legalize it? a bulletin from the war on drugs

Discontent over the efficacy and costs of America’s war on drugs has led to calls for drug legalization. But this course, too, has its pitfalls. The wisest policy may be to “do less harm.”

The explosion of crack cocaine use in the mid-1980s set off a fierce debate in the United States. In the midst of calls to crack down on drug users and suppliers, a formerly politically unpalatable proposal emerged: drug legalization. Advocates argue that enforcing the drug laws has fattened the wallets of drug gangs, increased drug-related violence, corrupted law enforcement, dissuaded drug abusers from seeking medical help, and in the end failed to deter drug use. It is time, these critics claim, to legalize illicit drugs, stop arresting drug users and focus entirely on treatment.

It is true that the “war” approach to controlling drug abuse and its side effects has failed. But the hope that simply legalizing drugs will work is also unrealistic. The optimal strategy is a program focused largely—and pragmatically—on reducing the damage that both drug abuse and the war on drugs inflict on users and society at large.

Legalization proposals vary across a wide spectrum. Some plans call for regulating all psychoactive substances in the same way we currently regulate alcohol. The alcohol model would legalize the possession of any and all drugs, but the...
government would control how they can be sold. Others endorse dispensing certain substances by prescription to the drug-dependent. The most radical proposals call for no state control whatsoever. This laissez-faire model of full decriminalization is endorsed by libertarians. Other decriminalization approaches are limited to certain drugs—usually marijuana—in small quantities, and to possession, not sale or distribution. Advocates of these various models agree that law enforcement should not and cannot solve the problem of drug abuse. They argue that the current system causes harm, which some form of legalization would alleviate, and that drug use would not skyrocket under legalization.

“Harm reduction”—more a strategy for evaluating policies and their consequences than a specific proposal—is often confused with legalization. Harm reductionists are pragmatic rather than programmatic. They weigh costs and benefits, focus more on the health of the community than on individual rights, tend to be cautious or even pessimistic about some legalization models and argue that policy should be set on a drug-by-drug basis. According to this approach, the goal of drug policy is to reduce death, disease, predatory crime, and other costs, not to attain some idealized outcome.

legalize it?

Would any form of drug legalization work better than the war on drugs? In what specific ways might legalization succeed or fail? While most of what is written on drug laws has been polemical, serious researchers have studied the possible consequences of changes to the law. Most focus on the practical effects of various policy proposals, leaving the moral issues to philosophers, politicians and pundits. One strategy is to look at the history of drug regulation.

drug policy and drug use, past and present

Journalist Edward Brecher described 19th-century America as “a dope fiend’s paradise.” For much of the 1800s, few jurisdictions controlled psychoactive substances. During the first half of the century, children were permitted to purchase and drink alcohol, politicians and the military distributed liquor, and work in rural planting fields and urban workshops was usually accompanied by more than one pull at the jug. Tax records indicate that in 1830, per-capita alcohol consumption was more than three times what it is today. As for narcotics, the problem of addiction has hardly improved from the days when these substances were legal. During the 19th century, under a laissez-faire policy, there were at least as many narcotic addicts as there are today. Historians estimate that at the end of the 19th century there were at least 300,000 opiate addicts, most of whom started using drugs to treat medical problems. That amounts to about 3.7 addicts per 1,000 people. Today, about 1 million people are addicted to heroin, which is approximately 3.55 per 1,000 people.

But a comparison between then and now should take into consideration more than numbers alone. Under a more or less laissez-faire 19th-century legal system, few addicts committed crimes to pay for their habit, the criminal-addict subculture was small and violent gangs did not distribute drugs. Today, our laws prohibit and penalize the possession and distribution of nearly all psychoactive substances for recreational purposes—and some for any reason. Each year, we arrest 1.5 million people for drug offenses, and between 300,000 and 400,000 drug offenders reside in state and federal prisons, more than the number of violent offenders. Today, about one-third of state prison inmates and half of federal inmates are serving time for drug crimes. There are more than 15 times as many people in state prisons for drug crimes now than there were in 1980, and the proportion of all state prisoners who are drug offenders has quadrupled. Likewise, federal prisons house four times more drug offenders now than in 1980, and the proportion of all federal prisoners who are drug offenders has doubled. Comparatively, the United States incarcerates more drug offenders (150 per 100,000 people) than the European Union does for all crimes put together (fewer than 100 per 100,000). It seems the social costs of drug use are higher than ever.

Perhaps the fear of arrest and imprisonment discourages potential users from taking up the joint, pipe or needle. Supporters of prohibition consider Reagan’s war on drugs a...
success, because use—especially among adolescents and young adults, which had shot up during the permissive 1960s and 70s—declined significantly and spectacularly during the 1980s. (Ironically, the crack epidemic hit precisely when casual, recreational drug use declined.) Yet, beginning in the early 1990s, rates of recreational drug use increased again among young people. (After 2000, they declined a bit.) Another blow to advocates of a law enforcement approach is that today American schoolchildren are more than twice as likely to use marijuana—and almost four times as likely to use other illicit drugs—as are their European peers. Also, Reagan’s drug war failed to curb supply. During his presidency, the purity of the two most dangerous illicit drugs—heroin and cocaine—increased, while their price declined. Methamphetamine, a powerful and once-popular stimulant commonly referred to as “speed,” also made a strong comeback. Moreover, “club” drugs such as Ecstasy, GHB, and Rohypnol, which were not on anyone’s radar screen a decade ago, are now widespread.

For these reasons, critics of the current system believe that drug prohibition has been a failure. Legalizers believe that enforcement of drug laws has untoward social side-effects. They argue that the prohibitions more than the drugs are responsible for the crime, violence and medical pathology. And they think the solution to the substance abuse problem is legalization. Under close scrutiny, however, the evidence does not always back up their claims.

**Lessons from Alcohol Prohibition**

Critics of the drug laws often point to national prohibition of alcohol in the United States as evidence that banning illicit substances does not work. Actually, Prohibition (1920-33) offers a complex lesson. Evidence on cirrhosis of the liver and hospital admissions for alcohol-related dementia indicates that alcohol consumption almost certainly declined during Prohibition—mainly among the heaviest drinkers. (Interestingly, these measures of heavy alcohol consumption began to decline before both state and federal prohibitions were imposed.) Tax records indicate that American adults drank an average of two gallons of absolute alcohol per year before Prohibition. During 1934, the first full year after Prohibition was repealed, this figure came to just under one gallon, suggesting that the experience of Prohibition deterred drinking even after it became legal again. The first lesson we learn from Prohibition is that criminalization can work—at least partially—to discourage use.
Deterrence aside, Prohibition proved a costly mistake. It enriched and empowered organized crime, increased murders, generated disrespect for the law, encouraged corruption among government officials, deprived the government of tax revenue and drove people to drink toxic “bootleg” substitutes. The second lesson of Prohibition is that outlawing illicit substances may generate damaging unanticipated consequences.

The fact is, most Americans did not regard alcohol consumption as a sin. When state referenda were held, voters chose to repeal rather than continue Prohibition by 15 million to 4 million votes. Alcohol was a part of the lives of many Americans—something that is untrue today of heroin, cocaine or speed. Hence, Prohibition offers a third lesson: behavior that is in the mainstream of American culture probably cannot be successfully prohibited. But behavior that runs against the grain may be an altogether different matter.

the lesson of marijuana decriminalization

Possessing small amounts of marijuana has been decriminalized—or, to use a term coined by Robert MacCoun and Peter Reuter, “depenalized”—in 12 states. This means that, if apprehended with pot, users cannot be arrested, will not serve jail or prison time, and will have no criminal record. Instead, they may have their stash confiscated and be required to pay a small fine. (Marijuana possession in any quantity—approved scientific research excepted—remains illegal according to federal law.) Surveys as recent as an October, 2002 Time/CNN poll show that 7 out of 10 Americans favor assessing fines over jail time.

Most policy analysts believe—based on systematic before-and-after comparisons—that removing criminal penalties on small-quantity possession did not open a floodgate of marijuana use in the depenalized states. Year-by-year changes in use in the decriminalized states basically follow the same up-and-down patterns as the nation as a whole. Also, many law enforcement officials feel that decriminalization has saved the states money at relatively little risk to public health.

The Netherlands provides another case study of the consequences of legalizing marijuana. There, anyone beyond the age of 18 can walk into one of roughly 800 “coffee shops” and purchase up to five grams of marijuana or hashish, a bit less than a quarter of an ounce. No “hard” drugs may be sold in these shops, selling to minors is illegal, and blatant advertising is not permitted. Studies of marijuana use in the Netherlands do not provide clear-cut evidence either for or against legalization. On the one hand, use among Dutch youth increased rather dramatically after legalization. In 1984, only 15 percent of 18-to-20 year-olds had ever used marijuana; by 1996, 44 percent had. Similarly, the percentage of
youth who had used the drug in the previous month more than doubled from 8 to 18 percent during that period. This evidence seems to support the prohibitionists’ argument.

On the other hand, usage rates have increased only modestly during the past decade and appear to be leveling off. According to surveys, rates of Dutch high schoolers using cannabis, although lower than in Ireland, the United Kingdom, and France, are among the highest in Europe. Yet, they are still considerably below the rates for high school students in the United States, where most states continue to criminalize marijuana. Clearly, the de facto legalization of cannabis in the Netherlands has not brought about a torrent of marijuana and hashish consumption, and most Dutch citizens and officials favor the current laws. In short, the experiences of the Netherlands and the United States suggest that decriminalization would not produce significantly higher levels of marijuana use. It is entirely possible that, uniquely for marijuana, nearly everyone who wants to use the drug already does so.

the economics of drug use

Legalizers typically argue that we need not worry about decriminalization making drugs cheaper and thus more enticing, because the relationship between the price of drugs and demand for them is weak or nonexistent. Economists, however, find that cost significantly influences demand for drugs. Elasticity—the variation in demand for goods as prices rise and fall—differs considerably from drug to drug. Demand for heroin drops only 0.2 to 0.3 percent for every 1 percent increase in price, but the demand for marijuana drops roughly 1 percent for every 1 percent increase in price. Cigarettes (a 0.4 percent decrease) and alcohol (a 0.7 percent decrease) fall somewhere in between.

Prohibition hugely increases the price of illicit drugs and therefore should discourage use. (Decriminalization retains penalties on distribution, sale, and large-quantity possession. Hence, even in the decriminalized states, marijuana remains fairly expensive.) Legalization would lower prices, which would probably reduce the property crimes committed by addicts (their habits would be cheaper), but it would almost certainly increase rates of use. Prohibitionists predict that tens of millions of Americans would take up cocaine or heroin. This worst-case scenario is almost certainly wildly off the mark. Use would increase the most not among current nonusers, but among the heaviest current users. Studies indicate that if these drugs were cheaper and less difficult to acquire, addicts would use them in much greater volume.

When drugs are legal, the government can use taxes to raise prices and discourage use. Current state and federal taxes on legal drugs—alcohol and tobacco—are far too low, at less than 50 cents per drink and 1 dollar per pack of cigarettes, to significantly deter drinking and smoking. Not included in that dollar is the price markup charged by cigarette companies to pay off the $200 billion that they have agreed to pay the states in a legal settlement; in effect, this is taxation by another means. Since most drug-related deaths stem from alcohol (85,000 per year, according to the Centers for Disease Control) and tobacco (440,000 per year), increasing alcohol and cigarette taxes could save lives. Whether through prohibition or taxes, policies that raise costs are a powerful way to depress demand.

Of course, financial cost is not the only way in which prohibition might reduce use. Criminalization imposes other types of costs: the extra time and effort required to get drugs and the risk of incarceration. Proponents of “absolute deterrence” believe that enforcing drug laws yet more firmly can drastically reduce or eliminate illegal drug use by locking up users and dealers and scaring off would-be violators. From that perspective, the war on drugs has been a failure, because it has been insufficiently aggressive. But “stamping out” drug use is a fool’s errand. “Stamping out”—or even drastically reducing—drug use is an unrealistic standard by which to judge the effectiveness of the drug laws. No one expects laws penalizing robbery, rape, or murder to “stamp out” those crimes.

“Relative deterrence”—a more moderate position—argues that, while prohibition cannot eliminate it, drug use would be more common in the absence of law enforcement. Imagine if any adult could freely purchase currently illegal drugs in licensed shops or markets, out of a catalogue or over the Internet. Drug use would surely increase. And it would rise significantly under almost any of the more radical forms of proposed legalization. Would such increased drug use be bad? It depends on the drug, and for some drugs, it depends on
how the drug is used and who uses it. Apparently, for alcohol, a drink or two a day can actually stimulate good health. But for tobacco, any use is harmful, and the greater the use, the greater the harm. The story is a bit more complicated with heroin and cocaine. The way they are used today is harmful, and while legalization would eliminate some features of that harm, others would remain. Hence, higher levels of use would inevitably mean higher levels of harm.

On the other hand, the more similar a system of "legalization" is to the current system of prohibition, the more the black market would step in to provide an alternative supply of illegal drugs as it does today.

harm reduction

Today, critics of the war on drugs are less likely to advocate legalization, and more likely to endorse some form of "harm reduction." There is a vast middle ground between strict criminal punishment and outright legalization. That territory should be explored, harm reductionists argue, to reduce deaths, disease, financial cost and crime. Find out what programs work to reduce harm, they urge, and adopt them. These advocates believe that better results will be achieved by being experimental, pragmatic and empirical.

The United States currently spends three times more money on law enforcement than on treatment and prevention. Harm reduction strategists suggest that we reverse the priority of these expenditures. They also advocate eliminating programs for drug eradication and crop substitution in source countries. Evidence gathered by the RAND Corporation indicates that these programs do not work. In addition, they are financially and politically costly. Tax dollars would be far better spent on more effective ways to combat addiction, such as treatment programs.

Needle exchange programs are another effective approach to reducing harm. They appear to lower rates of HIV transmission. Between 1988 and 1993, HIV rates decreased by 6 percent in major cities with needle exchange programs, and increased by 6 percent in cities without them. Critics of needle exchange have been unable to explain this phenomenon. These programs have been adopted nearly everywhere in the Western world. Yet they reach only 10 percent of intravenous drug users in the United States. In spite of favorable evaluations of the policy by expert panels—including the General Accounting Office and the Institute of Medicine of the National Academy of Sciences—and in spite of positive findings from the dozens of studies done to evaluate these programs, the federal government staunchly opposes needle exchange programs as "encouraging drug abuse." From a harm reduction perspective, such objections are counter-productive because the programs can help control a deadly epidemic.
Researchers have also conducted hundreds of studies of drug treatment. Overwhelmingly, these studies show that treatment works. Drug addicts and abusers who spend time in treatment programs—and the more time spent, the more this is true—tend to reduce their levels of drug abuse, commit less predatory crime, and live longer, healthier lives, than those who do not. Methadone maintenance has been studied particularly carefully. It cuts crime and saves lives. Equating the administration of methadone to heroin addicts with giving vodka to an alcoholic, as some critics do, is semantic hocus-pocus, harm reductionists argue. Even with cheating, enrollees significantly reduce their drug use and its byproducts, such as crime.

As with all policy research, the causal arrows are not always easy to draw, but most analysts are convinced from controlled studies that, over the long run, treatment is considerably more cost-effective than incarceration. Although failure rates are high, treatment programs reduce the total volume of illicit drug use and criminal behavior by roughly one-third to one-half. And a majority of drug abusers significantly reduce or abandon their use of illicit substances after a second, third, fourth, or fifth attempt at treatment—roughly comparable to the repeated failures following treatment for smoking.

Experimental programs that administer injected methadone are under way in the United Kingdom. Oral morphine is being tried in Austria, Australia, Switzerland and the Netherlands. In Germany, programs involving the use of codeine have been tried. Switzerland and the Netherlands have inaugurated injected heroin maintenance programs. Do they work? At this writing, we do not have definitive answers. But, if the goal is reducing harm and not simply drug use, American authorities should also be exploring such avenues.

Yet even after the facts are in, moral issues cannot be circumvented. Decisions about public policy ultimately rest on morality and ideology, because all programs result in a “mixed bag” of results, some good, some less desirable. How do we weigh the outcomes? Debate over which mixed bag is the least bad can never be resolved on strictly scientific grounds.

Many concerned citizens oppose any program that appears to condone drug use, even if it saves lives, while many proponents of legalization or decriminalization—especially free market libertarians—favor fully decriminalizing drugs, even if that results in higher rates of drug-related fatalities. Still, the sanctity of human life is a rhetorical “ace in the hole” for harm reduction proponents. It is time, they argue, to begin taking steps to save lives.

**recommended resources**


