]

It is well established in research literature that drug addiction may cause serious medical harm. Chronic heavy alcohol use, for instance, may lead to brain damage and cognitive dysfunction, central nervous system infection, hypoglycemia, hepatic failure, and the Korsakoff syndrome.[20] Brust warned that alcohol "is a direct neurotoxin and in sufficient dosage can cause lasting dementia."[21] In terms of mental disorder, alcohol use has been associated with depression, anxiety, bipolar disorder, ADHD, personality disorders, psychosis, and PTSD.[22] Sullivan and Austriaco reviewed a similar (but somewhat less grim) range of medical consequences resulting from chronic cannabis use and, on this basis, concluded that cannabis use is more harmful than alcohol use, but comparative harms assessments universally agree that alcohol is more harmful to the body than is cannabis.[23] We should also note that the often-emphasized association between cannabis use and psychosis appears not to be stronger than the associations between psychosis and tobacco use, sedentary behavior, and poor diet quality.[24]

Irrespective of the internal harm ranking, it is clear that drug use may cause bodily harm that in turn may constrain intrapersonal sovereignty. In parallel to the above discussion of dependence, however, the potential for harm is ubiquitous, and we cannot expect from people that they preserve their sovereignty by avoiding exposure to harm in general. Therefore, in order to qualify for consideration as something that makes citizens passive in the Kantian sense because of the harm it causes, drug use will (as a minimum) have to distinguish itself as exceptionally harmful. This is unlikely to be the case for moderate drug use. As noted above, moderate cannabis use is about equally strongly associated with psychosis as are sedentary behavior and poor diet quality, and the comparisons also extend to a range of other mental disorders.[25] Some years ago, Nutt compared the harm from MDMA use, then the subject of much media attention because of its reputed danger, with that from horse riding, finding

that serious injury was much more likely to result from the latter than from the former.[26]

Some forms of dependent drug use, for instance involving opioids, crack cocaine, and alcohol, are probably exceptionally harmful, however. As established in the previous section on dependence, such dependence may make a person passive to a substantial degree, and over the medium to long term harms to the body and brain will further exacerbate this problem. We might note in this regard that there is a debate as to what extent drug harms are systemic, or in other words related to problems with the drug trade rather than to drug use itself.[27] Heroin, for example, has been found to be only 44% pure at retail in the U.K., and it seems reasonable to assume that it is not always unproblematic to inject the various adulterants constituting the remaining 56% directly into one's veins.[28] Finally, overdosing is a serious problem with some drugs and might happen even (perhaps in some cases especially) to infrequent users. Comparative studies of acute lethal toxicity indicate that overdose risks are high especially for heroin, alcohol, and amphetamines and low for cannabis and most psychedelics.[29]

Before we move on, we should consider the perspective that drug use may also increase sovereignty for some people. One philosopher who has discussed such positive contributions from drug use is Hunt, who maintained that "drugs can make a significant contribution to human flourishing" in the sense that they serve as a technology for mood adjustment and thereby "free us from the tyranny of our moods."[30] Some people have psychological issues such as excessive introversion or neuroticism which hinder them from exercising their freedom in a way that moderate helpings of certain drugs might alleviate, thus strengthening their sovereignty overall. Similarly, some people who use psychedelics report that the state of intoxication provides insight into themselves and their relations along with other lasting psychological and spiritual benefits.[31] The personal growth that may result from such experiences can probably be understood, at least in some cases, as a strengthening of sovereignty.

In sum, people who use drugs may risk harming their health, but illicit drugs are not generally more harmful than the legally available alcohol and tobacco. For moderate drug use, the risk for serious harm appears to be relatively small, while drug addiction is substantially more problematic. The depressant drugs alcohol and opioids, which because of their debilitating effects were identified as the most problematic in the previous section on dependence, are among the most problematic in terms of debilitating long-term harms as well.

1.3. Intoxication

It may be possible to see intoxication in and of itself as a state that degrades personal sovereignty. In one version of this argument, previously discussed for instance by Lovering, drug users are seen to instrumentalize themselves.[32] In a Kantian context, such instrumentalization might be understood in terms of sacrificing one's sovereignty for the purpose of obtaining pleasure. This formulation of the issue seems close to the argument made by Sullivan

and Austriaco as well as Hsiao, where intoxication is understood to deprive a person of rationality and thereby of autonomy, liberty, and morality.[33] Sullivan and Austriaco in particular attempted to exempt alcohol use from such censure on the basis that alcohol can be used in moderation so that the person does not become intoxicated, but light to moderate use is possible for any intoxicant.[34] Indeed, the associations between alcohol use and violent behavior as well as traffic accidents are substantially stronger than the corresponding associations with cannabis use, arguably indicating a greater negative impact on cognition and rationality than that resulting from the cannabis use that Sullivan and Austriaco criticized.[35]

Regardless of their internal ranking, however, all intoxicants affect cognition to some extent, and their use may therefore be understood to temporarily degrade personal sovereignty. Such degradation of sovereignty is problematic, as Kant recognized when he said about drunkenness that "[i]t is obvious that putting oneself in such a state violates a duty to oneself."[36] Nevertheless, in his *Anthropology from a Pragmatic Point of View,* Kant accepted that (moderate) intoxication might also be beneficial as it offers, in Perkins-McVey's rendition, "a virtuous candidness, social limberness, elevation of the spirits, and even reprieve from the worries of day to day existence."[37] From Kant's perspective, therefore, while light or moderate intoxication may degrade cognition to some extent, such degradation is not sufficient to deprive a citizen of sovereignty in any meaningful sense. In other words, one can regard a person as serious and responsible even if they enjoy occasional departures from strict sobriety.

The position that any form of intoxication is unethical because it constrains cognition and thereby sovereignty may also seem to be excessively demanding. Richards objected to raising such a "perfectionist ideal of self-control as a compulsory moral standard," observing that "[w]hat for one is a reasonable self-imposed ideal of self-control and social service may be for another a self-defeating impoverishment of human experience and imagination."[38] Smith similarly dismissed the perfectionist ideal on the basis that "there is reasonable disagreement about ideals of human excellence and of the good life."[39] At any rate, while perfectionist ideals may be desirable to some, it seems unlikely that one might increase citizens' sovereignty by imposing such ideals on them.

Even if it is unreasonable to insist on sobriety as a universal ethical standard, we may agree with Kant that excessive intoxication constrains sovereignty to a considerable extent. Delineating excessive intoxication from its moderate counterpart is not straightforward, however. People who have drunk themselves into a stupor or are nodding off on opioids may seem like clear cases, but there are a number of drugs that impel or compel the people using them to lie down and rest for a while. One example is the Amazonian psychedelic drink ayahuasca, which may induce nausea and vomiting and typically renders a person inactive for a few hours. However, people also spend a few inactive hours watching entertainment on television, and while society may be

temporarily deprived of the independent contribution of people who are engaged in lazing off on the sofa, such behaviors may also be understood as a period of recuperation from where people will return to society with renewed vigor. Also, the ubiquity of such behaviors makes the attempt to moralize over them seem perfectionist. With regard specifically to the use of ayahuasca and other psychedelic drugs, people commonly report what Simons et al. called expansionist motives for use, which include goals such as "to know myself better" and "to expand my awareness."[40]

Another possible criterion of when intoxication becomes excessive is when it leads to violent behavior. As we saw above, violence is associated especially with alcohol use, and indeed it seems both imprudent and sovereignty-constraining to drink so much that one loses control of oneself and may lash out with confused aggression. In their 2019 report on homicide, the United Nations Office on Drugs and Crime found that 90% of the homicide perpetrators who were under the influence of psychoactive substances had been using alcohol.[41] This amounted to a third of all homicides, meaning that about 150,000 annual homicides across the world were perpetrated by people who had been drinking alcohol. The report also stated that about 2% of global homicides were perpetrated by people who were intoxicated on illicit drugs. Several classes of drugs do not have such effects on behavior, however. Opioids, for instance, tend to sedate people and have no statistical association with violence during the state of intoxication itself, although people with opioid addictions sometimes engage in violent crime in order to raise money for drug use. While there is plenty of drug-related violence, MacCoun and Reuter found that most of this is systemic, or in other words related to drug markets (and, implicitly, to the criminalization regime) rather than to the effects of drug intoxication as such.[42]

As with dependence and harms, therefore, intoxication may constrain sovereignty, but in this case only temporarily and generally not to such an extent that people who spend a few hours now and then being intoxicated become passive citizens. Excessive intoxication is more problematic, especially if the over-intoxicated person becomes aggressive or decides to operate motor vehicles, but, with many drugs, overdosing simply makes people want to lie down and is a problem primarily in terms of causing medical harms to themselves. Finally, when intoxication is excessive in terms of both dosage and frequency, as may often be the case for people with drug addictions, intrapersonal sovereignty is substantially constrained. An overall conclusion for this chapter on drug use and sovereignty, therefore, is that while neither dependence, medical harm, nor intoxication suffice on their own to render a citizen passive in a Kantian sense, a combination of these three factors may do so. The most problematic drugs would seem to be those that are both highly addictive and medically harmful and which also induce lethargic or violent states. Alcohol, most opioids, and stimulants such as amphetamine and cocaine appear to qualify on all accounts, while tobacco combines high addictiveness with carcinogenic

and other harmful medical effects that results in 480,000 annual deaths in the United States alone.[43] Cannabis and especially psychedelics for their part are less addictive and generally cause fewer medical problems, but sometimes induce states of panic or confusion in naïve or careless users.[44]

2. Drug Criminalization and Sovereignty

As mentioned in the introduction, drug criminalization here refers to the international regime of drug control, which has been interpreted to mandate prohibition both of the distribution and the personal use of a range of psychoactive drugs. We can probably understand this regime as reflecting a genuine concern for public health, even as the underlying concerns about medical harms resulting from the censored drugs were, as we have seen above, rather exaggerated. While the foundations for these exaggerated worries remain open to debate, there is a long-standing literature identifying racist sentiments in the argumentation of early drug prohibitionists, especially in the United States.[45]

On the surface, the Kantian tradition with its emphasis on respecting autonomy and sovereignty leaves little room for the criminalization of individual drug use. According to Ripstein, interference in a person's pursuit of their own purposes is only legitimate when necessitated by a need to protect other people's freedom, and it generally seems hard to argue that my drug use threatens your freedom. Nevertheless, we have seen that some forms of drug use—notably alcohol consumption—are associated with violent behavior, although this applies only to a small minority of use occasions of alcohol and similar drugs. The positive argument for the Kantian tradition's assessment of drug criminalization is therefore straightforward: only behaviors that threaten other people's freedom may be criminalized, and since one person's drug use does not threaten another's freedom, the question of whether or not to use drugs should be left to the individual.

Some may argue, however—perhaps stretching Kantian ideas in so doing—that if excessive drug use may, at least in some cases, be sovereignty-constraining to an extent that it deprives society of the affected person's independent contribution, this could serve as a basis for a drug prohibition policy. The aim of such a policy might be described as the wish to preserve citizens' overall sovereignty by constraining such sovereignty with regard to the issue of drug use, which may seem paradoxical since one does not usually aim to strengthen something by weakening it. As we saw in the introduction, however, the Kantian perspective emphasizes the importance of preserving overall freedom by curbing the freedom to interfere with other people's freedom. In other words, personal sovereignty is maximized when it is restricted from interfering with other people's sovereign sphere. Unrestricted sovereignty would therefore result in less sovereignty overall. The question is whether this *inter*personal dynamic, where my freedom is constrained to what does not interfere with your

freedom, can also work as an *intra*-personal dynamic. According to such an intrapersonal formulation of the sovereignty principle, my freedom would be maximized by being constrained to what does not interfere with my freedom.

Before we go into the philosophical discussion of this issue, we should note that there is an empirically based critique of the intrapersonal interpretation of the sovereignty principle with regard to drug criminalization. This critique starts with the observation that drug prohibition is not particularly effective, so that the constraints this policy imposes on personal sovereignty do not actually serve to protect many people from sovereignty-reducing drug addictions. There are even reasons to believe that drug prohibition may *cause* problematic drug use especially because of the violence it gives rise to.[46] From this perspective, the prohibition regime creates the conditions for violent criminality, resulting in higher levels of physical and psychological trauma among citizens, and those traumatized may later turn to drug use in order to cope with their problems. Similarly, it has been argued that attempts to suppress drug use by arresting and incarcerating users breed misery and trauma in the dependents of the incarcerated.[47] The incarceration of a parent may have a strongly adverse effect on children, and the mass-level arrests that drug criminalization has arguably led to especially in the United States may therefore have led to increased future drug abuse among affected children.

On the philosophical level, preserving a person's sovereignty by constraining this person from engaging in activities that may reduce their sovereignty is problematic. Perhaps most fundamentally, personal sovereignty is a developmental quality, which is to say that it is a capacity that people grow over the course of their lives by exercising it. Kant himself commented on this issue in *An Answer to the Question: "What Is Enlightenment?"* from 1784. Defining enlightenment as "man's emergence from his self-incurred immaturity" and immaturity as "the inability to use one's own understanding without the guidance of another," Kant found that the guardians who take it upon themselves to supervise others succeed only in perpetuating the public's immaturity.[48] By preventing people from taking a single unsupervised step and emphasizing "the danger which threatens them if they try to walk unaided," the guardians undermine maturity by preventing its exercise.

This developmental quality clearly differentiates the intrapersonal interpretation of the sovereignty principle from its interpersonal counterpart. On the interpersonal level, my actions may constrain your freedom, meaning that you suffer the consequences of how I behave. On the intrapersonal level, the person suffering the consequences of my actions is obviously myself, and the process has developmental potential for me. By acting in ways that constrain my own freedom, I get a lesson that will help me not to repeat the same mistake in the future. It is also possible that such a developmental dynamic will manifest on the interpersonal level: perhaps I get distressed when I see you suffering the consequences of my actions and decide to mend my ways. This, however, is far from guaranteed, as I may not even be aware of

your suffering, and if I am aware it may not affect me much. By contrast, it seems uncontroversial to claim that we are always aware of our own suffering and it always matters to us.

On the intrapersonal level, therefore, people grow their capacity for sovereign action by exercising this capacity in ways that may or may not be skillful, and any mistakes they make along the way have the upside of facilitating personal growth. The standard Kantian argument against those who would want to protect someone from making mistakes is that they are treating this person as a child, and therefore as lacking sovereignty, but another argument is that these guardians are also denying the person the opportunity to learn from their mistakes. However, while it seems straightforward to argue that I have a right to make mistakes affecting only myself, and thereby learn how not to do things in the future, it does not follow that I also have a right to make mistakes affecting you. In most societies across the world it would be recognized that even if I do not know much about rock-climbing, I have a right to try it out at my own risk, but if I do not know much about operating motor vehicles I do not have the right to try out this activity on the highway, since my incompetence is then obviously a threat to others. The interpersonal and intrapersonal versions of the sovereignty principle are therefore not equivalent.

Allowing a person to make mistakes and learn from them is in many ways the opposite of the self-instrumentalization discussed above. Instead of abandoning their sovereignty in order to obtain pleasure, this process accepts (potential) suffering as an investment in personal maturity. However, one of the risks in this process is that people will make mistakes that leave them permanently diminished. Kant continued his critique of guardians trying to protect people from walking unaided by saying that the "danger is not in fact so very great, for they would certainly learn to walk eventually after a few falls," but of course it does sometimes happen that people fall down the stairs and die.[49] Similarly, perhaps, a person might stumble into excessive drug use in such a way that they are forever diminished.

If such a permanently sovereignty-constraining form of addiction were possible, it might remind us of Mill's famous injunction against selling oneself into slavery, and the developmental perspective would appear not to apply.[50] In the same way that those learning to walk commonly have baby gates protecting them from staircases, strict prohibitions might seem necessary to protect citizens from such addictive drugs. As discussed in the above reviews of harms and dependence, however, drug use is not like selling oneself into slavery. Only a minority of drug users ever become addicted, and while it is certainly possible to die from overdoses of drugs such as alcohol and heroin, it is also possible to die from driving a car or engaging in sports. Injecting illicit heroin is riskier than those other activities, but much of this risk is related to varying strength and unknown adulterants and could be substantially alleviated by harm reduction strategies. At any rate, many drugs are not lethally toxic even at abnormally high doses, and the few extant comparative harms

assessments between drug use and other risky activities point to similar levels of danger.[51]

A further reason why sovereignty concerns do not provide a basis for drug criminalization is that the criminalization regime entails large increases in violent and property crime.[52] Such criminality serves to constrain citizens' sovereignty in a number of ways, among them by compelling people to stay at home as much as possible because their neighborhood is too dangerous. Even if the attempt to protect personal sovereignty by constraining citizens' freedom to take drugs should be legitimate, which in light of the above discussion seems doubtful, the criminality resulting from drug prohibition serves to diminish sovereignty for the whole population.

With reference to Kant's point about immaturity, it is also possible to argue that the drug war deprives people of the possibility to develop personally and culturally mature approaches to drug use. Arguably, what might truly protect people from getting entangled in patterns of drug abuse is not strict supervision from societal guardians, but a process of maturation whereby individuals and the culture as a whole develop norms for how to engage with drugs. This process may involve some stumbling and falling at first, but eventually most people would manage to walk unaided in this terrain of presently illicit drugs, which is not more difficult to navigate than that of alcohol.

Of course, drug cultures develop even for criminalized drugs, but perhaps not in ways that confer the same benefits. Under a criminalization regime, people who use drugs are forced to do so underground, and whatever safe practices they develop for instance with regard to dosage and drug combinations may not diffuse easily to others. Criminalization has also entailed that people with drug problems have often been handled by law enforcement rather than by health care professionals, arguably to the detriment not only to these people with drug problems but also to the health care community whose development of treatment practices is thereby hampered.

This section on drug criminalization and sovereignty has argued that even if some forms of drug use diminish personal sovereignty, a Kantian cannot protect against such loss by prohibiting the use of drugs. While Kantian philosophy acknowledges that societies must preserve sovereignty by constraining it on an interpersonal level, since I have no right to interfere with your freedom, this logic does not translate to the intrapersonal level, where it reduces to mere paternalism. Such paternalism might be acceptable for actions that are equivalent to selling oneself into slavery, but although some people believe that the use of (illicit) drugs has permanently freedom-constraining consequences, this is not true. Indeed, according to comparative harms assessments, the use of illicit drugs is, on average, about as addictive and harmful as the use of alcohol and tobacco, which is in turn about as addictive as smartphones and fast food. Furthermore, the drug criminalization regime does not appear to function very well, and the loss of sovereignty inherent to prohibition is therefore not compensated for by substantial reductions in sovereignty-diminishing drug abuse. Finally, the

criminalization regime leads to increased criminality, which serves to constrain citizens' sovereignty and may in turn contribute to increased drug use as a means of coping with trauma.

3. Conclusion

Drug use may constrain intrapersonal sovereignty in the short term because of the effects of intoxication and in the long run because of dependence formation and medical harms, but such constraints only suffice to render a citizen passive when high-frequency use, normally an indication of dependence, combines with debilitating drug effects. Only a minority of illicit drug users—from about 5% for psychedelics to 25% for heroin—end up with dependence, and these figures are comparable to those for alcohol (15%) and tobacco (32%). The reason why many people tend to believe that illicit drugs are more dependence-forming than alcohol and tobacco is probably that with illicit drugs, we often see only the damaged cases.[53]

While the sovereignty-constraining effect from (generally) illicit drugs such as psychedelics, cannabis, and psychostimulants is no worse than that from alcohol, some people end up using these drugs with such frequency that their sovereignty is diminished by it. As Smith observed, however, autonomy-based arguments may support the immorality of drug use, but they oppose its criminalization.[54] Well-meaning guardians who intend to preserve people's autonomy by preventing its exercise succeed only in destroying what they attempt to uphold. Instead, as Hoffman has argued, a proper Kantian respect for autonomy demands of us that we allow people to set their own ends also when it comes to drug use which, despite its reputation, is not inherently more dangerous than many other risky activities such as sports.[55] While some will certainly stumble as they try to navigate this territory, we can protect them to some extent by adopting harm reduction policies.

Kantians cannot accept paternalistic intrusion into citizens' sovereign sphere because, as Ripstein maintained, "any criminal prohibition that does not protect sovereignty is a despotic violation of it."[56] However, the opposite of a criminalization regime need not be a free-for-all legalization where hard drugs are for sale in supermarkets alongside apples and milk. Every drug is different and probably requires its own carefully crafted policy regime that discourages harmful use without being a despotic violation of citizens' sovereignty.

Notes

I thank Dr. David C. Vogt at the University of Bergen for helpful comments on earlier versions of this manuscript.

1 Ripstein, "Beyond the Harm Principle"; Kant, *Metaphysics of Morals*.

2 Kant, *Metaphysics of Morals*, 6:230–1 (emphasis in original).

3 Ibid., 6:314 (emphasis in original).

4 Ripstein, "Beyond the Harm Principle," 229.

5 Ibid., 231.

6 Ibid., 245.

7 Husak, *Drugs and Rights*; Husak, "Moral Relevance of Addiction"; Watson, "Disordered Appetites"; Lovering, *A Moral Defense*.

8 Kant, *Metaphysics of Morals*; Perkins-McVey, "Kant, Intoxicated," 10.

9 Glasser, *Positive Addiction*; Cui, Mrad, and Hogg, "Brand Addiction"; Junaid et al., "Brand Love"; Allcott, Gentzkow, and Song, "Digital Addiction"; Meng et al., "Global Prevalence."

10 Griffiths, "Anything Can Be Addictive"; Griffiths, "Internet Sex Addiction"; Griffiths et al., "Gambling and Internet 'Addictions'."

11 Guy-Evans, "Brain Reward System."

12 Meng et al., "Global Prevalence"; Praxedes et al., "Prevalence of Food Addiction"; Yekaninejad et al., "Prevalence of Food Addiction."

13 Anthony, Warner, and Kessler, "Comparative Epidemiology of Dependence"; Lopez-Quintero et al., "First Use to Dependence"; Schlag, "Problem Drug Use."

14 Bonomo et al., "Australian Drug Harms Study"; Crossin et al., "Drug Harms Study"; Nutt, King, and Phillips, "Drug Harms"; van Amsterdam et al., "European Rating."

15 Goldstein, "Drugs/Violence Nexus."

16 Johnstad, "Unhealthy Behaviors"; Khantzian, "The Self-Medication Hypothesis"; Khantzian, "Reconsideration and Recent Applications"; Khantzian, "Understanding Addictive Vulnerability."

17 Sullivan and Austriaco, "Virtue Analysis"; Hsiao, "Recreational Drug Use"; Hsiao, "Case for Marijuana Prohibition."

18 Husak, *Drugs and Rights*; Lovering, *A Moral Defense*.

19 Kant, *Metaphysics of Morals*, 6:427.

20 Cservenka and Brumback, "Burden of Heavy Drinking"; Harper, "Alcohol-Related Brain Damage"; Harper and Matsumoto, "Ethanol and Brain Damage"; Kopelman et al., "The Korsakoff Syndrome"; Thayer et al., "Structural Neuroimaging Correlates."

21 Brust, "Ethanol and Cognition," 1540.

22 Castillo-Carniglia et al., "Psychiatric Comorbidities"; Esmaeelzadeh et al., "Mental Health Disorders"; Noël and Campanella, "Alcohol Use Disorders"; Preuss et al., "Psychiatric Comorbidity in Alcohol"; Preuss et al., "Bipolar Disorder"; Puddephatt et al., "Mental Disorder with Alcohol"; Trull et al., "Personality Disorder."

23 Sullivan and Austriaco, "Virtue Analysis"; Bonomo et al., "Australian Drug Harms Study"; Crossin et al., "Drug Harms Study"; Nutt, King, and Phillips, "Drug Harms"; van Amsterdam et al., "European Rating."

24 Johnstad, "Comparative Harms Assessments"; Johnstad, "Unhealthy Behaviors."

25 Johnstad, "Unhealthy Behaviors."

26 Nutt, "Equasy" (see also Young, "Equasy Revisited").

27 Lovering, *A Moral Defense*.

28 Babor et al., *Drug Policy*.

29 Gable, "Comparison Acute Lethal Toxicity"; Lachenmeier and Rehm, "Comparative Risk Assessment."

30 Hunt, "What Good Are Drugs," 47–8.

31 E.g. Johnstad, "Entheogenic Experience and Spirituality."

32 Lovering, *A Moral Defense*.

33 Sullivan and Austriaco, "Virtue Analysis"; Hsiao, "Recreational Drug Use"; Hsiao, "Case for Marijuana Prohibition."

34 See for instance the literature on psychedelic microdosing as reviewed by Polito and Liknaitzky, "Emerging Science of Microdosing."

35 E.g. Coomber et al., "Aggression and Violence"; White, Conway, and Ward,

"Substance Use and Violence"; Brubacher et al., "Cannabis Use as Risk"; Drummer et al., "Odds of Culpability"; Johnstad, "Comparative Harms Assessments."

36 Kant, *Metaphysics of Morals*, 6:427; see also Timmermann, "Kantian Duties."

37 Kant, *Anthropology*; Perkins-McVey, "Kant, Intoxicated," 10.

38 Richards, "Drug Use and Rights," 653.

39 Smith, "Drugs, Morality and Law," 238.

40 Simons et al., "Five-Factor Marijuana Motives"; Johnstad, "Entheogenic Spirituality"; Johnstad, "Entheogenic Experience and Spirituality."

41 United Nations Office on Drugs and Crime, *Global Study on Homicide*.

42 MacCoun and Reuter, *Drug War Heresies*.

43 Centers for Disease Control and Prevention, "Tobacco-Related Mortality."

44 E.g. Johnstad, "Day Trip to Hell."

45 Armstrong and Parascandola, "American Concern over Marijuana"; Bonnie and Whitebread, "The Forbidden Fruit"; Hickman, "Drugs and Race"; Johnstad, "Racial and Religious Motives."

46 Johnstad, "Does Drug Criminalization Increase."

47 Bourgois, "Insecurity"; Earp et al., "Racial Justice."

48 Kant, "What Is Enlightenment?", 54.

49 Ibid.

50 Mill, *On Liberty.*

51 Fusar-Poli et al., "Deconstructing Vulnerability for Psychosis"; Johnstad, "Unhealthy Behaviors"; Nutt, "Equasy."

52 Coyne and Hall, "Failure of the War"; Johnstad, "Police Against Drug Policy Liberalisation"; Miron and Zwiebel, "Economic Case against Drug Prohibition"; Nadelmann, "Alternatives to Drug Prohibition."

53 Hari, *Chasing the Scream*; Johnstad, "Why Are the Police."

54 Smith, "Drugs, Morality and Law."

55 Hoffman, "Kantian Harm Reduction."

56 Ripstein, "Beyond the Harm Principle," 245.

ORCID

Petter Grahl Johnstad http://orcid.org/0000-0002-2528-3356

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