

### Drug licenses as an alternative to prohibition

There are many ways in which the prohibition-based drug policies epitomized by the U.S. 'War on Drugs' have failed to achieve their objectives while creating new problems. Illegal drugs remain widely available in countries with strong criminal prohibitions against their production, sale, and use. At the same time, prohibition has made drugs into a lucrative business for criminal organizations, while making them more harmful for users. Despite this, countries including Canada have recently chosen to enact even more stringent criminal prohibitions against the use of drugs like cannabis.

Alternatives exist to a prohibition-based approach. Most obviously, these include the legalization of drugs that are currently illegal. This approach has a low level of political support and would risk increasing the number of drug users. Rather than shifting from total criminalization to total legalization, it is possible for governments to adopt a licensing approach to the use of psychologically active drugs. This approach would carry three main benefits:

1. creating an opportunity to educate users,
2. creating an effective sanction against antisocial drug use that has fewer problems than immediate criminal punishments,
3. and reminding users that their choices affect others, and that they do not have the right to harm innocent third parties.

In addition to drugs that are currently illegal, a licensing system might be helpfully applied to alcohol.

### **Alcohol – the official drug of the West**

Alcohol is a powerful psychoactive substance that causes an enormous amount of harm within society, ranging from liver disease to drunk driving to acts of alcohol-facilitated violence. And yet the experience in North America of the prohibition of alcohol in the 1920s and 1930s was hugely negative. As with illegal drugs today, prohibition of alcohol fed organized crime, led to users drinking dangerous bootleg alcohol, and failed to prevent the emergence of an elaborate system for smuggling alcohol into the U.S. and producing bootleg alcohol domestically.

Alcohol now has a highly prominent role in society. Aside from caffeine, there is no psychoactive drug sold by more businesses or generally considered to be acceptable in so many social circumstances. A glass of wine is the expected accompaniment to a fine meal, common religious ceremonies include the consumption of alcohol, and adults in North America are legally permitted to buy alcohol in unlimited quantities and varieties.

These characteristics make alcohol a potentially appropriate target for a drug licensing regime. The system could resemble the one that already exists for driving licenses. Those who wish to use alcohol could be provided with study materials detailing the short-term and long-term effects of the drug, the dangers associated with overdoses, and so on. They could then be required to pass a test

to make sure they had absorbed this information. Critically, the license granted to consume alcohol would be subject to temporary suspension and, in extreme cases, lifetime revocation. Suspensions would be issued in cases where alcohol users caused harm to others while under the influence of the drug. Scenarios could include operating a vehicle under the influence of alcohol, committing acts of domestic violence under its influence, or otherwise behaving in an illegal or strongly antisocial way.

Businesses selling alcohol would check the licenses of customers and refuse sale to those who had no licenses or whose licenses have been suspended or revoked. The cost of the system could be covered through fees for having a license issued, or possibly an annual renewal fee. Given that tourists from jurisdictions without alcohol licenses would need to acquire them, there would be another opportunity for government revenue to recoup the cost of the licensing system.

There will inevitably be those who circumvent the system: acquiring alcohol when they are not licensed to do so or where their license has been temporarily or permanently invalidated. Still, there are notable ways in which a licensing system could be an improvement over what exists now. At present in North America, those with long histories of problematic behaviour under the influence of alcohol are nonetheless able to acquire the drug freely in unlimited quantities.

Criminal punishments would not be absent within the licensing system. Just as it is a crime in many jurisdictions to drive without a valid license, using a drug without a valid license could be subject to criminal sanctions. Obviously, crimes committed under the influence of drugs would remain within the scope of the justice system. Punishments for using alcohol without a license would need to be carefully designed, to avoid the kind of problems arising now from drug-related imprisonment.

In addition to curbing alcohol use by some problem users, the new system would also have the benefit of making alcohol education mandatory for alcohol users. The message being sent by the state would shift from: "You are now old enough to use unlimited amounts of alcohol at your own discretion" to "You are licensed to use this potentially dangerous drug, provided you refrain from causing harm to others". Under the licensing system, drug use is permitted subject to certain restrictions, in recognition of the ways in which this is less harmful overall than a prohibition-based approach.

### **Licensing for other drugs**

There is perhaps no area of drug policy that is more counterproductive than the criminalization of 'soft' drugs such as cannabis and MDMA (ecstasy). Prohibition turns the drugs into lucrative rackets for criminals. It creates a market in which the purity and safety of drugs is unknown, where users may be poorly educated about the risks associated with their choices, and where people find themselves facing criminal penalties for undertaking benign recreational activities that cause harm to nobody but themselves.

There is an extra injustice that arises from the inconsistent way in which the legal system applies drug prohibition laws. While well-to-do drug users who can hire defense attorneys and solicit character references are relatively unlikely to be given criminal records or sent to jail, those who are poor and legally unsophisticated are likely to face more severe punishments for the same act. By diminishing their education, employment, and general life prospects, these criminal punishments cause a great deal of harm in the lives of drug users. As drug policy critic and Las Vegas magician

Penn Jillette points out, if Barack Obama had been put on trial for his admitted marijuana and cocaine use, he would likely have been given a criminal record, possibly been given jail time, and been unlikely to go on to Harvard and the presidency.

Criminal organizations enriched by prohibition cause harm within society as a whole. They contribute to political corruption, engage in acts of politically-motivated violence (such as attacks against police and judges in Mexico), and compete violently with one another in ways that cause direct and indirect harm to those around them. A major benefit of either legalization or licensing would be to reduce the wealth and influence of these groups.

The question of which drugs to license is necessarily a contentious one, and not one that it is within the scope of this paper to consider. It may be the case that there are some drugs that are simply so harmful that they must remain prohibited. It is possible that moving to a license-based system for 'soft' drugs would actually help to reduce the usage of these more dangerous drugs. For one thing, criminal networks that profit primarily from drugs like cannabis and MDMA would have their power greatly reduced. Drug dealers who lose all their business in softer drugs may not persist in selling harder ones to a smaller group of users. For another, having some drugs within a licensing system and other drugs outside of it might discourage people from using the latter while perhaps encouraging them to use the former. Speculation aside, a drug licensing system would convey the benefits of education for whichever drugs it was applied to.

For 'harder' drugs, it would also be possible to create more restrictive licenses. Licenses for alcohol and cannabis might allow a user to purchase a set quantity for use in their home or in designated locations. Licenses for drugs like PCP or heroin might specify a small maximum purchase size and could restrict acceptable areas of usage to supervised medical settings such as safe injection clinics. This approach would decrease the risk of overdoses, avoid the harm that comes from criminalizing addiction, and serve as a fairly strong disincentive to new users. Trying cocaine might be appealing in the context of a nightclub, but would likely to be less so in a clinic with addicts being overseen by doctors and nurses.

## **Objections**

The licensing system concentrates on harm that drug use causes to third parties, such as pedestrians struck by drunk motorists, rather than on the harm that drugs do to the individual using them. Particularly because many drugs are physically or psychologically addictive, it can be argued that prohibition is the best policy simply because it does the most to minimize how many people are drug users in total.

This perspective is not supported by examination of the evidence. Even in societies with harsh prohibitions on drug use, drugs are widely available and widely used. Several features of the licensing system could actually decrease drug usage below current levels, in particular the requirement that aspiring drug users be educated about the risks and the shift from a situation where drugs are sold by criminals to a situation where they are sold by more reputable companies that would be less likely to provide them to the underage and the unlicensed. The drugs sold would also be pure and accurately labeled. This would be a significant improvement over the current situation, in which users cannot be sure that they are using what they think they are and in which they are unable to calculate appropriate doses.

## Conclusions

Human beings will make use of psychologically active drugs regardless of the legal regime in which they find themselves. The goal for policy-makers should not be to eliminate use, but rather to reduce the harm done by drugs to the individual, those near them, and to society as a whole. Making all drug users into criminals enriches criminal organizations, wastes the resources of the state, and destroys lives through the stigma of criminal records and punishments. A licensing system treats drug users as adults who are sovereign over their own bodies and responsible for their choices. It also makes it much more likely that drug users will have access to accurate and impartial information about the likely consequences of their choices before making them. For these reasons, it may be a worthwhile alternative to prohibition.

A licensing system would not need to be created all at once. Countries that are struggling with the unwanted consequences of prohibiting relatively benign drugs like cannabis could try implementing licenses for that drug first, using it to develop experience that could be applied to other substances. In this way, cannabis might serve as a 'gateway drug' for the introduction of a general licensing system. While the largest benefits associated with the licensing system may be reducing the power of criminal groups and reducing the injustice of different sentencing outcomes for drug users of different means, it is possible that the largest benefits will actually result from encouraging more responsible use of alcohol – a widely-endorsed drug that nonetheless causes more illness and death than all illegal drugs put together.

*Comments? Objections? Please email me at: [milan@sindark.com](mailto:milan@sindark.com)*