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The abject failure of drug prohibition

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Abstract

For more than 50 years, like most other countries Australian drug policy relied heavily on law enforcement: politicians emphasised criminal justice measures and the overwhelming majority of government expenditure in response to drugs was allocated to drug law enforcement. Yet during the last half-century, drug markets expanded and became more dangerous. Even worse, deaths, disease, crime, corruption and violence increased substantially. Evidence that supply control is effective is scant yet there is abundant evidence of its serious adverse effects. The limited data available show that drug law enforcement is not cost-effective. However, ample data confirm that drug treatment and harm reduction are effective and cost-effective. Although the heroin shortage in Australia since 2000 is one of the most pronounced and protracted decreases in heroin supply worldwide, there is little evidence that Australian drug law enforcement contributed significantly. International leaders declare increasingly that the international drug control system has failed comprehensively. For many producer and transit countries, the cost of drug prohibition has been devastating. The academic debate about drug policy is now largely over. A number of countries have begun searching for politically feasible alternatives. Whether it is fair and just for the majority of a community to punish those with a minority taste in drugs is the most fundamental question in drug policy and the case for doing so is weak. Drug prohibition has proved to be an expensive way of making a bad problem worse: its major success has been as a political strategy.

Keywords

Drug law reform, global drug prohibition, harm reduction, heroin, international drug control

Introduction

A series of international meetings in the early 20th century led to three international drug treaties (1961, 1971 and 1988) and an international drug control system (Jelsma, 2011) aiming to minimise the use of specified psychoactive drugs for recreational purposes while ensuring their availability for medicine and science. Almost all countries

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signed and ratified these treaties, requiring them to pass legislation imposing criminal sanctions on persons found selling or using these drugs. Global drug prohibition was gradually intensified over the last hundred years.

The debate about drug prohibition involves three major strands. First, should illicit drugs be defined as primarily a criminal justice issue? Second, should more pragmatic responses to illicit drugs be adopted, such as, heroin-assisted treatment, safer injecting facilities or the use of civil rather than criminal sanctions for small-scale drug possession? Third, should illicit drugs be regulated and if so which ones and how?

Weatherburn argues (Weatherburn, 2014) that drug prohibition has been an effective policy while advancing plausible mechanisms for its effectiveness. But Weatherburn has not demonstrated that drug prohibition has reduced drug production, drug consumption or drug-related harms. Nor has he demonstrated that the unintended negative consequences have been modest or that prohibition has been cost-effective. Churchill observed that 'however beautiful the strategy, you should occasionally look at the results'. This paper demonstrates that drug markets have expanded and become more dangerous while drug policy outcomes have deteriorated. The conclusion is inescapable: drug prohibition has failed abjectly.

Analysis

Drug policy adopted by Australia and most other countries

For over half a century, political rhetoric about illicit drugs has been punitive and strongly emphasised criminal justice actions. On 17 July 1971, US President Richard Nixon declared a 'War on Drugs' (Vulliamy, 2011) with this term still in use until recently. The Howard government in Australia adopted a 'Tough on Drugs' approach in November 1997 (Australian Government, 1997). The United Nations Office on Drugs and Crime (UNODC) in 1998 even declared 'a drug free world: we can do it!'

Governments allocate the overwhelming majority of their expenditure in response to illicit drugs to law enforcement measures (such as customs, police, courts and prisons) with limited funding for health and social interventions. This is demonstrated in the only two available Australian estimates (Moore, 2005; Ritter, McLeod, & Shanahan, 2013). Of commonwealth, state and territory government expenditure in response to illicit drugs in 2009–2010, 66% was allocated to drug law enforcement, 21% to drug treatment, 9% to prevention and only 2% to harm reduction (Ritter, McLeod, & Shanahan, 2013). The distribution of resources in the few other countries where such data are available is similar. Criminal justice measures, even if supported by limited or no evidence, are generally adopted quickly and funded generously. But health measures supported by strong evidence, such as needle syringe programmes, methadone or buprenorphine treatment or heroin-assisted treatment, are generally only implemented partially after long delays and with parsimonious funding. Often they are rejected entirely.

On 2 April 1985, all Australian governments adopted 'harm minimisation' as the official national drug policy. This commitment remains. The term 'harm minimisation' was defined in the late 1990s as the combination of supply reduction, demand reduction and harm reduction.

The development of drug markets

During the last half-century, drug markets have expanded and become more dangerous.

Production

Global opium production increased from about 1000 metric tons in 1980 to almost 9000 metric tons in 2007 (UNODC, 2010a). In the decade after UNODC declared in 1998 the goal of achieving a drug free world, global opium production increased from 4346 metric tons to 8890 metric tons and cocaine production increased from 825 metric tons to 1024 metric tons (UNODC, 2010b).

Consumption

The number of countries reporting serious drug problems has increased steadily in the last century. In the first half of the 20th century, only one country (USA) reported serious drug problems. In the third quarter of the 20th century, almost every developed country began reporting serious drug problems (including Australia). In the final quarter of the 20th century, almost every developing country (outside Africa) began reporting serious drug problems. In the early years of the 21st century, over a dozen countries in Africa have begun reporting serious drug problems.

Availability

Despite substantial government expenditure on supply control, illicit drugs remain relatively easy to obtain. The overwhelming majority of drug users in Australia in 2012 reported that obtaining drugs was 'easy' or 'very easy' (heroin 87%, 'speed' 80%, base 79%, ice 84%, cocaine 70%, hydroponic cannabis 94% and bush cannabis 81%) (Stafford & Burns, 2012). In annual surveys of 12th graders (17 year olds) in the USA since 1975, the proportion reporting that obtaining marihuana was 'easy' or 'fairly easy' ranged from 81.1% (2009) to 90.4% (1998) (Johnston, O'Malley, Bachman, & Schulenberg, 2012).

Price

Despite substantial government expenditure on supply control, prices of street drugs have been falling steadily for decades. A recent longitudinal study of seven regional and international surveillance systems monitoring price and purity concluded 'in the USA, the average inflation-adjusted and purity-adjusted prices of heroin, cocaine and cannabis decreased by 81%, 80% and 86%, respectively, between 1990 and 2007… Similar trends were observed in Europe, where during the same period the average inflation-adjusted price of opiates and cocaine decreased by 74% and 51%, respectively. In Australia, the average inflation-adjusted price of cocaine decreased by 14%, while the inflation-adjusted price of heroin and cannabis decreased 49% between 2000 and 2010. During this time, seizures of these drugs in major production markets generally increased' (Werb et al., 2013).

Decreasing drug prices indicate that drug law enforcement failed to achieve a cardinal objective of increasing prices. This substantial fall in street drug prices in the USA occurred despite a 10-fold increase (from 50,000 to 500,000) in the number of inmates serving sentences for drug-related offences and an 8-fold increase in expenditure on international drug control (from US$ 0.5 billion to US$ 4 billion per year) (Walsh, 2004).

Weatherburn argues (Weatherburn, 2014), without providing supportive data, that drug law enforcement increased the price of street drugs and that increased prices reduced consumption. He argues by analogy with tobacco that reduced consumption of illicit drugs is likely to reduce harm. Although the notion that increased enforcement should reduce consumption and therefore harm is inherently plausible, the supporting evidence is weak. If supply control is as effective as claimed, what can the explanation be for the increase in global drug production and consumption, the substantial fall in price and increase in purity, the steady increase in the number of newly identified psychoactive drugs and the increase during the last half century in deaths, disease and crime? The best that supporters of conventional drug policy can now argue is that prohibition may have produced poor outcomes but alternative policies would be even worse. The longer outcomes continue to steadily deteriorate, the more attractive alternative policies appear.

Wetherburn's views in his paper conflict with his own empirical findings where he concluded 'variations in the average amount of heroin seized exert no effect on the price, purity or availability of heroin at street-level. They also show that the rate of arrest for heroin use and/or possession exerts no effect on the street-level price of heroin or on the rate at which heroin users seek methadone treatment' (Weatherburn & Lind, 1995). Weatherburn has also been sceptical publicly about the impact of drug law enforcement on drug markets noting that 'research had so far been inconclusive on the long-term impact of drug law enforcement.... Drug seizures in the early 1990s had had no impact on price, purity or availability of the drug...' (Sydney Morning Herald, 2010).

Purity

The recent study of regional and international surveillance systems concluded that in the USA, the purity of heroin, cocaine and cannabis increased by 60%, 11% and 161%, respectively, between 1990 and 2007 (Werb et al., 2013).

The increasing hazardousness of the drug market

Under current drug policy, the drug market has become more dangerous. The number of newly identified psychoactive substances in the European Union increased from 24 in 2009 to 73 in 2012 (European Monitoring Centre for Drugs and Drug Addiction, 2013). After three Asian countries banned opium, opium smoking disappeared within a decade (Westermeyer, 1976). But unfortunately this relatively benign practice was replaced by the much more dangerous practice of heroin injecting. The paper reporting these findings was aptly entitled 'the pro-heroin effects of ant-opium laws'. Opium smoking had been largely confined to elderly men but when young and sexually active men began injecting heroin, this created the conditions for an HIV epidemic in the most populous region of the world. More dangerous drugs driving out less dangerous drugs has been observed under prohibition on other occasions.

The adverse consequences of illicit drug use and drug policy

The adverse consequences of illicit drug use have worsened considerably for drug users, their families and communities. Drug prohibition has not protected the health and wellbeing of communities.

Deaths

The number of heroin overdose deaths in Australia increased from six in 1964 to 1116 in 1999 and the rate of heroin overdose deaths in Australia increased 55-fold between 1964 and 1997 (Hall, Degenhardt, & Lynskey, 1999). Thus the increase in heroin overdose deaths occurred after and not before the Australian government banned the production and importation of heroin in 1953.

Disease

Measures required to reduce HIV and hepatitis C infections among people who inject drugs were fiercely resisted in many countries. The introduction of needle syringe programmes required civil disobedience in Australia, like many other countries. Australia managed to maintain a low prevalence of HIV and reduce the incidence of hepatitis C not because of, but in spite of drug prohibition.

Property crime

It is generally accepted that property crime in many countries increased in recent decades as an unfortunate side effect of drug prohibition. The Strategy Unit, a Whitehall research centre available to the UK Cabinet, concluded in a confidential report that 'drug use is responsible for the great majority of some types of crime, such as shoplifting and burglary' (including 85% of shoplifting, 70–80% of burglaries, 54% of robberies) (Strategy Unit Drugs Report, 2003).

Violent crime

While the link between property crime and drugs is closer than the connection with violent crime, there is also a well-established link between drugs and violence. The 36 gangland figures murdered in Melbourne between 1998 and 2010 were involved in methamphetamine trafficking. A recent comprehensive review of the relevant scientific literature examined the impact of drug law enforcement on drug market violence. Of the 15 suitable studies identified, 13 (87%) reported a likely adverse impact of drug law enforcement on levels of violence. Increasing drug law enforcement resulted in increased rates of drug market violence (International Centre for Science in Drug Policy, 2010).

The incoming Mexican President (Felipe Calderon) declared a War on Drugs on 1 December 2006. When he left office in 2012, drug traffickers, the police or the Army had murdered over 60,000 Mexicans. Calderon began speaking of the need for a drug policy more consistent with 'market mechanisms', seemingly a euphemism for legalisation. Increased violence was also an adverse consequence of alcohol prohibition in the USA (1920–1933).

Corruption

Weatherburn acknowledges that the NSW Wood Royal Commission in 1997 identified extensive police corruption linked to enforcement of drug laws. Several other Royal Commissions in Australia in recent decades (Costigan, 1985; Fitzgerald, 1987; Kennedy, 2004) have drawn similar conclusions. Barry Moyse, then Head of the South Australia Drug Squad, received a 27-year prison sentence for drug trafficking in 1987. Mark Standen, then Assistant Director of the NSW Crime Commission, received a 22-year sentence for drug trafficking in 2011. At least three of the 36 murders

of methamphetamine dealers in Melbourne (1998–2010) appear to have involved high-level police corruption. In 2012, the HSBC bank paid a fine in the USA of US$ 1.9 billion for laundering drug money (Reuters, 2012). Pervasive corruption was also an adverse consequence of alcohol prohibition in the USA (1920–1933).

Serious collateral damage from drug prohibition

Even the UNODC, charged with implementing drug prohibition, has conceded that 'global drug control efforts have had a dramatic unintended consequence: a criminal black market of staggering proportions. Organized crime is a threat to security. Criminal organizations have the power to destabilize society and Governments. The illicit drug business is worth billions of dollars a year, part of which is used to corrupt government officials and to poison economies' (UNODC, 2013).

The comparative effectiveness and cost-effectiveness of drug supply control and treatment and harm reduction

It is difficult to find evidence supporting the effectiveness of drug law enforcement. The limited data available indicate that drug law enforcement is also not cost-effective. In contrast, there is substantial data, much of high quality, demonstrating that drug treatment and harm reduction are effective and cost-effective.

Benefits per US dollar from interventions to reduce harm to the USA from cocaine in 1992 were estimated to be 52 cents for domestic enforcement (customs and police), 32 cents for interdiction of refined cocaine transported from South to North America, 15 cents for source country control (eradication of coca plants in South America) but US$7.46 for drug treatment of people with problems due to cocaine (Rydell, & Everingham, 1994). US government expenditure in response to cocaine in 1992 was estimated to be US$ 13 billion of which 73% was allocated to domestic enforcement, 13% to interdiction, 7% to source country control but only 7% to drug treatment, the only intervention to achieve a positive return on investment (Rydell & Everingham, 1994).

The benefits were estimated of a US$ 1 million (1992) investment on additional enforcement by agencies against a representative sample of drug dealers. Mandatory minimum sentences for dealers reduced US cocaine consumption by an estimated 13 kg. Prison terms of conventional length reduced cocaine consumption by over 27 kg. But an additional US$ 1 million spent on treating heavy cocaine users was estimated to reduce cocaine consumption in the USA by over 100 kg (Caulkins, Rydell, Schwab, & Chiesa, 1997).

Expanded access to methadone maintenance was found to have an incremental cost-effectiveness ratio of less than US$ 11,000 per Quality-Adjusted Life Year, greater than many widely used medical treatments (Barnett & Hui, 2000). Heroin-assisted treatment is less cost-effective than methadone or buprenorphine treatment but it is still cost-effective when provided to a small minority with very severe dependence who have also proved refractory to multiple other treatments.

A review of the effectiveness and cost-effectiveness of needle syringe programmes in Australia estimated that these had prevented 25,000 HIV and 21,000 hepatitis C

infections (by 2000), 4500 deaths from HIV and 90 deaths from hepatitis C (by 2010) resulting in savings (by 2000) of between AU$ 2.4 and AU$7.7 billion from an investment between 1991 and 2000 of AU$ 130 million (Health Outcomes International Pty Ltd., The National Centre For HIV Epidemiology and Clinical Research, & Drummond, 2002). A subsequent study confirmed these findings estimating that an investment of AU$ 243 million between 2000 and 2009 achieved short-term health savings of AU$ 1.28 billion. Thus for every AU$ 1, invested savings amounted to AU$ 4 in healthcare costs and with overall savings of AU$ 27. (National Centre for HIV Epidemiology and Clinical Research, 2009).

Drug law enforcement and heroin shortages

In the half-century or more since prohibition became the global drug policy, there have only been about half a dozen national heroin shortages. The heroin shortage which began in China after the 1949 revolution and lasted till China opened her borders in the late 1970s seems more like to have been due to an upsurge in nationalism and a sense of renewal than supply control measures. The USA experienced a brief heroin shortage in the 1970s after supply routes in Turkey and France were disrupted. Little heroin has reached New Zealand since a criminal syndicate was broken up in the early 1980s. Singapore claims to have almost eradicated heroin use for decades but falsification of data by some officials has been conceded recently. Overall, despite substantial government expenditure, the small number of heroin shortages worldwide is an unimpressive record of achievement for supply control.

A heroin shortage beginning in Australia in 2000 and still continuing has been studied extensively. Few now accept the initial claims that drug law enforcement was the most plausible factor responsible. A study by this author concluded ‘evaluation of the heroin shortage in Australia suggests that the most severe, longest lasting, and best documented heroin shortage in the world cannot be confidently attributed, solely or largely, to improved domestic drug law enforcement. At best, improved domestic law enforcement may have made a smaller contribution than multiple other factors.... Evidence that more effective domestic drug law enforcement contributed to the heroin shortage is minimal but this factor cannot be excluded as contributing to some extent’ (Wodak, 2008).

The UK Strategy Unit was also sceptical of the claims that drug law enforcement was largely responsible for the Australian heroin shortage noting that ‘the cause of the drought is unclear

- the Australian government argued that law enforcement played a key role
- but there were also severe droughts at the same time in source countries
- and the drought may have been due to marketing by Asian crime syndicates to promote methamphetamines.’ (Strategy Unit Drugs Report, 2003).

Expert opinion

In the past few years, growing numbers of international leaders including retired and serving presidents, prime ministers and senior police have commented publicly that they

regard current global drug policy as a comprehensive failure. Some Latin American leaders from producer and transit countries have been especially outspoken. The Global Commission on Drug Policy comprising more than 20 international leaders including a former UN Secretary General, five former Presidents and a former US Secretary of State noted in 2011 that 'the global war on drugs has failed, with devastating consequences for individuals and societies around the world' (Global Commission on Drug Policy, 2011).

UN Secretary-General Ban Ki-Moon said '. . .many countries impose criminal sanctions for same-sex sex, commercial sex and drug injection. Such laws constitute major barriers to reaching key populations with HIV services. Those behaviours should be decriminalized, and people addicted to drugs should receive health services for the treatment of their addiction' (Ki-Moon, 2009).

Drug policy and consumption

A common objection to drug law reform, confidently and repeatedly asserted, is that policy liberalisation will increase consumption and therefore inevitably also increase harm. This proposition has several serious weaknesses. First, drug consumption has often increased under conventional drug policy. Second, while the relationship between consumption and harms from legal drugs is very close, it is not clear what the relationship is between consumption and harms for illegal drugs. As many of the harms of illicit drugs are unrelated to their pharmacology but closely related to their black market distribution, the relationship is likely to be poor. Third, even if drug law reform did increase consumption and harm, the critical consideration is the relative magnitude of benefits and negatives. Fourth, most of the empirical evidence (Hughes & Stevens, 2010; Room & Reuter, 2012; Single, Christie, & Ali, 2000) indicates little relationship between the intensity of drug law enforcement and levels of consumption. A recent WHO World Mental Health Survey carried out in 17 countries found that 'countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones' (Degenhardt et al., 2008).

Post-prohibition alternatives

The intellectual debate about drug policy is now largely over. A political phase has begun. The Summit of the Americas in 2012 commissioned a report on drug policy options from the Organisation of American States. This report included drug legalisation as a legitimate policy option, the first time a multi-national organisation had considered legalisation an option. In 2012, 55% of voters in Colorado and Washington states in the USA supported ballot initiatives to tax and regulate cannabis. The schemes will start operating on 1 January 2014. In July 2013, the New Zealand parliament passed the Psychoactive Substances Bill (Psychoactive Substances Bill, 2013). After applicants have paid a licence fee and provided toxicological evidence that the risks of the drug they wish to sell are acceptably low, an expert committee considers the evidence and then lodges their decision. This system is now operating. A majority in both houses of the Uruguay parliament passed a bill in 2013 legalising cannabis cultivation and sale. The bill becomes operational in April 2014. The recent wave of drug regulatory reform in the Americas and New Zealand now surpasses the modest earlier reforms implemented by the Netherlands, Switzerland and Portugal.

Ethics

The most fundamental question in drug policy is the question least often considered: is it fair and just for the majority of a community to punish those with a minority taste in drugs (if they do not harm others by their drug use)? If this punishment is for the benefit of the minority, why are those taking even greater risks, such as tobacco smokers, hang gliders or mountain climbers, not similarly punished? If this punishment is really for the benefit of protecting others, why is it needed when all countries already have laws requiring severe criminal sanctions for people harming others? (Husak, 2002).

Conclusion

The more successful supply control becomes in forcing up prices, the more lucrative the profits of drug trafficking; but the more lucrative the profits of drug trafficking, the greater the number of new recruits to drug trafficking. This is the Achilles' heel of drug prohibition.

Illicit drugs are fundamentally a market. Where there is a strong demand for a particular drug, there is generally a supply, and if no legal source is available, other sources emerge. But black market drug supplies are inherently more dangerous for people who use drugs, their families and communities. Inevitably, societies find appetites for some goods and services unpalatable. If the unpalatable good or service is banned, and demand persists, supply emerges but by default criminals and corrupt police become the gatekeepers. The other alternative to drug prohibition is attempting to regulate as much of the supply as possible while also focusing on minimising the harm from drugs and drug policy.

The threshold question is whether drugs should be considered primarily a criminal justice issue or primarily a health and social issue. The outcome from defining drugs as a criminal justice issue is increasingly accepted to have been grossly unsatisfactory. If drugs are redefined as primarily a health and social issue, increased funding would follow. This would enable drug treatment to be expanded, improved and made more flexible.

Conventional drug policy has survived for so long despite compelling evidence of abject failure because dysfunctional policy has been good politics. But as Herb Stein said 'things that cannot go on forever, don't'.

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