

SUBSTANCE MISUSE OPTION LECTURE 4

WHY CRIMINALISE THE RECREATIONAL USE OF (SOME) DRUGS?

SOME DRUG FACTS

- Quoted in "Modernising Australia's Drug Policy" by Alex Wodak & Timothy Moore)
- The international drug trade has an annual turnover estimated to be \$US400 billion, accounting for 8% of total international trade (UN International Drug Control Program 1997) – larger than the entire Australian economy.
- In 1993, 98% of Bolivia's foreign exchange earnings from goods and services came from the coca market.
- According to the UN Office for Drug Control and Crime Prevention, an estimated 141 million people use cannabis, 2.5% of the world population.

SOME DRUG FACTS

- According to the UN Office for Drug Control and Crime Prevention, 75% of all drug shipments would have to be intercepted to seriously reduce the profitability of drug traffickers.
- At the most optimistic estimates, current efforts intercept only 13% of heroin shipments and 28-40% of cocaine shipments.
- This leaves about 400 tonnes of heroin and about 600 tonnes of cocaine available to global illicit markets.

SOME DRUG FACTS

- The economic cost of illicit drugs to the United States in 1992 was estimated to be \$98 billion compared to \$148 billion for alcohol.
- Over the past decade in the US, inflation-adjusted prices fell by 50% for heroin and 70% for cocaine. The mean purity level for heroin was 6% in 1987 and 37% in 1997 and reached 60% in New York in the same year.
- Federal spending on the war against drugs in the US has risen from \$65 million in 1965, to \$1.65 billion in 1982 and \$17.7 billion in 1997 (State spending was at least the same again).
- A kilogram of cocaine base costs an average of \$257 in Peru, while a kilogram of cocaine in the US costs \$25,000 in 1997 with a street price of \$66,000.

SOME DRUG FACTS

- The social benefit to the United States of a \$US1 investment was estimated to be 15 cents for coca plant eradication, 32 cents for interdiction, 52 cents for US customs and police, and \$7.46 for cocaine drug treatment (Drug Policy Research Centre, RAND, 1994)
- Nevertheless, the US Government allocated 93% of funds expended in response to cocaine on three law enforcement interventions that brought a negative return and only 7% to drug treatment that brought a strong positive return.

SOME DRUG FACTS

- A \$A10 million expenditure on needle and syringe programs in Australia in 1991 was estimated to have prevented 2,900 HIV infections and saved \$A270 million.
- In Australia, federal and state government expenditure in response to illicit drugs in 1992 was estimated at \$US393 million. Of this, 84% was allocated to law enforcement, 6% to treatment and 10% to prevention and research.
- In Australia, the rate of drug overdose deaths per million increased 56 times in the 33 years to 1997.

CHANGING DRUG POLICY

- Drugs are often in the news because the outcomes are bad.
- The usual response to the recurrent political crises about illicit drugs is an announcement of “a crackdown on drugs.” Never mind that “getting tough” did not work last time.
- However, it is getting increasingly difficult for politicians to hide behind rhetoric and inaction (or inappropriate action) and escape from the reality of illicit drugs.
- There are an increasing number of people who believe there need to be changes in drug policy.
- Decriminalisation is talked about much more these days.

DECRIMINALISATION

- There is no standard definition of decriminalisation.
- It is commonly assumed to indicate that illicit drug users themselves should not be punished.
- It has no position on people who manufacture or distribute illicit drugs.
- People who favour decriminalisation may argue that people who manufacture and distribute drugs should be prosecuted. They may not.
- Different approaches may be suggested for different substances depending on their toxicity and dependence-producing properties.

SHOULD RECREATIONAL DRUG USE BE CRIMINALISED?

- The philosopher Douglas Husak in “Legalize This! The case for decriminalising drugs” presents a cogent analysis of the drug debate.
- The book is devoted to the central question of the justice of our drug laws.
- His combination of hard fact and rigorous moral reasoning provides a powerful indictment of what has been done in the name of the law.
- He writes, “I think the sheer scale of incarceration of drug users makes prohibition the worst injustice perpetrated by our system of criminal law in the 20th century. Only the institution of slavery and the despicable treatment of the Native Americans are greater injustices in the United States.”

SHOULD RECREATIONAL DRUG USE BE CRIMINALISED?

- Husak points out the critical question that must be answered to evaluate the justice or injustice of a nation's drug policy.
- Should drug use be criminalised? (or Should drug users be punished?)
- The question is a little more complicated because drugs are used for medical and non-medical use. It is complicated further by the fact that some drugs are used recreationally and medically (or legally functionally, e.g. amphetamines in US bomber pilots)
- Therefore, the question should be: “Should recreational users of (some) drugs be punished.”

WHY SHOULD RECREATIONAL USERS OF (SOME) DRUGS BE PUNISHED?

- Husak goes on to analyse the reasons he believes could be (and sometimes are) put forward by prohibitionists to justify why people should be punished for recreational drug use. Time precludes us looking at these analyses in detail, but I will make a few points for you to think about.
- Husak writes that he hopes that “my arguments lead defenders of prohibition to undertake a task they have avoided thus far – to defend prohibition.”

DRUG USERS SHOULD BE PUNISHED TO PROTECT CHILDREN?

- Husak points out this is the most pervasive argument, but also the worst.
- Is the state committed to welfare generally? Millions live in poverty and lack health insurance, schools under-funded, etc.
- Concern for welfare vanishes when child begins to use drugs – growing trend to prosecute and sentence children as adults.
- Concern that children remain drug free disappears when doctors purport to detect a syndrome, e.g. about 5 million children in the US take ritalin, an amphetamine-like stimulant.

DRUG USERS SHOULD BE PUNISHED TO PROTECT CHILDREN?

- How can punishing adults protect children?
- Are adults instigating the behaviour we are trying to prevent? No, the myth of the pusher has been wholly discredited. Peers introduce children to drugs.
- Maybe by punishing adults we can prevent the trickling down (or leakage) of drugs to children.
- Husak argues that criminalisation does not prevent this leakage.

DRUGS AND CRIME

- The ONDCP argue that the most important objective of our drug policy – after the protection of our children – is “to increase the safety of America’s citizens by substantially reducing drug-related crime and violence.” This rationale can be criticised:
- On empirical grounds, there has been a large increase in the punishment of drug users since 1980, but about the same amount of non-drug crime.
- Prohibitionists often point out that a high percentage of criminals test positive for illicit drugs.
- More meaningful, however, is the fact that an extraordinarily low percentage of drug users commit non-drug crimes. If drug use causes crime, why do the vast majority of drug users not engage in crime?

DRUGS AND CRIME

- We need to look at how and why the punishment of recreational drug users might be thought to reduce violent crime. We must understand the nature of the drug-crime connection.
- There are three types of crime that might be linked to drug use:
- Systemic crimes are those that occur because drug use is illegal and illicit drugs are bought and sold in black markets. When something goes wrong (someone cheats), there is no law to turn towards.
- A study conducted in New York in 1988 revealed that 85% of crack-related crimes were caused by the market culture associated with crack sales, primarily territorial disputes between rival dealers.

DRUGS AND CRIME

- The second type of crime is economic crime. Some addicts need money to pay for their drug use. Some estimates of this cost are astronomical.
- But as Husak points out, only 25% of adult prison inmates who use illegal drugs and commit economic crimes cite their drug use as a primary motivation for becoming involved in criminal activity. Many such people are committing economic crimes before they started taking drugs.
- Is this economic crime caused by drugs, or by drug prohibition?

DRUGS AND CRIME

- If less economic crime would occur under decriminalisation than prohibition, the goal of reducing economic crime could hardly be the rationale for punishing drug users.
- Heroin, for example, would be very much cheaper under decriminalisation (some have estimated it could be bought and sold at 2% of current prices). If this estimate was roughly accurate, there should be a drastic reduction in economic crime.
- But the rate of taxation may not make drugs that cheap – and if they were cheap might this lead to more people using them, who create more addicts, who might take to economic crime?

DRUGS AND CRIME

- The third type of crime is psychopharmacological crime, arising from the effects of the drugs themselves, e.g. drugs may release inhibitions, affect judgement and perception.
- Drugs do not produce the Jekyll and Hyde syndrome. The drug that most likely causes psychopharmacological crime is alcohol.
- In 1998, it was reported that 21% of persons in US state jails or prison for violent crime were under the influence of alcohol and no other drug at the time they committed the crime. Only 3% were under the influence of cocaine or crack alone, and 1% were under the influence of heroin alone.

DRUGS AND CRIME

- The one final connection between drugs and crime is related to the fact that drug use and crime both occur in poor neighbourhoods. Both occur, or are influenced, by poverty.
- Crime might be reduced if we punish drug users in poor environments. But would it do anything (imprisoned people will come out and back to their environment probably to offend again)?
- And is it justified? No, we cannot be racist and discriminatory by enforcing drug prohibitions in poor (but not middle or upper class) environments. But it is happening.

DRUGS AND HEALTH

- It is argued that drugs are bad for our minds and bodies. Few prohibitionists state explicitly: "The state is justified in punishing drug users because illicit drugs are bad for our health."
- However, it is clear that this rationale is endorsed implicitly.
- Yes, illicit drugs do pose risks to physical and psychological well-being.
- But is this not a strange rationale for drug prohibition? Although the state has a central role in protecting the health of its citizens, it does not ordinarily perform this function by punishing the very persons whose health it endeavours to protect. If you eat spoiled meat, do you get sent to prison?

DRUGS AND HEALTH

- If the public's health was so important, wouldn't it be easier to invest our money more wisely, e.g. increasing the number of people who have health insurance.
- Prohibitionists emphasise not only the importance of protecting the health of the individual, but also the public expense incurred when people make unhealthy choices.
- So does this mean we should send people to prison in order to reduce insurance premiums and conserve public resources?

DRUGS AND HEALTH

- How does criminalisation improve health?
- Would the infliction of punishment deter current users from persisting in their unhealthy behaviour? This assumes that the health of drug users will improve in prison. But prisons are unhealthy and drugs are freely available.
- Would the threat of punishment deter those who do not use drugs from starting to use them? This is more credible, but it depends on three assumptions.

DRUGS AND HEALTH

- Health will not be protected unless criminalisation is a reasonably effective deterrent. Does not appear to be so as many people take illicit drugs.
- The health of those who are deterred from taking illicit drugs will be preserved only if they do not substitute more or equally dangerous drugs (e.g. alcohol) for those they forgo.
- Finally, we cannot fully assess the plausibility of this rationale unless we understand how risky drugs really are.
- The health hazards of marijuana are low, but users are punished (sometimes heavily) – in this case, the rationale has no plausibility.

DRUGS AND HEALTH

- According to estimates of the ONDCP, about 25,000 Americans die each year from using illicit drugs (NB. The majority are caused by drug prohibition, not by the drugs themselves)
- Approximately 100,000 people die each year from adverse reactions to medications, making prescription drugs one of the largest causes of death in the country.
- The estimates with alcohol are more controversial, but all exceed 100,000 people per annum.
- At least 430,000 die each year because of tobacco.

DRUGS AND HEALTH

- Many activities that do not involve use of a drug are far more risky to health, even though no one would dream of using the criminal law to prohibit them
- More than half of all Americans are now overweight.
- The 97 million adults who are obese far outnumber illicit drug users, and the health hazards of excessive weight are more easily demonstrated than those of illicit drugs.
- According to the Centre for Disease Control and Prevention, obesity accounts for about 300,000 deaths a year. Obesity also diminishes health and the quality of life in many ways.

DRUGS AND IMMORALITY

- The former drug czar William Bennet said, " I find no merit in the legalizers's case. The simple fact is that drug use is wrong. And the moral argument, in the end, is the most compelling argument."
- How can the mere act of taking a substance be immoral?
- Husak believes that this raises "perhaps the most fascinating and divisive question about contemporary drug policy. Unfortunately, those who are convinced that the recreational use of drug is immoral almost never try to answer" the above question.

NEGATIVE EFFECTS OF PROHIBITION

- **Racial bias** is perhaps the most scandalous aspect of our punitive drug policy.
- Even though white drug users outnumber blacks by a five to one margin, blacks comprise 62.7% and whites 36.7% of all drug offenders in state prisons.
- In Illinois, the state with the highest rate of black male drug offenders behind bars, a black man is 57-times more likely to be sent to prison on drug charges than a white man.

NEGATIVE EFFECTS OF PROHIBITION

- Earlier we examined the suggestion that prohibition is justified to protect **health**.
- The National Institute on Drug Abuse lists 25,000 fatalities per year from illicit drugs.
- However, some 14,300 fatalities are due to hepatitis and AIDS, diseases caused (mostly) by shared dirty needles.
- Needle exchange schemes could prevent many of these deaths (and have been very successful in other countries).
- But the possession, distribution, and sale of syringes remain criminal offences in much of the country, and the federal government continues to prohibit the allocation of its funds for any needle exchange program.

NEGATIVE EFFECTS OF PROHIBITION

- There is a vast historical evidence that demonstrates the pernicious role drugs have played in **international affairs**.
- In 1999, Congress passed the Western Hemisphere Drug Elimination Act, which authorised over \$246 million for crop eradication programs.
- As an example, eradication programs in Columbia have led to the clearing of 1.75 million acres of Amazon rain forest. Husak points out that some environmentalists predict that within 50 years poor agricultural soils in Columbia may not be able to support the population.
- If you spray crops, you must give farmers financially viable alternatives – this does not happen. Spray crops, they move elsewhere.

NEGATIVE EFFECTS OF PROHIBITION

- **Crime** may actually be increased by prohibition. Criminals eventually return to the neighbourhoods from which they came.
- Prisons are schools for crime – offenders become more deeply immersed in criminal subcultures and learn more sophisticated skills for committing crimes.
- Men who have been incarcerated are less likely to marry, get good jobs, or to develop productive relationships with family members once they are back on the streets – all of which increase their propensity to commit crime.

NEGATIVE EFFECTS OF PROHIBITION

- Husak believes that, "Truth is among the casualties of our misguided drug policy." **Lies and hypocrisy** prevail.
- "The demonisation of illicit drugs is so pervasive that frank and honest discussion is almost impossible", and people are afraid of the repercussions if changes are made.
- Children are sceptical of what they are told about drugs.
- Educators may be sceptical about certain programs (e.g. DARE) – and have proof backing this scepticism – but are scared to speak out because they may be called soft on drugs.

NEGATIVE EFFECTS OF PROHIBITION

- Prohibition has eroded **civil liberties** in which Americans take pride.
- Asset forfeiture has been a favourite strategy in the drug war. Assets may be seized if it is thought they were obtained by money obtained from drugs. This might preclude someone being able to pay for their defence.
- School children wishing to take part in after-school activities (e.g. playing clarinet) may be drug-tested.
- Women convicted of a drug offence may lose their social security benefits for life.
- And many more.

NEGATIVE EFFECTS OF PROHIBITION

- Prohibition and the huge amounts of money in the illicit drug trade create irresistible temptations for law-enforcement agents to place themselves above the law (**corruption**).
- Some studies claim to conservatively estimate that 30% of the nation's police officers have been unlawfully involved with illicit drugs.
- According to the Government Accounting Office, half of all the police officers in FBI-led corruption cases between 1993 and 1997 were convicted of drug-related offences.

NEGATIVE EFFECTS OF PROHIBITION

- The federal government now spend close to 20 billion dollars per annum, and state and local governments that much again, on combating illegal drugs.
- If we stopped punishing drug users, taxpayers would reap enormous savings.
- If decriminalised, this massive industry would become subject to taxation.

MODERNISING AUSTRALIA'S DRUG POLICY

- Alex Wodak and Tim Moore believe that the "war against drugs" has failed resoundingly in Australia and elsewhere.
- It is clear that where there is a strong demand for drugs, sources of supply will inevitably emerge.
- Why give the drug industry to criminals?
- The authors of this excellent book propose a ten-point plan to reduce the death, disease, crime and corruption that has become an entrenched part of the drug economy.

REDEFINING THE PROBLEM OF ILLEGAL DRUGS

- "The most important point for progress is to redefine illegal drug use as primarily a health and social issue rather than a criminal justice problem."
- Law enforcement will always be needed to complement social and health interventions, but should no longer dominate policy, funding allocation, or public rhetoric."

SETTING APPROPRIATE PENALTIES

- "Unauthorised, large-scale cultivation, production, transport, distribution, sale or possession of mood-altering drugs should continue to attract penalties including, where appropriate, criminal charges. The magnitude of the penalties should be in proportion to the quantity and type of drugs seized.
- "On the other hand, cultivation, production, transport, distribution, sale or possession of small quantities of illegal substances consistent with personal use should not attract criminal or civil sanctions."

REGULATING AND TAXING CANNABIS

"The Australian cannabis industry has an estimated turnover of \$A5 billion per annum, representing 1% of the Australian economy."

The regulation and taxation of cannabis production has the following advantages:

- juvenile access to cannabis can be restricted;
- better separation can be achieved of the cannabis markets from markets for heroin, amphetamine and cocaine;
- harm reduction advice including access to treatment can be provided at point of sale;
- quality control of the product can be assured;
- and official corruption minimised."

REGULATING AND TAXING CANNABIS

- "Cannabis tax revenues could be specifically dedicated for consumer education, research, drug law enforcement, prevention education, and treatment of drug users."
- "While the regulation and taxation of cannabis production and sale may be inevitable in the long term, progress towards such a policy will probably be incremental."

BALANCING FUNDING ALLOCATION: FUNDING WHAT WORKS

- "Under current policy, most government expenditure on illegal drugs is allocated to programs that give a poor return on investment. Conversely, treatment interventions which provide a far more favourable return, are poorly funded.
- Increasing funding for prevention and treatment to the levels currently enjoyed by law enforcement would provide a far better return to the community than the current allocation.

TAKING PREVENTION SERIOUSLY

- "Adequately funded, research-based is required for schools and the community."
- Although drug education provides only modest, long-term gains rather than the massive, short-term gains desired by politicians and others, these benefits are worthwhile. The cost benefit of drug education (for cocaine) has been estimated as \$2.60 for \$1 spent.
- Drug education should be based on up-to-date scientific research, not on political interference, hearsay and moral bias.
- There must be an emphasis on describing the positive consequences of not using drugs.
- There must be improvements in education and employability for the disadvantaged groups who disproportionately account for new recruits to drug misuse.

IMPROVING THE RANGE, CAPACITY AND QUALITY OF DRUG TREATMENT

- Expanding the range, increasing the capacity and improving the quality of drug treatment is a fundamental requirement of any effective drug policy.
- Improvement in treatment is the most important component of a comprehensive approach to reducing drug overdose deaths.
- There must be an unwavering commitment to independent research.

EVALUATING NEW TREATMENTS AND INTERVENTIONS

- “Research is the engine driving the search for more attractive, more effective, safer and less expensive treatments and more effective political interventions.
- New treatment options must be developed because the current range of treatments is limited.
- Selections of new interventions for research evaluation should be based on a strong theoretical rationale, impressive empirical data, or both.”
- There is no room for political interference.

RENEWING A NATIONAL COMMITMENT TO HARM REDUCTION

- The paramount focus of national drug policy must be a reduction in the adverse health, social and economic consequences of mood-altering drugs.
- Undermining the illegal drug-trafficking industry by recruiting and retaining more drug users in an increasingly attractive and effective drug treatment system is likely to substantially reduce demand for drugs and new recruits to drug use. Therefore, drug treatment must be expanded to meet demand.
- Needle and syringe programs must be expanded because of risks of HIV, hepatitis C, etc.

DIVERTING DRUG USERS FROM CRIMINAL JUSTICE TO TREATMENT

- More emphasis on non-custodial sentencing options is required to divert offenders from the criminal justice system to drug treatment.
- The cost of incarceration is 4-8 times higher than residential treatment and 25-50 times the cost of methadone treatment.

EVALUATING THE ACHIEVEMENTS OF GOALS AND TARGETS FOR SUPPLY, DEMAND AND HARM REDUCTION

- A crucial component of any management system is the setting of goals and targets and the evaluation of performance.
- If goals and targets are not met, then strategies must be reviewed.
- Supply control should not be exempt from this process.

The following were used to help prepare this lecture:

- Husak, D. (2002) *Legalize This! The case for decriminalizing drugs*, London: Verso.
- Wodak, A. & Moore, T. (2002) *Modernising Australia's Drug Policy*, Australia: University of New South Wales Press Ltd.