

Only way – or no way?

Your crammer on the pros and cons of legalising prohibited drugs

AFTER STEWING ON the political back burner for some 20 years, the issue of liberalising drug laws has re-emerged on the international policy agenda, to the point where recently the UN International Narcotics Control Board felt the need to refute the arguments in its annual report.¹

Traditionally the debate has centred on the laws relating to cannabis. Between 1968 and 1972 government-appointed committees in Britain², Canada³ and the USA⁴ concluded that the medical evidence did not justify the severity of the penalties for cannabis possession. In 1979 the UK Advisory Council on the Misuse of Drugs made similar recommendations⁵ as did the South Australian Royal Commission into the Non-Medical Use of Drugs.⁶

This article will review some more recent international developments and then tease out the major threads in the debate. Before that we need to look at one apparent block to nations going it alone with any decriminalisation.

Malleable convention

One reason why more radical law reform proposals have been dismissed is the value placed on maintaining international solidarity in the fight against drug misuse. All the major industrialised nations of the West are among the 109 signatories to the 1961 UN Single Convention on Narcotic Drugs which obliges signatories to make possession and other drug-related activities involving a range of drugs (heroin, cocaine, cannabis, etc) "punishable offences".

This has been interpreted to mean no major relaxation of the drug laws is possible unless the nation concerned opts out of the convention. However, the official commentary to the convention is clear that nations have wide latitude in the interpretations of this provision as it applies to possession. Some have taken it that "possession" refers only possessing the drug in the course of drug trafficking, not personal use; others have deemed fines "or

even censure" as punishment enough for simple possession.

So while the convention is an obstacle to the legal possession and supply of currently illicit drugs, it appears that it is no barrier to the imposition of only minor penalties for possession. Signatories need consider imprisonment only for "serious offences".⁷ Several legislatures have used this flexibility to mould the convention's provisions to their own local cultures and legal systems.

Real world experiments

In Holland, the 1976 Opium Act tripled the penalties for dealing – but an administrative framework was established which allowed the *de facto* legalisation of possession. For cannabis only, the drug was allowed to be sold from designated premises. Recently Holland has come under intense pressure to revise its policies.

The Spanish and Italian authorities have given the possession provision of the UN convention its most liberal interpretation. In Spain personal possession of any drug is not a criminal offence. Last year Italy reverted to punishing possession of drugs for

personal use only by 'administrative' sanctions.

In the '70s 11 US states reduced penalties for personal possession of cannabis. Alaska allowed cultivation for personal use and held that it would be unconstitutional to bar its citizens from smoking cannabis in their own homes.

It is in America that the legalisation battle lines have been drawn most prominently. In the 1980s despite an ever-increasing budget, law enforcement agencies failed to stop widespread use of cocaine and the violence and massive profits for organised crime that followed in its wake.

Probably the cocaine issue more than any other prompted a catholic spread of opinion (including academics, journalists, politicians, lawyers and law enforcement officers of both liberal and conservative persuasion) to argue that US drug policy had to be reconsidered. Their motivations are as disparate as their professional interests – from civil liberties and reducing social and legal harms caused by prohibitionist laws to crime prevention.

Preventing the spread of HIV as a rationale for liberalising drug laws has not been a major feature of the American debate. However, it has been thoroughly integrated into the European debate which has seen the formation of pan-European organisations dedicated both to the rolling back of the drug laws and to their maintenance or strengthening.

Point and counterpoint

The debate is complex – more than simply a question of 'Do we legalise or not?'. What degree of reform are we talking about? What is the likely impact on society of the different options? How many more people would use drugs? At what point would this increase be unacceptable? Should the opportunity be taken to also rationalise controls on alcohol and tobacco? The list goes on ...

by

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Drug law reform has re-emerged on the international and domestic policy agendas. More drug use by younger people and the connection with crime have taken the debate beyond cannabis. International conventions allow countries to impose only minor penalties for possession. Several have used this flexibility to withdraw from enforcing some laws. Arguments over legalisation cover individual freedom versus the duty of the state, the harms caused by current laws, how legalisation would work, and the health consequences.

European drug renegades

In general, European countries toe the accepted line on implementing international drug conventions, but there are some notable exceptions – Holland, Italy, Spain and, briefly, Switzerland.

Holland Since the Opium Act of 1976, although possession offences have remained on the statute book, personal possession of drugs has been *de facto* decriminalised through local law enforcement directives which have in effect instructed the police to look the other way. For cannabis, Holland has gone one step further and allowed the drug to be sold in cafés.

Now there are hundreds of such premises and pressure is mounting on the Dutch health ministry to dismantle the arrangement. This pressure comes both from the Dutch Ministry of Justice and from Holland's European neighbours, which accuse the Dutch of encouraging 'drug tourism'. France (which takes a particularly hard line on drugs) has refused to ratify the Schengen Convention creating a 'borderless' region in Europe because of the situation in Holland. The International Narcotics Control Board has criticised Dutch policy as a contravention of the Single Convention on Narcotic Drugs.

It is unlikely that the Dutch will reverse their policy but they may introduce a licensing system, carry out checks to make sure that only cannabis is available from the 'cafés' and not (as rumoured) heroin, ecstasy and other drugs, and try to limit sales to

Dutch nationals to stem the influx of drug users across the border.

Italy Until 1990 possession of moderate amounts of drugs for personal use was not a punishable offence in Italy. Then the Socialist Premier of the day, Bettino Craxi, started an anti-drug crusade. In 1990 the law was changed to make possession punishable by penal sanctions if the amount of the drug exceeded the 'average daily dose' established in the law. Below this level 'administrative' sanctions (like confiscation of driving licenses or passports) were applied, though the user could instead agree to rehabilitation.

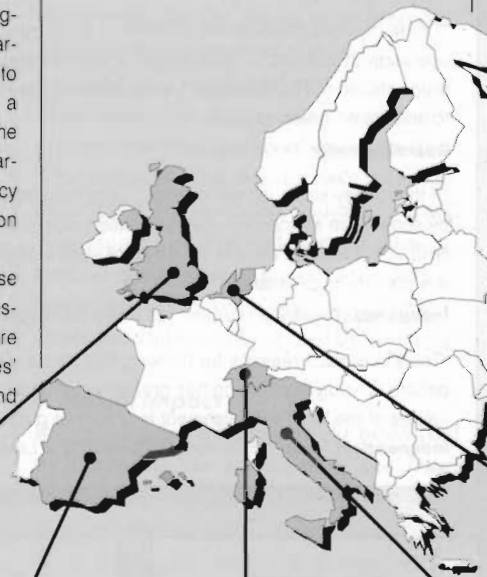
The low level of the average daily dose meant that soon the prisons and the criminal justice system were overburdened by drug use cases with no evidence that the drug problem was being lessened.

In a referendum in 1993 there was majority support for making possession of drugs for personal use in whatever quantities subject only to administrative sanctions. As before, these would be waved if the user agreed to rehabilitation. Criminal sanctions would be applied only to those convicted of more serious offences.

Spain Since the end of the Franco era the main sanction against possession has been fines. However, opinion polls in Spain have shown most respondents favour tighter controls. Some cities have introduced a ban on drug consumption in public and there are plans in Madrid for hefty increases in fines.

Switzerland In 1989, to curb the spread of HIV among drug users, the city of Zurich supplied free needles and syringes to users who were then allowed to inject in a city park 'exclusion zone' unmolested by the police. However, the number of users soared and in the wake of dealing and violence, the experiment ended in 1992.

United Kingdom In its own way the UK has for decades been an international drug renegade. A selected band of doctors are allowed to stretch their clinical discretion far enough to prescribe injectable heroin and smokable cocaine to addicts. This dent in the demonology of heroin – implying that even addicts can benefit from the drug – has at times irritated other nations whose laws are framed on the assumption that the drug has no legitimate uses.



United Kingdom

Doctors can prescribe heroin and cocaine to addicts

Spain

Fines are main sanction against possession

Switzerland

Drug users allowed to inject in a city park

Italy

Possession of drugs subject only to administrative sanctions

Holland

Cannabis sold in cafés

The arguments generally break down into four areas:

- the freedom of the individual versus the duty of the state;
- the perceived harms caused by enforcing current laws;
- how a legalised control regime would work;
- the potential health harms consequent on drugs being more freely available.

The major themes in these areas are outlined below; each pro-legalisation argument (*italics*) is followed by an anti-legalisation reply (normal text).

1. *The individual and the state*

The individual is entitled to conduct him or herself any way they wish so long as no harm is done to others. This principle of personal choice is applied to a wide range of private activities and should also apply to the drugs use. If harm is caused by drug use (eg, harm to family, committing crimes, etc) the state can rightfully act against that harm, but not against drug use per se.

The state has a duty to protect its citizens – even from themselves. Witness the laws relating to the seat belts and motorcycle

helmets. Government must look to the greatest good of the greatest number even at the expense of personal liberty. Society cannot possibly benefit from maximising the chances of its citizens becoming intoxicated. And if drug use is supposed to be a matter of 'personal choice' – how much choice does the drug addict have?

2. *The harm from current laws*

The worst aspect of prohibition is the way it hits the user. Many have been saddled with criminal records or even sent to

A live debate

In Britain today the legalisation debate has a higher profile than for many years. Increased drug use by younger people and the connection with acquisitive and, recently, violent crime, have helped broaden the debate beyond cannabis. Legalising drugs such as heroin and cocaine has become a hot media topic as commentators speculate that spread of HIV, crime and other social ills could be reduced at a stroke of the legislator's pen. Last October the intervention of the Law Lord, Lord Woolf, and the drug-related murder of a police officer in London, helped stimulate a fresh rash of comment. Here are some of the highlights from just a single month of the debate.

THE MPS

"What should worry people most is the criminal activity associated with the supply of drugs. Legalisation of cannabis would eliminate much [of this]. Decriminalisation of all drugs would enable other health issues such as adulteration and needle infection to be addressed ... we need a Royal Commission to review current legislation ..."

Tony Banks, Labour MP for Newham North West, writing in the *Tribune*, 15 October 1993.

"Liberal Democrats should take a 'relaxed' view of the legalisation of cannabis ... Is it not true that the young people who purchase cannabis in the street buy it from the very people who will also supply them with crack, cocaine and all the other hard drugs?"

Angela Browning, Liberal Democrat MP, in a Commons debate on crime, 28 October 1993.

"If we legalise cannabis, we will just whet the appetites of children for more and more hard drugs, and create more crime."

Sir Ivan Lawrence, Conservative MP, in a Commons debate on crime, 28 October 1993.

"It now seems to be fashionable and politically correct to call for the decriminalisation of cannabis, but I would be very sorry if this ... paved the way for a freer availability and a new drug culture."

David Alton, Liberal MP and vice-chair of the All Party Parliamentary Drugs Misuse Group, *Liverpool Echo*, 20 October 1993.

THE DISTINGUISHED JOURNALIST

"I ... have been forced to the conclusion that our present drug laws cause far more crime than they prevent, including ... assault and murder ... [They] might have been written to enrich the mafia ... All drugs should be sold through licensed outlets ... They should be taxed ... but ... not so expensive as to make smuggling profitable ... This should apply to hard as well as soft drugs ..."

Lord Rees-Mogg, former editor of the *Times* and until recently chair of the Broadcasting Standards Council, writing in the *Daily Mail*, 30 October 1993.

compiled by
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THE TOP HOME OFFICE ANALYST

"Would you decriminalise drugs?"

"Oh, without a doubt ... in America they don't even process crime ... They're so overwhelmed by it ... That's because they're so stupid about drugs ... [their] inner cities are totally destroyed and handed over to criminals, all to protect the price of crack and heroin."

Mary Tuck, former head of research at the Home Office involved with criminal statistics, interviewed by David Hare in the *Independent* on Sunday, 10 October 1993.

THE NATIONAL PAPERS

"Let's legalise cannabis, says Labour MP Tony Banks, and the problem will go away ... Some hope! It would simply focus [the gangsters'] minds on harder drugs."

News of the World leader, 24 October 1993.

"Crude decriminalisation will not work ... Something more subtle is needed ... and is already in operation in Holland ... Soft drugs ... are decriminalised through prosecution policy ... Hard drugs should not be legalised, but we should review the old British idea of making them available to addicts on prescription."

Guardian leader, 14 October 1993.

"If the money stops, so will murder ... The transfer of profits from the [drug] dealers to the state by some form of licensed, decriminalised sale ... would shift the burden from the police to the NHS ... not even to debate the effect of such a change shows a collective lack of nerve among this country's politicians."

Independent leader, 23 October 1993, after the drug-related murder of a London police officer.

"There are good reasons for thinking that drugs should be made legal ... The campaign for a debate on drug legalisation has greater weight now that one of the most respected and humane figures of the legal establishment is one of its public advocates."

Independent leader, 13 October 1993, reacting to Lord Woolf's speech (see The Judges).

THE JUDGES

"Should we not at least consider whether it would be preferable for drugs, or at least some drugs, to be lawfully available in controlled circumstances, so that it would no longer be necessary for addicts to commit crimes to feed their addiction?"

Lord Woolf, Law Lord and former Lord Justice of Appeal, speaking in *London* on 12 October 1993.

"The creation of an underground criminal world - the drug culture - outweighs the evils of legalising drugs. The enormous amount of money saved [by legalising] could be spent on educational programmes."

A serving judge from *London* in a call to BBC Radio's *Crimewatch* programme, 19 October 1993.

THE POLICE OFFICERS

"If this is a war on drugs, then we are losing ... policing efforts ... may not only be failing, but contributing to the problem ... It may be time to consider an alternative ... I am not suggesting legalisation as a way of abandoning the war. I want to win."

Eddie Ellison, recently retired Metropolitan Police detective chief superintendent, *Police Review*, 15 October 1993.

"Even if, heaven forbid, the authorities sold and taxed drugs, organised crime would undercut the price, intimidate and distort the market, while still controlling production ... It is too soon to say we have failed ... There is no place at this crucial time for faint-hearted revisionists."

Graham Saltmarsh of the National Criminal Intelligence Service, *Police Review*, 22 October 1993.

"While politicians wring their hands ... as drug-related crime escalates and police officers face increasing danger from armed criminals, they would do well to reflect whether the very laws they swear to strengthen are the cause of the problem they seek to address ... As Margaret Thatcher said, you cannot buck the market."

Gordon Payne of the Hampshire Constabulary, *Police Review*, 22 October 1993.

prison just for possessing drugs. Enforcement of the drug laws causes tensions between the police and otherwise law-abiding citizens – especially in the sensitive area of race relations. Users have to come into contact with criminal networks to obtain drugs. We should at least legalise possession for personal use.

Prohibition brings in its wake violence and corruption on a huge scale while making massive profits for organised crime.

Anybody who uses illegal drugs knows the price of getting caught. People have to take responsibility for their actions. Decriminalisation – legalising possession for personal use – might be even *more* damaging than legalisation. It would do nothing to undermine the illicit market while introducing more people to drugs. Users would still have to contact criminals to get their drugs – it's just that there would be more of both.

For all the billions spent on enforcement, it doesn't work – use of illegal drugs is going up all the time.

Despite their faults, the laws against drug use prevent even *more* people becoming involved.

3. How would it work?

Legalisation would transfer huge revenues to government by way of taxation on what would then be legal commodities, while wiping out the illegal market and all the problems it brings. Eradicating the illegal market would also bring enormous savings in the costs of enforcement, criminal justice and imprisonment.

Many Western governments are wedded to the merits of free market forces and know how difficult it is to 'buck' the markets. Yet they unrealistically believe they can use the law to suppress the illicit market in drugs.

How realistic is it to imagine drug syndicates would melt away if drugs were legalised? Given the prevailing economic and political ethos of the West, it is most

unlikely that legalised drugs would become state monopolies. The drug business would become just another lucrative legal investment for organised crime – much as now happens in the entertainment industry (gambling, hotels, etc).

A legal market would ensure that users were getting drugs produced under proper manufacturing conditions with quality control, etc.

Illegal manufacturers will still sell adulterated products because these will be cheaper than the legal alternatives, which will almost certainly be highly taxed to curb use. For example, unlike tobacco, cannabis can be grown anywhere, so there is every chance that the illicit market will continue, undercutting heavily taxed legal supplies.

We would be able to control legal supply more easily than illegal supply and stop drugs reaching the young or vulnerable. An unregulated market would be replaced by a regulated one.

The reform lobby goes on about legalisation without answering practical questions like: Which drugs? Who is going have access to what? How do you control manufacture and distribution, the time and place of sales, marketing and sales to minors, etc? And how successful have we been at stopping alcohol and tobacco being used by the young?

4. Health impact

Whatever health harms might be caused by drugs, the harms caused by the drug laws are much worse. We can only improve the situation by legalising.

What if you were wrong? After legalisation it would be very difficult to cut consumption, however disastrous the result. A ban could be re-imposed, but many people who had been introduced to drugs during the legal period would carry on using them. We would be in a worse position than before.

More availability doesn't equal more use – cannabis use did not escalate in the US states which decriminalised the drug in the '70s. Nor does more availability mean more addiction. During the Vietnam war many US soldiers used heroin regularly; most stopped when they returned. Heroin was easy to obtain, but the main reason soldiers used it was because they were in a war situation.

Once they got home, they didn't use it even though they could have done so.

That's wishful thinking. More availability does mean more use and that means more problems. What the Vietnam experience shows is that when drugs are freely available, more people will use them, and

more will become addicted. You only have to look at the numbers who smoke and drink as opposed to those who use illegal drugs to know this must be true. Then look at the massive problems we already have from tobacco and alcohol. There is good evidence that the more alcohol drinkers there are, the more become problem drinkers.

What constitutes a dangerous drug is simply a value judgement that changes across cultures and eras. At various times since the Middle Ages, drinkers of alcohol and coffee and smokers of tobacco have been subjected to draconian punishments for their indulgences. At the same time, cannabis, heroin and cocaine had (and still do have) legitimate medical uses.

The laws against drugs reflect the fact that people can get into serious health and social problems with drugs like heroin and cocaine far quicker than with alcohol and tobacco. It is a major flaw in the argument for blanket legalisation to treat all drugs the same. There are significant pharmacological differences between drugs and to suggest, for example, that crack is the same as coffee is ridiculous.

Despite our knowledge of their harmful effects, alcohol and tobacco are freely available – why not other drugs?

Even if illegal drugs were 'only' as harmful as alcohol and tobacco, why make even more harmful drugs available?

The attempt to ban alcohol in America in the 1920s was a prime example of how the law harmed people's health. Many died through drinking 'bathtub gin' and other poorly made alcoholic drinks.

From a public health point of view, Prohibition was more successful than generally assumed. The number of heavy users fell as did the incidence of cirrhosis – only to rise when alcohol was re-legalised.

Given credible information, people will avoid using drugs they believe are dangerous, just as many have reacted to the knowledge that smoking can kill.

So it seems particularly invidious to encourage the use of other smokable drugs, such as cannabis. This could undo the good that has been done through anti-smoking education.

By making cannabis illegal and treating it the same as heroin and cocaine, we undermine the credibility of drug education in the eyes of young people.

Any government legalising cannabis would be sending out the message to society that intoxication is OK. ○

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3. Canada. *Commission of Inquiry into the Non-Medical use of Drugs. Cannabis* [Le Dain Report]. 1972.

4. USA. *National Commission on Drug Abuse. Marihuana – a signal of misunderstanding* [Shafer Report]. 1972.

5. UK Advisory Council on the Misuse of Drugs. [unpublished 1979].

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7. United Nations. *Commentary on the Single Convention on Narcotic Drugs*. 1973.