

# CRIMINAL JUSTICE vs PUBLIC HEALTH

## Decriminalisation, legalisation and harm reduction

British policy towards illegal drugs hinges on a pragmatic compromise between the aims and priorities of criminal justice and public health. Hence, there is a fair consensus that policy and services which aim to reduce drug related harm rather than stick to 'all or nothing' abstinence goals, show how a good mix of responsible but humane policy and practice can be achieved.

Of course, some people argue that a response which 'goes easy' on drug users is colluding with their anti-social behaviour and encouraging further drug problems. The 'right' response is 'zero-tolerance', heavier penalties, more resources for the 'war on drugs' and no sympathy for its casualties. But there is yet another position, which says the drug problem we have is one of our own making; the answer they say is greater liberalisation - decriminalisation or even legalisation.

### The decriminalisation and legalisation arguments

The decriminalisation proposal would argue for tolerance of some drug use, particularly cannabis possession and retail sale, and emphasise health rather than enforcement responses to other drugs. This is essentially what has been popularised as the Netherlands model - a policy aiming to separate the cannabis market from the market in more harmful drugs, presenting what Dutch law sees as 'unacceptable risks'. Cannabis is still illegal, the laws of the Netherlands are in line with international conventions but possession of small amounts of up to 30 gms is a petty offence for which it is simply very unusual to be arrested! So, this is a case of de-criminalisation, not legalisation. As in the UK, stiff penalties and policing are still aimed at other drugs while a health programme (with methadone maintenance and clean syringes) has expanded in response to HIV/AIDS (as transmitted between injecting drug users).

The more radical proposition - that of legalisation of all drugs - has no correspondence with actual policy anywhere. So what do its advocates mean - and what are the critical responses to it?

Basically, pro-legalisers argue that if drugs were not illegal then there would be no criminal profit to be made, so organised crime would withdraw; violent gang 'turf wars' would cease; the

level of drug related crime would fall dramatically or disappear; drug users would not fear the law and would be much more willing to approach health and social work agencies for check-ups, HIV tests, advice and counselling.

In response, critics argue that there are three principal issues to consider; these are 1) consumption; 2) harm; and 3) the consequences of legalisation for the developing countries that produce psychoactive plant drugs, such as poppy, coca and marijuana.

Opponents of legalisation generally argue that it would lead to large scale increased use (ie more consumption) and that this will result in higher health costs to individuals, and medical costs to the state; families will suffer if a user becomes dependent on freely available - but not 'free' - drugs; and intoxicant related crimes of violence, motor accidents etc would rise.

While some legalisers suggest that consumption would stay the same or even fall, others accept that ease of availability is a key factor in why people drink alcohol and smoke cigarettes and therefore easily available drugs might attract new users. However, this licit drugs business would be regulated, they argue, priced at a commercial rate and taxed and the duty generated would then go to government to support health, education and counselling services aiming to discourage drug use; products would be manufactured to be sold only at certain levels of strength and with the added advantage that they would be pure and untainted by some of the dangerous additives that illegal drugs may be cut with.

In some ways these arguments are persuasive, but there are, of course, problems. Criminal entrepreneurs are not so easily diverted from potential 'earners'. For example, tobacco smuggling and illegal bookmaking thrive, in part because there is profit in avoiding taxation. Furthermore, then it is unlikely that criminal entrepreneurs will not find and encourage a market for stronger preparations. Thus, the claims that criminal involvement will disappear seem fairly unconvincing.

To turn to the probable impact upon the countries that grow plant drugs. At present such cultivation is carried out by small scale farmers, plant drugs being a cash crop easier to grow and giving a higher return than many other crops (hence the failure of most crop substitution programmes which introduce crops

demanding more attention and yielding less harvest and income). If sale and use of drugs were made legal, then cultivation would have to be legal too and plant drugs would offer the same profit potential (perhaps more) as other crops grown commercially in similar developing countries, eg tobacco, tea, coffee. The consequences would be large scale farms, owned by multi-nationals, specialising in one commodity for export, using labour hired by the week or month. The traditional patterns of small scale farming would be less or no longer viable and poverty on a large scale would result.

Thus 'decriminalisation' has its merits but these are limited, whilst 'legalisation' has inherent problems that overshadow proclaimed benefits. In contrast, what many in the criminal justice system see as the preferred path is 'harm reduction'.

### Harm Reduction

The idea is simple: if a person is determined to persist with drug use then all efforts should be made to reduce the danger of associated risks and to minimise the harms that may follow.

And harm reduction strategies can be developed in various directions eg to avoid health harms: prevent the spread of HIV, Hepatitis B and other infections by making clean syringes available through needle exchange schemes, instructing users how to inject safely so they don't destroy veins or hit an artery; and by easing the prescribing of drugs for maintenance of dependent users so that they do not have to obtain street-drugs that may have unhealthy adulterants. Street-wise educational materials pass on 'safe-sex' and drug use advice. Legal harms can be minimised by informal warnings and cautions for minor drug offences instead of pulling people into the criminal justice net; and could be reduced further by lowering penalties which are currently excessively high.

Harm reduction is already well and sensibly established. Perhaps readers of CJM might like to start 'thinking the unthinkable' about what's next?

### Reading:

E. BUNING et al, eds. *Reduction of Drug Related Harm*, Routledge.  
J. INCIARDI (1991) ed. *The Drug Legalisation Debate*, Sage.

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