

# Legalising Illicit Drugs

*All but a handful of countries signed the United Nations Single Convention on Narcotic Drugs in 1961. This treaty and two related conventions were established to prohibit the use of and trade in a range of drugs and have been used as the basis for the standardisation and enforcement of drug laws in most countries. The fundamental philosophy driving their formation and implementation is the goal of a global society free of all drugs that are deemed to be harmful, alcohol and tobacco being notable exceptions. However, nearly 60 years later, the resulting UN-driven War on Drugs has failed miserably and has inadvertently created a trillion dollar illicit drug trade controlled by international networks of powerful drug syndicates. This mistaken policy has brought about a legally sanctioned global human rights tragedy that has ruined the lives of millions of people.*

## Evidence that the war on drugs is not working

Demonstrating that the War on Drugs is not working is the fact that the use of illicit drugs and their trade has increased substantially over the years. Furthermore the growth of the drug trade has continued in spite of draconian punishments (long prison sentences and even the death penalty) that have been meted out to producers, suppliers and users of these drugs.

The main reasons why this severe, punitive global campaign to stamp out 'recreational' drug use has failed are as follows:

- *Humans have always desired psychoactive substances*

It is essential to appreciate that the centre of the fraught relationship between humans and drugs is the inherent desire of many of our species to ingest, inject or inhale a selection of substances that influence their minds (psychoactive substances). For millennia humans have used them to induce religious and spiritual experiences, enhance creativity, boost physical endurance, alleviate pain and stress, or simply for pleasurable sensations and temporary respite from life's hardships.

For aeons numerous natural substances such as caffeine-containing plants (coffee, tea, and cacao), cannabis, coca, khat, tobacco, psychoactive mushrooms and plant derivatives such as opiates, alcohol, psilocybin and cocaine have fulfilled these needs. Modern chemical advances have introduced many other substances to this psychoactive-substance inventory such as amphetamine, methamphetamine, heroin, LSD, MDMA, benzodiazepines, ketamine and others.

This primal need for some people to take psychoactive substances is at the core of the drug issue and not appreciating its importance in formulating relevant legislation has led to the ghastly situation we now find ourselves in.



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- *Aspects of drug dependence*

An important but little appreciated fact is that of those who experiment with any given psychoactive substance, roughly 80% of them will NOT carry on using that drug, while most of the other 20% will continue using that substance WITHOUT becoming dependent on it. And only about 10% of those who experiment with a drug, risk developing a substance use disorder associated with that drug. These well documented findings include culturally sanctioned drugs such as alcohol, tobacco and caffeine as well as prohibited drugs such as heroin, cocaine, crack cocaine, methamphetamine, cannabis, MDMA, LSD and others. Alcohol and tobacco products are amongst the most addictive of them all.

These crucial statistics invalidate the widespread and entrenched belief that the majority of people who experiment with drugs will become dependent on them.

The evidence has established the contrary – that only a small minority of those who use either legal or illegal drugs will become addicted to these substances.

*The evidence shows that the primary drivers of addiction are the disturbed psychological states and adverse social circumstances of individuals.*

These facts counter the prevailing narrative that illicit drugs are far more addictive than legal drugs such as alcohol and tobacco. Scientific evidence has firmly established that a small (but important) percentage of a particular population group has a dependency

risk for any given psychoactive drug, while the great majority of people are not predisposed to develop substance use disorders.

- *Psychosocial cause of substance use disorders*

Increasing scientific evidence has overturned the previously held notion that the primary cause of substance use disorders is chemical addiction. The evidence shows that the primary drivers of addiction are the disturbed psychological states and adverse social circumstances of individuals.

People with well-defined mental disorders and those who have suffered unresolved psychological ordeals are known to be far more likely to use both legal (alcohol and prescribed medicines) and illicit drugs. Similarly, many of those who are in difficult and dire social circumstances attempt to find relief in one or more psychoactive substances. Chemical dependence develops later in the addiction process and, although important in the context of rehabilitation, it is seldom the primary cause of substance use disorders.

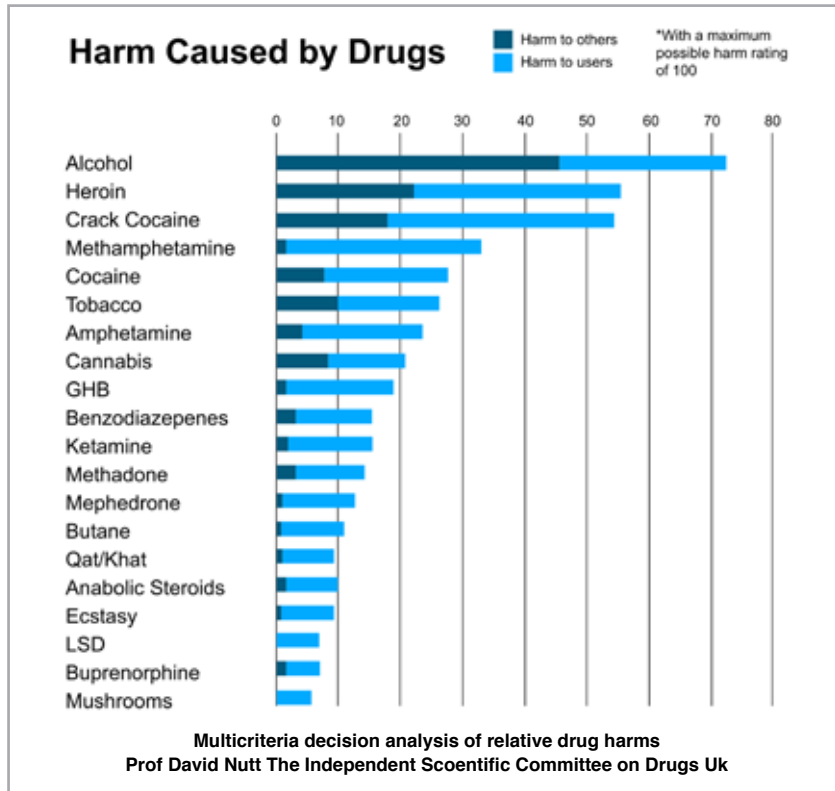
The tragic irony of the current situation is that the more the drug laws encourage the persecution of people who take illicit drugs, the more likely it is that they will seek out further drugs to make their lives more bearable. Prosecuting people who, for whatever reason, take drugs of their own choosing, makes life even more difficult for them, hampers their rehabilitation, and often results in them turning to lives involving 'real' crimes. Moreover the discriminatory harassment of those who choose to use substances other than culturally sanctioned drugs, such as alcohol and tobacco, is a clear infringement of their human rights.

As illicit drug use is a victimless crime, it should not be considered a crime at all.

- *Arbitrary selection of illicit drugs*

The UN conventions have classified the drugs into four main schedules depending on their perceived harmfulness.

The glaring omissions from these lists are two of the most harmful drugs of all, alcohol and tobacco. Excluding these two culturally sanctioned drugs from the UN lists obviously has little to do with concern over their addiction, potential or harmfulness, as alcohol and tobacco are much more harmful than most of the drugs deemed illicit by the UN.



- *Recreational users drive the drug economy*

Most people who first experiment with illicit drugs do so out of curiosity or because of peer pressure. Contrary to prevailing misconceptions only a very small minority of drug users are introduced and coerced into taking drugs by drug dealers.

A seldom discussed and uncomfortable truth is the fact that the people who are primarily “responsible” for helping to drive the drug trade are not the drug addicts (a small percentage of users) nor those who grow, manufacture and supply the drugs. As is the case with alcohol, most illicit drugs are purchased by those who use the drugs recreationally but who seldom develop substance abuse disorders. Most of the liquor industry’s profits come from people who use alcoholic beverages in moderation and not from those who have alcohol-use disorders. The illicit drug economy is similar to the alcohol economy regarding ratios of the customers with substance abuse disorders versus those recreational drug users who do not have dependence issues.

- *Drug cartels, syndicates and dealers are not the cause of the demand for illicit drugs*

Basic demand/supply economic reality predicts that if certain sectors of society want to use psychoactive drugs, there are people who will seize the opportunity to provide them with those commodities.

Because many humans have an innate desire for mind altering drugs means that there has always been and always will be a market for them. The market for alcohol and tobacco (and before the global War on Drugs, opium, cocaine, cannabis etc.) is catered for by legal industries that are subject to regulation and taxation. Before the prohibition of what are now illicit drugs, the same legal regulation and taxation policies applied to these arbitrarily outlawed substances.

*Unfortunately, while Prohibition was driven by a naive, misguided attempt to protect a nation from the 'evils' of alcohol, the contemporary drug laws, instead of being based on scientific evidence, are maintained and enforced by beliefs, political expediency, ignorance, corruption and fear.*

Unfortunately, the sponsors of the 1961 UN Single Convention on Narcotic Drugs ignored the most important lesson that prohibition of alcohol in the USA taught us – that prohibition simply does not work on any level. Therefore it is not surprising that the implementation of the UN conventions has resulted in the supply of banned drugs being taken over by an illegal industry that is only too happy to continue to service an extremely lucrative and resilient market.

The UN missteps caused this industry to flourish and has fuelled the growth and political influence of international crime – in exactly the same way that the

1920 USA Prohibition gifted the untaxed alcohol beverage market to the criminal sector, leading to a decade long organised crime boom in that country.

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## **The terrible consequences of the War on Drugs**

Apart from the fact that the UN-driven War on Drugs has failed to carry out its basic mandate to create a drug free world, its misguided policies have created two important problems.

- *A grave human rights tragedy*

The UN Conventions have misunderstood and completely failed to take into account all of the medical, social and economic dynamics that influence the use of recreational drugs. The criminalisation of people using these drugs has caused huge collateral health, social and economic damage that has impacted negatively on society and poor communities in particular. These laws resulting in the incarceration of millions of people and the execution of many others is reminiscent of those archaic, medieval laws that stigmatised and barbarically treated people with mental illnesses and those found 'guilty' of homosexual offences.

- *A global organised crime wave*

The drug laws, in South Africa and in many other countries, have enabled organised crime structures such as drug cartels, drug syndicates and gangs to access and control the trillion dollar international drug market. These powerful, interlinked groups use their massive economic strength to infiltrate and substantially weaken the very same legal structures that are expected to confront and contain those involved in the illicit drug market. Worldwide, the police and politicians at all levels are often paid accomplices in the drug trade. In South Africa, Jackie Selebi, head of the South African Police Service and Interpol was convicted of being in the pocket of drug dealers.

Organised crime bosses, both in South Africa and abroad, have stated that the last thing they want is for cannabis and other illicit drugs to be legalised. Their reasons should be obvious to all of us – it will destroy their primary source of income and put most of them out of the crime business.

Drawing on the experience of the era of prohibition in the US, the economist, Bruce Yandle, coined a phrase ‘Bootleggers and Baptists’ to describe a model of politics in which the opposite moral positions lead to the same vote. Preachers demanded the prohibition to make alcohol illegal while criminal bootleggers wanted it to continue to be illegal in order to stay in business. In our current situation those who have emotions and beliefs tied to continuing the War on Drugs will be supported by those driving the illicit drug trade as well as those who have a vested interest in opposing it, such as the police and in the US, at least, the private prison companies.

## Legal Regulation

### *Legal Regulation is a rational, humanistic alternative to the War on Drugs*

The only holistic, proven and rational way to deal with the undesirable consequences of the human penchant to use psychoactive substances is to legalise these drugs and include them in a flexible *legal regulatory* framework. Legal regulation is a well known and widely applied legal and administrative process that most countries use to tax and control the production, distribution and sale of prescription drugs, alcohol and tobacco and others.

Legal Regulation does what the War on Drugs has failed to do. It decreases drug use amongst children, fosters harm reduction measures in drug users, reduces the stigmatisation of addicts, curtails infectious disease transmission, dramatically reduces drug related deaths, controls the quality, sale and availability of drugs, substantially decreases drug-related criminal activity, reduces the profits of organised crime, lessens the opportunities for corruption amongst law enforcement officials, lowers the cost of law enforcement and reduces prison populations. It also allows for the more effective implementation of drug education programmes and drug-related health services.

*Instead, legal regulation enables governments to control where drugs are grown, manufactured and sold and who can access them. The authorities can monitor the quality, strength and composition of the products in the marketplace, which is currently impossible.*

The terms ‘legalisation’ and ‘legal regulation’ differ. While *legalisation* is merely a process that makes something that is illegal, legal, *legal regulation* provides a regulatory framework that governs the production, supply and use of drugs - any activity outside of this framework remains prohibited.

Unfortunately, a widely held misconception is that legal regulation is a radical idea and is sometimes characterised as a ‘liberalisation’ or ‘relaxation’ of the law. However, it is in fact the opposite; it is about bringing the drug trade *within* the law with strict controls that cannot be imposed under prohibition. Legal regulation certainly does not imply a free-for-all that makes drugs available to anyone, anywhere and at any time. Instead, legal regulation enables governments to control where drugs are grown, manufactured and sold and who can access them. The authorities can monitor the quality, strength and composition of the products in the marketplace, which is currently impossible.

The legal regulation of recreational drugs essentially aims to protect the young and vulnerable by controlling their availability and to educate the public about their potential harms. It aims to reduce crime by diverting to the state fiscus the profits generated by the illicit drug trade. This extra tax revenue should finance education, rehabilitation, medical services and support effective, humanistic crime fighting initiatives and provide for other expenses associated with the regulation of recreational drugs. Public health issues relating to these products would be improved by ensuring pure, standardised products along with the provision of health education and other pertinent information.

Legal regulation provides a platform to protect human rights by abolishing the unjust laws that discriminate against those who want to use psychoactive substances for recreational and medicinal purposes, without the fear of prosecution.

*Changing to legal regulation from the current legal situation need not happen overnight. It may be phased, cautious and adapted according to the results achieved. Examples of successful initiatives elsewhere in the world are available.*

Our laws make it virtually impossible to control any of the links in the drug supply chain. At present anyone of any age can buy drugs – drug dealers don't ask for ID! Under a system of legal regulation many activities, such as sales to minors, would remain illegal and subject to sanctions. Proponents of legal regulation generally support the implementation of even better, stricter regulation of both legal drugs such as alcohol tobacco and other 'recreational' drugs.

However legal regulation must be complemented by improvements in public health, education, prevention, and addiction prevention and treatment, as well as action on poverty, inequality and social exclusion.

Changing to legal regulation from the current legal situation need not happen overnight. It may be phased, cautious and adapted according to the results achieved. Examples of successful initiatives elsewhere in the world are available. If policies do not work they can be revisited and, where necessary, reversed.

Although legal regulation alone will not solve the many problems related to either currently legal or illicit drugs, it provides a far better alternative to the disastrous crime and social problems caused by drug prohibition. Local and global experience over the past 100 years demonstrates that prohibition cannot achieve these aims, and in fact actively undermines them.

### **Evidence that legal regulation works**

There is a valid concern that legal regulation of cannabis will increase its use, especially amongst minors. However in the Netherlands, where the possession and retail supply of cannabis is legal, rates of cannabis use are similar to the European average. Moreover, when Portugal decriminalised the possession of *all* drugs in 2001, drug use did not rise dramatically, as some feared and has decreased amongst young people. Now, over twelve years later, levels of drug use remain *below* the European average and drug-related crime and health problems have dropped significantly.

In many countries, tobacco use is half of what it was 30 years ago. This reduction was achieved without blanket bans or criminalising smokers; it is the result of health education and stricter market regulation, only possible because tobacco is a legal product

Levels of drug use are often equated with levels of drug harm, but the vast majority of drug use is non-problematic. Rather than narrowly focusing on reducing use, policy should seek to reduce overall harm.

We have a choice: the drug trade can be controlled either by criminals or governments. Legal regulation is the only substantiated, holistic and humanistic way to deal with the issues relating to the health benefits and harms of recreational and other drugs, their social impact and the vast crime networks that the current laws help to sustain.

When faced with a failed ideal such as the ‘War on Drugs’, some will argue, because of their beliefs, that the war should be intensified. A more helpful approach concerning drugs is to examine the facts which would result in a more acceptable human rights and positive public health approach.

As CS Lewis, the Christian writer and thinker observed: “Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busy bodies. The robber baron’s cruelty may sometimes sleep, his cupidity may at some point be satisfied but those who torment us for our own good will, torment us without end for they do so with the approval of their own conscience”.

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FURTHER READING

Hari, Johann (2015) *Chasing The Scream*; Bloomsbury  
Hart, Carl (2013) *High Price*; Penguin  
Nutt, David (2012) *Drugs - without the hot air*; UIT Cambridge  
Global Commission on Drug Policy; <http://www.globalcommissionondrugs.org/>  
Transform: <http://www.tdpf.org.uk/>