

Mike Goodman

Public enemy number one



The 'Great Debate' has come full circle and once again, the issue of legalisation is dominating the drug field. But what exactly is legalisation? And legalisation of what? Here, one of Britain's champions of the law reform cause seeks to clarify some very muddled thinking and, once and for all, to lay to rest the 'policy tool/civil liberties' distraction

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The debate around the decriminalisation and legalisation of drugs is undoubtedly one of the most important current discussions in the drug field. The entire future of the British response to drugs and drug misuse is founded on the discussion – or otherwise – of this policy option. For no matter how unlikely a change in domestic law may seem to be the issue of whether a change is that far away is by no means a foregone conclusion.

Paradoxically, the simplistic polarisation between 'prohibition' and 'legalisation' can actually help clarify all our thinking and allow for

an examination of the key policy options with a clear view of where Britain should be positioned and how it should get there. Regrettably, however, in recent years this debate has not served us well in elevating the understanding of practitioners, policy makers or the public about one of the most important social questions of the day.

For this failure I do not blame that traditional bogeyman of the drug field, the media. The press, radio and television (*Panorama*, anyone?) do, of course, have much to answer for – negative imagery, simplistic and stereotypical plot lines and even blatant news creation. Even research-

ers from Radio 4's flagship *Today Programme* have no qualms about contacting Release, as one did recently, to ask for "someone to call for restrictions on the prescribing of Rohypnol".

The fence-sitters and the flaky

Nevertheless, for all their faults the media do have a keen eye for the main issue – the question of the legalisation of drugs. No amount of fence-sitting by those too timid to call for a change in the law but too guilt-ridden to support it will make it otherwise.

A particularly popular form of fence-sitting is that promoted by the 'legalisation is a red herring, legalisation is not the real question' school of sophistry. Now what exactly the 'real question' is, is apparently infinitely variable and will often depend on who is talking, what time of day it is and how much money they get from the government. Thus on any given day 'the real question' could include any or all of the following:

- the raising of standards
- the needs of young people
- the views of young people
- the need for more resources
- the need for more research

In fact, you name it and for the fence-sitters it will be more important than the number one policy tool, the number one spending priority and the number one issue of public discussion from Belfast to Brisbane.

But if in this debate the fence-sitters are at best unhelpful and at worse intellectually dishonest, it is the protagonists themselves – among whom I guiltily number myself – who are so often to blame for the paucity of the debate.

It is bad enough having to contend with ranters and ramblers who can bore the audience half to death before getting to their infinitely irrelevant point, without also having to contend with flaky thinking and blind alleys from those who ought to know better. And flaky thinking is no respecter of ultimate rights or wrongs – we are all guilty of it.

Quite simply, we are neglecting our responsibilities by perpetuating notions which often defy both common sense and hard evidence. By indulging in arguments which are at best simplistic and at worst misleading or erroneous, it is little wonder

Drug offenders in the UK, 1966-1995

| YEAR | NUMBER |
|------|--------|
| 1966 | 1397 |
| 1967 | 3024 |
| 1968 | 4243 |
| 1969 | 6095 |
| 1970 | 8800 |
| 1971 | 10844 |
| 1972 | 13988 |
| 1973 | 14977 |
| 1974 | 12532 |
| 1975 | 11846 |
| 1976 | 12754 |
| 1977 | 12907 |
| 1978 | 13604 |
| 1979 | 14339 |
| 1980 | 17158 |
| 1981 | 17921 |
| 1982 | 20356 |
| 1983 | 23442 |
| 1984 | 25240 |
| 1985 | 26958 |
| 1986 | 23905 |
| 1987 | 26278 |
| 1988 | 30515 |
| 1989 | 38415 |
| 1990 | 44922 |
| 1991 | 47616 |
| 1992 | 48924 |
| 1993 | 68480 |
| 1994 | 85691 |
| 1995 | 93631 |

that so many words have led to so little action. I have little doubt that we have all witnessed examples of flaky hot air from dinner party to debating theatre, but I do have my own favourite top ten flaky ideas (spot which side they come from).

- Harm reduction is the number one reason for legalisation
- Linking the therapeutic use of cannabis and hemp product lobbies with the issue of the recreational use of cannabis
- If we knew then what we know now, we would have banned alcohol
- The law ought to change because everybody breaks it
- The gateway drug theory
- The illegal status of cannabis makes users more likely to use heroin
- Education stops people using drugs
- Legalisation means the blanket withdrawal of legal controls
- Decriminalising some drugs would make other more dangerous drugs even more attractive
- Legalisation would inevitably lead to greater levels of drug dependency

Informed choice

The starting point for the case for the legalisation of drugs is an old one, older in fact, than the prohibition of drugs. Quite simply, it is that the criminalisation of drug users conflicts with the individual civil and human rights of citizens in a free society.

It is a fundamental principle of such a civilised society that citizens should have the right to take acceptable risks with their own lives providing they do not harm anybody else. This principle is not only reflected in the American *Declaration of Independence* but is also one of the fundamental building blocks of liberal democracy, informing the development of all civilised western governments since the eighteenth century. As John Stuart Mill, wrote in his classic libertarian text, *On Liberty*:

"The only purpose for which power can be rightfully exercised over any member of a civilised community in to prevent harm to others".

Criminal sanctions against drug users contradict this principle and represent an unwarranted and unnecessary intrusion by the state into the realms of individual decision-making. Although there may be circumstances in which citizens must

be 'protected from themselves' this can only be determined in accordance with the relative harms and risks which they may generate and their ability to make informed decisions about these risks.

This is the key issue at the heart of the legalisation debate – everything else is either secondary or supplementary, and we have to be open and honest about that. And, as is obvious,

Criminalisation

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it is a universal issue, one which has ultimately brought about changes to the law on gambling, abortion, the age of consent, suicide and obscenity. The reform of drug law is simply one more issue in this 'civil liberties' package.

Living with risk

Hand in hand with the principle of informed choice is the issue of 'living with risk'. This demands an element of pragmatism on the part of government and lawmakers. The law need a degree of logic and consistency or it brings the system into disrepute.

In relation to drugs (both legal and illegal), the law fails this rationality test. Though by no means risk-free, cannabis, LSD and amphetamine are undoubtedly far safer than alcohol and tobacco. They are also far safer than just about every outdoor pursuit, from fishing to football. We live with – and in – danger every day of our lives, and yet flaky thinking has led to the expectation that, if legalised, drug use must be completely risk-free.

These principles of liberty, social tolerance and the appreciation of risk are in reality the main battleground for the debate, though they are by no means the only issues. The extent to which we could support and treat drug users better under a decriminalised or legalised system also deserves attention as does the financial saving from not pursuing cannabis users through the police cell and the court room. Similarly, the real possibility of dramatically reducing drug-related

acquisitive crime and the blight this inflicts on communities cannot be understated.

These areas shift the emphasis of legalisation away from the civil liberties arguments and towards treating the issue as a policy tool. Legalisation simply becomes 'one among many' options for dealing with drugs, and as such, these factors can make 'legalisation' more palatable to politicians. If it can be shown to have merit, the pragmatic argument goes, it's a valid option.

All well and good, and we are just as entitled to use all the arguments at our disposal as the supporters of the status quo. Nevertheless, we are also required to be intellectually honest, and all the 'policy tool' arguments have to complement – and *not* replace – the one overriding reason for law reform: civil liberties.

Tell you what I want . . .

Yet notwithstanding all the arguments, the real test and the challenge for the 'pro' lobby is how a reformed system would work in practice.

It is perhaps worth clarifying at the outset what is meant by the catch-all of 'legalisation'. The term is generally used as a point of reference rather than of precision, referring to the desire to see a move towards the licensing and control of psychoactive substances within the law rather than outside it. For all bar the most extreme free market libertarians, this encompasses a diverse regime of approaches

for different drugs.

There are several options for a reformed system, and numerous variations within those options. Essentially, there are four main models (*see chart*): prohibition (the status quo), 'quasi-prohibition' or de-penalisation, decriminalisation (possession legalised, supply not) and full legalisation, which brings supply and possession within the law.

permitted cultivation for personal use.

Other drugs would be treated differently. Ecstasy and LSD could be licensed for sale in more controlled environments than cannabis (such as clubs). We could also finally put our money where our mouths are and stand by the principles of the 'British System', making heroin

debate is up its own cul-de-sac designed for equally vacuous and irrelevant 'talk' shows, there are clearly some welcome signs that the debate is becoming more sophisticated and meaningful. Engaging on the policy option front (even perhaps compromising sometimes) is one recent example of this, and so – although there may not quite be a wind of change yet – our hair might just be getting ruffled by a slight breeze.

This breeze has a number of sources. Firstly, the constant media focus on the issue may, ironically, have allowed the public the time to internalise the debate, distance themselves from preconceived notions and prejudices and examine the options for change with a dispassionate eye.

Secondly, the cross currents from this (largely) press attention have added weight and volume – and even respectability – to the legalisation position. *The Independent on Sunday's* bold campaign to decriminalise cannabis is the obvious example, but serious examinations of the case for legalisation have appeared in other broad sheets, gaining credibility for the debate.

Add to this the recent Rowntree report on young drug users, the Swiss referendum to prescribe heroin (watch Blair's predilection for referenda), the Police Foundation's 'Royal Commission *manque*' and even – in the generous spirit of our times – the Drug Czar team (we could have done a lot worse), anyone could be forgiven for thinking that "events, dear boy, events" are conspiring towards reform.

If we who call for change can but only marshal our arguments, strip away the detritus of flaky thinking and develop a viable programme of national and international implementation perhaps through a formal committee of inquiry, then we may just have reform within our grasp ■



In a British reformed system, cannabis would almost certainly be licensed and sold in much the same way as alcohol is now, with tough restrictions on promotion, drugged driving and sale to minors. Whatever the model, a step-by-step approach to reform is essential, and so an interim period of decriminalisation could precede these measures, which

available on prescription for those with a proven addiction. Alternatively, if society wished to draw a line under certain elements of legalisation, medical and social evidence is vital if the decisions are to stand up. If the research really did seem to justify a ban, personal possession (remember JS Mill) could still be decriminalised. This is already the case in the UK for steroids and poppers.

Pipe dreams?

Despite the cynicism in some quarters that the legalisation

The 'policy tool' arguments have to complement – and *not* replace – the civil liberties argument

