Illicit Drug Policy

An Economist's View of the Least-Worst Options

By Peter Reuter

For the past three decades, our nation's policies toward illicit drugs have been a source of despair to most thinking people. Federal, state and local governments have all been committed to harsh enforcement of prohibition, and the result has been, at a minimum, disappointing, and, at worst, disastrous. The War on Drugs has left us with the West's most serious drug problem, as measured by rates of addiction, violence and deprivation of civil liberties – not to mention the humongous bill for police and prisons. Perhaps most dispiriting, it highlights America's shameful willingness to be tough at the expense of poor urban minorities, while forgiving the lapses of the elite.

Neither political party has shown much inclination to deviate from the path of failure. The difference between the Clinton administration and the Republican administrations before and after amounted to rhetorical nuance. President Clinton managed

to sound a bit empathetic about addicts' problems, perhaps reflecting his brother Roger's experiences with heroin. But he made no effort to fight policy inertia.

The only hint of recent progress at the federal level has been at the margin, where racial inequity is most glaring. With support from the Obama Justice Department, a number of members of Congress from both sides of the aisle are pushing to correct the outrageous disparities in sentencing between crack-cocaine and cocaine-powder offenses. But no senior member of Congress – Democrat or Republican – has made drug policy a priority.

There have been efforts to build a coalition of libertarians and liberals to press for drug reform. But, so far, it has been effective only on the niche issue of medical marijuana, where 14 states have defied federal authorities by legalizing access.

Barack Obama's election offers some hope of a fresh look at drugs. He, after all, has acknowledged using marijuana and cocaine in his youth. And he chose Gil Kerlikowske, the former police chief of Seattle, to head the Office of National Drug Control Policy (to the media, the "drug czar"). Kerlikowske has already called for a shift in emphasis from punishment to treatment.

It is easy to describe what rational people don't like about the War on Drugs: half a million drug prisoners, who are even less white than the overall prison population; three-quarters of a million arrests for marijuana possession annually; the spraying of coca fields in the Andes, damaging the environment with no apparent success in diminishing cocaine supplies; aggressive efforts to interdict illicit drugs at the border, making cultivation incredibly profitable and transforming Afghanistan, Myanmar, Bolivia and, arguably, Mexico, into narco-states. But it is hard to describe what an unambiguously better drug policy would look like because every path has pitfalls.

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THE SIREN CALL OF LEGALIZATION

Ask any card-carrying economist whether addictive drugs should be legalized, and you'll get a resounding "yes" – perhaps accompanied by snide remarks about dumb questions. Those seeking a formal statement of the case can read the classic article on the market for illegal goods by the Nobel laureate Gary Becker, along with Kevin Murphy (University of Chicago) and Michael Grossman (City University of New York), in *Journal of Political Economy*. But the case is easily summarized:

- Most of the damage to society from drugs is a result of prohibition, not a consequence of drug ingestion.
- Criminal sanctions are more expensive than any other plausible method of controlling the "externalities" of drug use.
- A combination of taxes and the regulation of suppliers could fix most of the remaining problems.

There's a catch, however – well, really three catches.

First, economists assume that all the effects of legalization are captured in prices. In truth, legalized cocaine would not simply sell for less, but would be more accessible and more attractive to some because the activity would no longer put them at risk of criminal penalties. In economics parlance, legalization would most likely shift the whole demand curve "to the right," implying that the resulting increase in consumption would be greater than that suggested by estimates of the current elasticity of demand with respect to price.

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Second, America's long experience with other legalized vices suggests that the political economy of regulation is fragile: once a legal industry is created, it will organize to undercut restrictions that reduce its profitability. In the half century after repeal of Prohibition, the alcohol industry successfully pushed for a more permissive system with lower taxes. Besides, it is unclear whether, in a highly regulated regime for selling addictive drugs, the government would be part of the solution or part of the problem. Consider, for example, the experience of the states that have created lottery monopolies for themselves. In search of revenue, they have aggressively advertised lotteries, inviting the poor and those with gambling problems to spend more on the game.

Third, the analysis ignores the extent to which the problem of drug addiction, like cigarette smoking, has its origins in adolescence. State-based paternalism in the name of protecting the young against their own bad judgment is a well-established tradition. The decision to raise the legal drinking age to 21 reflects a view that even those aged 18, 19 and 20 need protection from themselves. Given that most drug use begins before age 21, and that some share of those who start will become addicted in ways that only an economist could call "rational," legalization poses societal threats broader than Becker et al. contemplate.

This is not to say that legalization is clearly a bad idea; after 10 years of study, I remain genuinely agnostic. My principal concern is to prevent the advocates from oversimplifying the issue. In weighing the pros and cons, three factors are salient.

1. Uncertainty of benefits. The evidence from other countries, times and drugs strongly suggests that legalization will result in an increase in both drug use and addiction. But past experience offers little basis for even crude estimates of the increase.

An increase of 50 percent in heroin addiction might be acceptable since the harm associated with each instance of heroin addiction would fall sharply: most of the adverse consequences – crime and disease – are largely a result of the circumstances of drug use in an environment that keeps prices high and needles dirty. But what if the increase in heroin addiction were 500 percent? That figure sounds high, but even with an increase of that magnitude, three times as many Americans would be addicted to alcohol as were addicted to heroin.

Easy access to cheap drugs would sharply reduce costs, as measured by violence, inner-city collapse and, of course, law enforcement. But Rosalie Pacula, a senior economist at the RAND Corporation, reminds us that the cost to new addicts could be very high. For example, she estimated that the total cost of methamphetamine use in the United States was $23 billion in 2005 – more than half of which was borne by users suffering the intangible burdens of addiction. The bottom line, then: legalization might well reduce the net harm to society, but that is hardly a certainty.

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2. Non-comparability of benefits. Drug use generates many different kinds of damage that make aggregate measurement of the bill problematic. How, for example, does one weigh the costs of increased addiction resulting from legalization against the benefits of reduced crime and corruption? How does one balance the benefits of reductions in violence against the costs of the likely increases in accidents and other behavioral risks of drug use? While economists are adept at weighing such intangibles – what other profession would dare to estimate the dollar-value of life? – the dimensions here are daunting. The catastrophic violence surrounding the drug trade in Mexico would vanish, while the power of the Taliban in Afghanistan would wane if marijuana, heroin and cocaine were legalized in the United States and their prices fell sharply. How should we factor in such intangibles?

How does one balance the benefits of reductions in violence against the costs of the likely increases in accidents and other behavioral risks of drug use?

3. Distribution of benefits. Another complication is that the advantages and disadvantages of different approaches would be unevenly distributed. Any substantial reduction in illegal drug markets would yield immense benefits to urban minority communities, where drug sales now cause so much crime and disorder. And that's likely to be true even if the levels of drug use and addiction were to increase in those communities.

For the middle class, however, these indirect benefits of eliminating the black market might look small compared with the costs of increased drug use, particularly among adolescents. For liberals (including me), redistributing the damage away from the poor would be desirable, and might justify some worsening of the overall problem. But even economists understand they are on shaky ground when they make judgments about who gets the benefits and who pays the bills.

A further complication here is that the legalization arguments are drug-specific. There is a strong case to be made for not only eliminating the penalties for marijuana possession, but also allowing people to cultivate the plant for their own use – the approach currently taken in four Australian jurisdictions. The downside risks (mild behavioral changes and respiratory illness from increased use) seem modest while the potential gains look large: the elimination of 750,000 marijuana possession arrests annually and the potential for weakening the links between soft- and hard-drug markets. But the downside risks for heroin and methamphetamine, where the health and behavioral consequences of regular use are much greater, make them tougher calls.

So, how about decriminalization?

The case against legalization largely turns on the difficulty of restricting promotion by the sellers of drugs in licit markets. Removing criminal sanctions against users without creating rights of commercial free speech would avoid that, but still get the government out of the ugliest of the drug war's activities – namely, locking up drug users.

There's some evidence that decriminalization works. Portugal decriminalized the use of all drugs in 2001 with no apparent ill effect to date, according to a recent study for the

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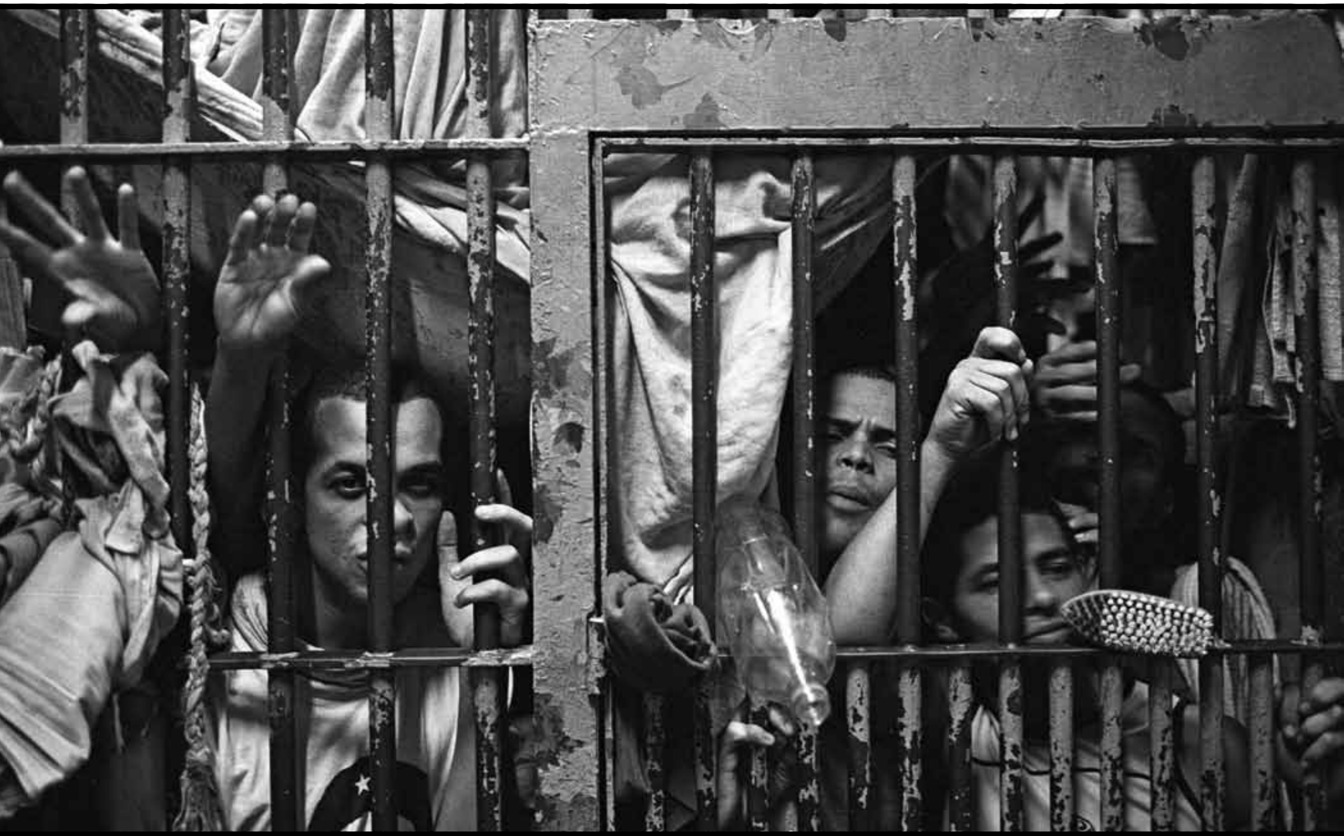
Cato Institute by the lawyer and columnist Glenn Greenwald. However, decriminalization of possession alone wouldn't go very far to reduce societal costs in the United States. Of the half million people in prison for drug offenses at any one time, a vast majority are drug sellers. The center-city street markets, overdose rates and conflict among dealers would all continue unabated. Colombia and Mexico would still be racked by drug-related corruption and violence.

Or cutting prison populations and expanding treatment?

If one accepts the above arguments, legalization of hard drugs is risky because we don't know how many addicts would be created, while decriminalization would not constitute a big enough change to make much of a difference. Is there anything that can be done to make prohibition less harmful without altering the legal status of drugs?

A lot of what troubles observers of our drug policy is the extraordinary incarceration rates, which have grown more than tenfold – that's right, *tenfold* – since 1980. Sweden, often held out as the tough boy of European drug enforcement, imprisons one-quarter as many drug offenders per capita. A sentence of two years, the median sentence in the United States for drug crimes, is the upper limit in Sweden.

Would the United States really be worse off if it contented itself with keeping just 250,000 drug offenders in prison rather than 500,000? Jonathan Caulkins, a Carnegie-Mellon drug-policy analyst, notes that halving incarceration rates would hardly constitute going soft on drugs: the regime would still be a lot tougher than the one in force in the Reagan years. Furthermore, keeping fewer drug offenders in the slammer need not mean that a minority who are especially violent or otherwise dangerous would get out earlier. Indeed, with less pressure on prison space, they might



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serve more time, not less.

Paring the numbers incarcerated could be usefully complemented by greater efforts to target incarceration more effectively. Low-level dealers are now locked up on the rationale that it makes drugs harder to get and more expensive. Yet, as is well known (by everyone, apparently, except the policymakers), the prices of cocaine and heroin have fallen over the decades. The only published effort to estimate the effects of increased incarceration on cocaine prices, co-authored by Steven Levitt of *Freakonomics* fame, found that during a period in which incarceration for drugs (mostly cocaine) rose from 82,000 to 376,000, the retail price rose by 5 to 15 percent. A simple calculation of the cost-effectiveness of locking up drug offenders, as measured by the reduction in cocaine consumption per $1 million spent by the government, shows that it is much less effective than much-scorned drug treatment – even taking into account the notoriously high dropout and relapse rates. There's simply no question that cutting sentences for drug dealers would make minimal difference in the price or availability of cocaine, heroin or methamphetamine.

I offer no magic formula here; there's no reason to believe that halving the incarceration rate, as opposed to, say, cutting it by one-third or by two-thirds, would be optimal. The point is simply that drastic reductions in incarceration – and thus reduction in costs to both society and to the many drug users who are locked up because they sell to support their habits – would be possible without embarking on the uncharted waters of legalization.

Cutting prison populations is especially attractive right now because of the desperate plight of state budgets – and, in the case of

California, because the prison system is under a federal court injunction driven by the failure of the state to provide safe and humane conditions for inmates even when it could afford the cost. It would be ironic if the only reason that this nation cut the number of individuals imprisoned for selling drugs was to avoid tax increases. But history suggests that any argument adding a touch of rationality to drug policy should be exploited.

Drug treatment has become the standard alternative to incarceration – though one talked about more than implemented. Drug courts that use the threat of jail to compel offenders to enter and remain in treatment have proved useful. But they currently cover only about 5 percent of drug-involved offenders because the screening criteria exclude all but the least problematic. Proposition 36, the ballot initiative adopted by Californians in 2000, ensured that most of those arrested for drug possession for the first time were not incarcerated. Even though most of those directed to treatment rather than jail never reached the treatment program door, it seems to have been reasonably successful in the sense that it cut the number imprisoned without raising crime rates or drug use. But, needless to say, these interventions don't have much impact on the market for drugs or the violence illicit markets create.

The problem is, oddly, linked to both inadequate demand and supply: Not enough of those who need treatment seek it, and too many of those who seek it face long delays and poor service.

The demand-side problem could be easily solved by transforming the criminal justice system into a recruitment mechanism for treatment. Over the last decade, the British have doubled their population in treatment – mostly for heroin addiction – by aggressive use of legal carrots and sticks. Some police officers now see treatment recruitment as an important part of the job, while a dizzying array of post-arrest programs encourage heroin addicts to enter treatment rather than prison.

On the other side of the equation, it would be no great feat to increase both the supply and quality of drug treatment services as long as expectations were realistic. But to get from here to there, Americans would have to adopt a more sympathetic view toward illicit drug users.

A more important change would be to impose shorter sentences and then coerce abstinence by linking parole to staying clean. Coerced abstinence, long the crusade of the UCLA drug policy specialist Mark Kleiman,

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simply means doing what citizens assume is already being done by the criminal justice system: detecting drug use via frequent mandatory testing and providing immediate sanctions when the probationer or parolee tests positive.

Kleiman has been promoting this sensible idea for 20 years, noting that pretrial detainees, parolees and probationers account for a large share of the nation's cocaine and heroin consumption. The primary obstacle has been bureaucratic resistance. But thanks to the help of an entrepreneurial judge in Hawaii named Steven Alm, supporters of coerced abstinence can now point to some striking results in that state. Few of those subject to the monitoring system over the past five years

have failed to comply, and their recidivism rates after they are free from the immediate threat of jail are much lower than those not forced to undergo testing.

HARM REDUCTION AND COST-BENEFIT ANALYSIS

If prohibition remains the law of the land, is there much else one could do to make illicit drugs less problematic for both users and society as a whole? The notion of "harm reduction" – acceptance of the practical limits of a free society to control drug consumption and to focus on cutting the harmful consequences of drug use – has become the approach of choice in many Western countries.

And for good reason. The evidence that governments can cut the number of users is depressingly slight. Prevention remains a slogan and aspiration, rather than a set of proven programs. Treatment, while cost-effective in the sense that it is cheaper than incarceration, apparently can make only a modest difference in recidivism. And, as already noted, draconian enforcement to raise prices and reduce availability has failed abysmally.

China, whose government has seemed unable to tell the difference between a labor camp and an addiction-treatment center, is showing signs of a pragmatic move toward harm reduction. Even Iran, with its huge opium/heroin market and indifference to individual rights, has tilted in this direction.

The iconic harm-reduction program is needle exchange, in which no-questions-asked access to clean needles, along with collection and destruction of used needles, minimizes the risk that addicts will spread AIDS and hepatitis. A dozen countries, including the Netherlands, Australia, Norway, Denmark and Canada, offer these services – as do 33 states in this country.

The logical extension to needle exchange is legal access to drugs solely for established addicts. This service has been available for heroin addicts in Switzerland for 15 years and in the Netherlands for five. Legal access remains a niche program, however. While it brings large benefits for those enrolled, only 5 percent of the heroin-dependent population in Switzerland have chosen to enroll.

Harm reduction need not be restricted to consumption-oriented interventions. Robert MacCoun, a social psychologist at University of California (Berkeley), and I have argued that harm reduction is best seen as a benchmark for judging policies and programs rather than a class of interventions. Indeed, harm reduction is merely standard cost-benefit analysis applied to a policy area that has so far been left in the hands of true believers. Cost-benefit analysis requires that the decision maker list and value all of the consequences of the decision, both positive and negative. Harm reduction can be seen as analysis-lite, since it does not claim to be able to monetize all the benefits and costs.

The distinct and disturbing feature of bringing this lens to drug policy is that most of the effects of supply-side interventions are negative. For example, aerial spraying of Colombian coca fields has led to other fields being planted with coca, which itself causes serious damage to fragile ecosystems. Moreover, spraying is predictably inaccurate, so legitimate farmers are also hurt by it. And as Vanda Felbab-Brown, a fellow at the Brookings Institution, shows in her forthcoming book, *Shooting Up: Counterinsurgency and the War on Drugs*, the historical record in Afghanistan, Colombia and Peru suggests that eradication increases peasants' willingness to collaborate with insurgents like the Taliban, FARC and Shining Path. The benefits from spraying, however, are elusive, since the most one can

hope for is a modest increase in production costs – and a much, much smaller increase in retail prices back home.

Neither I nor anyone else has tried to weigh the costs against the benefits here, but it is not possible that spraying makes sense in these terms. Labeling the above analysis as harm reduction rather than cost-benefit analysis merely acknowledges that it is a stretch to put dollar values on the costs and benefits of drug policy initiatives.

All that said, using the harm-reduction framework to assay the whole array of programs and laws that we use to control drug use in the United States might make a large difference. It might even force the deeply entrenched drug enforcement system to collect data and to provide some analysis to defend prohibition-as-usual. We have no idea, for example, of the consequences of the federal government's multibillion dollar program to interdict drugs in international waters. Perhaps it raises prices enough and captures enough high-level dealers to meet the criteria set by proponents. But if it does, it must also lead to higher export demand for cocaine from Colombia – and that effect ought to weigh particularly heavily in our decisions. Doing certain harm to other nations for questionable domestic benefits is, at best, morally problematic.

MUDDLING ON

It would be nice to be able to make a slam-dunk case for legalizing drugs since so much of the harm done by drugs is linked to their legal prohibition. But as long as we lack a clear sense of the consequences of legalization in terms of greater drug use, to my mind, the case will remain unconvincing.

What's left, if one dismisses legalization, hardly adds up to a bold initiative. But incremental steps in the name of increasing the bang for a buck spent on drug programs may be all that can be expected from policymakers, who will face fierce resistance from interests whose jobs (or claims to the high moral ground) are at stake.

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Certainly the nation's first African-American president and attorney general might reasonably be expected to pay particular attention to policies that lead to the incarceration of a large percentage of young, poorly educated African-American males on the basis of deeply flawed logic. And any president committed to fighting the rise of narco-states that threaten global security must acknowledge that only a shift in policy lowering the value of illicit drugs at our borders would do much to undermine their power. M