

WHY STRICT DRUG LAWS WORK (AND WHY THEY DO NOT)

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In the first place, we must bear in mind that arguing for the effectiveness of punitive anti-drug laws—that is, the penal approach favoured and promoted by the United States, the United Kingdom, Sweden and, with a wide degree of variation, much of the developed world—is to offer an interpretation that is distinctly un-fashionable in academic and scientific circles. Most often, academics (including myself) and addiction scientists focus on the harm that is undoubtedly generated by the penal approach to drug control, particularly in terms of the crime, corruption and negative health consequences wrought by entrepreneurs and consumers who persist in the illegal drug economy despite police attempts to curtail it. In addition to the consequent criminality and interference with effective treatment, critics also point to the obvious ‘double-standard’ in the legal classification of intoxicants. That is, they note that alcohol and nicotine, which have social, psycho and physiological effects that are often as severe as those of the banned substances, go relatively unregulated. I stress ‘relatively’ because those substances are also subject to a variety of access regulations, use restrictions and tax schemes. In short, the growing opinion of many academics, scientists, legal and health professionals is that strict drug laws are simply illogical. They produce more harm than they eliminate.

The academic and scientific critique, however, has had only limited success in persuading politicians to de-regulate or indeed legalise illicit drugs. Their hands are at least partly tied. Virtually all countries have agreed to follow the United Nations’ drug conventions, the most recent of which came into force in 1990. These declare that drug production, trade and use are health threats and should be regulated. The form that regulation takes, however, is a matter of interpretation and debate has been fierce. In late 2009, for instance, David J. Nutt was sacked as the chair of the British government’s Advisory Council on the Misuse of Drugs for suggesting that some forms of illicit drug use are less dangerous than popular pastimes like horseback riding. Professor Nutt is an accomplished neuroscientist and his assertion was technically correct but its implication—which drew media attention after it was posted on the internet—was distinctly critical of current British drug policy. Government ministers felt that he thereby exceeded his role as a non-partisan scientific advisor and he was dismissed. The uproar in the UK scientific community around what many see as infringement of intellectual freedom has yet to die down and other leading medical and legal figures have taken positions similar to Nutt’s, but I would like to suggest that arguments for de-regulation based on an unjustifiable ‘double standard’ in the regulation of licit and illicit drugs, or on compromised treatment programmes rest on a fundamental logical

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mistake. That is, they assume that drug policy has primarily to do with those who produce, take and sell drugs. It does not. Instead, I would like to suggest that drug policy is, in the first instance, made for those who do not, and are not likely to take drugs. It is aimed at economically secure, mainstream voters whose chief concern is to keep themselves and especially their children off drugs. Politicians know this and, from a purely utilitarian perspective that is common across the political spectrum, strict anti-drug measures are good policy because they bring in votes, which is what they are designed to do.

But that is not all that they do. Restrictive drug laws are also effective from the point of view of the voters who continue to support drug-warrior politicians. It is important to remember that habitual drug use and the health problems associated with it are relatively minor problems in global public health terms—especially when compared to the problems generated by relatively de-regulated recreational drugs like alcohol and tobacco. UN figures show that global opium production is currently only 1/3 of what it was in 1907, when demands for world drug regulation gathered pace largely due to US pressure. Likewise, production of other illicit drugs like cocaine, cannabis, amphetamines and ecstasy has stabilised or even declined over the last 10 years according to Antonio Maria Costa, the former director of the UN Office on Drugs and Crime. The UN further estimates that there are about 25 million people whose daily drug use classifies them as ‘addicts’. That comes to .06% of the global population. If we add to this number people who take illegal drugs at least once a year, it jumps by a factor of 10, to about 5% of the world population. In a claim that is as controversial as it is influential, Costa argues that this drop in production is the result of aggressive anti-drug policy. In contrast, Tobacco delivers the legal drug nicotine and it is used by 30% of the global population. Alcohol is more popular still. These two relatively de-regulated drugs together cause around 7 million deaths per year, while illicit drugs cause only about 200,000.¹ Put another way, the ratio of licit to illicit drug deaths is about 35 to 1. Here then is a challenge for those who wish to de-regulate: can you convince a majority of voters that health problems generated by the inevitably increased use of newly de-regulated drugs won’t grow until they approach those of alcohol and tobacco? If not, can you persuade those voters that drug-related crime poses them a greater personal threat than the health risks that they have been warned about incessantly for at the past 40 years? If you cannot do either of these, it will be extremely difficult to persuade the electorate, and the politicians who need it, to call for de-regulation. To do so would be to make currently banned substances even more easily available to the families of mainstream voters, and this above all they do not want.

It is also important to remember that the health problems associated with all of these substances, but especially with the illegal drugs, fall disproportionately upon economically disadvantaged, marginalised populations. They have their greatest impact upon social groups that are often excluded from the voting mainstream, whose participation in the illegal

¹ Antonio Maria Costa, ‘Legalise Drugs and a Worldwide Epidemic of Addiction Will Follow,’ in: *The Observer*, 5 September 2010, section 1, p. 27.

drug economy is proportionately lower. Some of the children of these mainstream voters, like their parents before them, may experiment with drugs that are made only more attractive by their illegality, but illegal drug use, like youthful rebelliousness itself, soon loses its appeal for most, though not all. Here, however, we begin to note the ways in which strict drug laws fail those who have the greatest need for effective policy: they fail the habitual drug users themselves, and the communities of which they are most likely to be part. This is the case, on the one hand, because of the woeful inadequacy of the treatment facilities and programmes that are usually offered to criminalised users and, on the other, to the crime and corruption which is a consequence of the huge profits generated by a product whose scarcity is a direct result of the laws banning it. This latter consequence is clear in economically disadvantaged districts in the wealthy, drug-consuming countries themselves, but it is at its most extreme in countries like Mexico, Jamaica and Columbia where drug money has helped to establish warlords and gang leaders that dominate entire regions. The worst-case scenario is Mexico where, between 2006 and 2010, 28,000 people died in a continuing government crackdown and concurrent gang war fought over the control of the lucrative US drug market.² Most importantly, however, these two great areas of policy failure, inadequate addiction treatment and the creation of criminal fiefdoms, are not usually part of the direct experience of the voters for whom drug policy is created. For them, aggressive drug laws mean that their own drug use remains relatively low, and their rational/naive/selfish (whichever adjective you prefer) choice is to vote their own interest.

There may, of course, be another path than the simple opposition between criminalisation and legalisation. Portugal, for instance, has recently attracted attention for an approach that de-criminalises drug use, while maintaining the illegality of the substances themselves. Users are not treated as criminals, but instead even first-time cannabis offenders are sent to a panel that assesses their situation and recommends appropriate treatment options. Users may reject the panel's advice, but repeat offenders become subject to stronger penalties, though prison is not an option. After 10 years, Portugal's strategy seems to be working. Drug addiction and use have not grown, drug-related health issues like needle-based HIV transmission have decreased and Portugal has not become a destination for 'drug tourism.' Still, some Portuguese treatment professionals suspect that the removal of penal disincentives has taken away the motivation to quit using drugs for some patients, creating a 'maintenance community' that shows little sign of diminishing. It is also hard to see how the Portuguese model will ease the difficulties of drug-producing nations like Mexico, where continued prohibition (which is part of the Portuguese system) means continued strife. The Portuguese experiment's promising results are gaining influence, but in the meantime, advocates of de-regulation are going to have to engage the concerns and needs, not of the minority who use and who are directly affected by drugs, but of the great majority who are not and do not wish to

² Guy Adams, 'Mexico Counts the Cost of a War With No End in Sight,' in: *The Independent*, 26 August 2010, section 1, p. 4.

be. Persuading them to vote against what they (perhaps accurately) perceive to be in their own best interest is a much harder task than simply exposing the harms generated by the century-old illogic of strict drug laws.

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