

## Book Review

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### **Pharmaceutical Freedom: Why Patients have a Right to Self-Medicate**

JESSICA FLANIGAN, 2017

New York: Oxford University Press

288 pp, £25.99 (hb)

*Pharmaceutical Freedom* is the most rigorous, in-depth defence of a right to self-medicate to date. In it, Flanigan brings together her wealth of expertise on the regulation of drugs and integrates it into a systematic examination and critique of our current prohibitionist climate. Flanigan seamlessly moves from normative considerations to the discussion of practical problems and policy implications. This makes the book interesting to both members of the educated public who wish to know more about self-medication as well as policymakers and philosophers working on medical ethics, drugs policy, and the permissibility of paternalism more generally.

The main thesis of the book is that the moral reasons which support granting competent individuals the right to make their own decisions (even if these are risky) cannot be circumscribed to the patient-physician encounter and, hence, serve to ground a right to self-medication. If individuals are entitled to refuse medical treatment, delay treatment to achieve other goals (e.g. going on holiday), or choose less effective treatments for their ailments, they should also be entitled to access pharmaceuticals (even when doing so is risky). Flanigan advances both a rights-based and a wellbeing-based argument for this view and concludes that, in most cases, both arguments will agree on the conclusion that public officials are not entitled to preclude people from making choices about their own lives by instituting prescription and pre-market testing requirements.

The main element of Flanigan's proposal is that regulatory bodies such as the FDA (Food and Drug Administration) or the EMA (European Medicines Agency) should limit themselves to *certifying* drugs as opposed to approving drugs. Under this certification system companies would be free to sell drugs to consumers without having to wait for governmental approval of the drugs. Individuals would also be entitled to purchase medications without a prescription. Although this appears radically revisionary, Flanigan assures us that much would remain unchanged for the grand majority of people. Individuals would still be free to consult a doctor prior to taking medication and abstain from taking uncertified medications or medications with unknown side-effects. The main change is that as well as therapeutic compounds, deadly and addictive drugs would be available for sale (behind the counter) without prescription requirements. Flanigan argues her case using a wealth of empirical evidence and provides detailed responses to paternalistic arguments in favour of restricting access to addictive drugs.

As well as the main thesis, over the course of the book Flanigan argues that certification systems are morally superior to approval systems because certification systems

do not involve killing people, whereas approval systems do. The argument relies heavily on the distinction between killing and letting die. Unless already inclined to accept the distinction, the conclusion will remain difficult to believe. Similarly with Flanagan's argument in favour of direct to consumer pharmaceutical advertising. This argument depends on the claim that commercial speech is speech we have stringent obligations to protect being true. Anyone who is comfortable enforcing restrictions on advertising such as those in operation in much of Europe could consistently accommodate concerns about the importance of patients having access to information without permitting direct to consumer advertising. This could be done, for example, by creating publicly funded bureaucratic bodies dedicated to disseminating information about drugs.

Perhaps most interesting of all is Flanagan's account of the changes to current democratic politics that are required if we accept that people possess rights to self-medication. Flanagan argues that our rights to self-medication ought to be insulated from democratic politics. Rights to self-medication, like our rights to free speech, ought to be protected by the judiciary. This, Flanagan argues, is necessary to avoid biased voters encroaching on the rights of citizens. Although this claim seems intuitively plausible when it comes to cases in which people seek access to medicines to save their lives, the idea that there is no space for democratic deliberation on how and when people are entitled to use drugs needs greater defence. Even if we accept that people have rights to self-medicate, there are questions which remain to be answered. Legalising and regulating drugs requires taking a position on a panoply of practical questions such as opening hours for drug retailers. Democratic control is required for this. In as far as restrictions on opening hours do not seem to constitute violations of people's rights to self-medicate, using the judiciary to resolve this seems inappropriate.

While I agree with Flanagan that people have rights to self-medication, Flanagan fails to recognise that her argument poses an even deeper challenge to how we currently treat our ailments. The same considerations that support moving toward a certification system for pharmaceutical products also seem to support abolishing licensing requirements for physicians. If regulating pharmaceuticals is incompatible with respecting people's ability to make their own healthcare decisions, prohibiting individuals from practicing medicine without a licence (which most jurisdictions also do) is also incompatible with their strong pre-political rights. Flanagan's account can't bracket off this implication of her view as much of her argument is based around the idea that drug production and consumption is not fundamentally distinct from other activities and industries. If Flanagan is correct about the normative component of her argument then bodies such as the American Medical Association (AMA) in the USA and the General Medical Council (GMC) in the UK should, in principle, also become certification bodies. Although the full argument would require development, if it succeeds, those who are less inclined to object to paternalism may take this implication to be an objection to the view that we should limit ourselves to certifying drugs. On Flanagan's account of consumer decisions under a certification system, individuals who wish to safeguard their health would be wise to consult physicians as there will likely be uncertified and untested drugs on the market. As decisions about which drugs to take are complex, delegating these decisions to healthcare professionals allows us to reduce the amount of research we have to do ourselves. Delegating decisions in this way would be increasingly difficult if one also has to research whether one's physician is certified

by a certification agency, what criteria they use to certify their physicians and what codes of conduct they are held to in order to keep their certified status.

In conclusion, Flanigan's book is a timely piece of practical philosophy aimed at bringing to light the systematic and relentless violation of people's rights in the name of reducing and controlling drug use in society. What remains is for those who craft and enforce policy to take note.

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