

4. After the War on Drugs: How Legal Regulation of Production and Trade Would Better Protect Children

by Steve Rolles

Children in the Political Narrative of the Drug War

The emergence of the “war on drugs”—shorthand for a broader punitive and prohibitionist paradigm—has been predicated on the concept of drugs as an existential “threat” rather than a more conventionally conceived health or social policy issue.¹ Prohibitionist rhetoric frames drugs as menacing not only to health but also to national security (our borders), and not infrequently, to the moral fabric of society itself, using the “drug threat” to children as the specific rhetorical vehicle.

Emotive plays on the threat to our children have a long history in political propaganda (particularly in times of war), exploiting the potency of the parents’ greatest fear. Drug-war rhetoric presents the threat to youth both as the drugs themselves (although significantly only the illegal ones) and the sinister drug dealers who prey on the young and vulnerable (lurking at the school gates, etc.). While there are, of course, very real risks for children and young people associated with both drug use and illegal drug markets, perception of these risks has been dramatically distorted by the populist fearmongering of politicians (who can then position themselves as “tough” on the drug threat), aided and abetted by a sensation-hungry mainstream media.

The prohibition paradigm is very much framed as a response to such threats, and its popular narrative has cast itself as a moral crusade against an “evil” that threatens mankind itself. The preamble to the 1961 UN Single Convention on Narcotic Drugs, for example, establishes the context of the legal framework it has enshrined in these terms:

- Concerned with the health and welfare of mankind.
- Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind.
- Conscious of their duty to prevent and combat this evil.

Given this rhetorical context, it is easy to see how supporters of

prohibition understand any kind of moves toward legal regulation of drug production and supply as being immoral, a form of surrender, or a descent into anarchy in which our children will be the first and most obvious victims.

Criticisms of less punitive drug policies are, in fact, often framed in these terms. Critics define one or more worst-case scenarios, often extrapolated from “what if?” thinking built on an immediate and total absence of all drug control legislation, and then argue from the basis that such scenarios will be the norm. The popular public discourse on alternatives to prohibition is thus frequently characterized by the “imperiled child” narrative, with apocalyptic visions of stoned school bus drivers, heroin in candy stores, and armies of child drug-zombies. As advocates of legal regulation of drug markets have made abundantly clear (see below), this is a grotesque misrepresentation of what is actually being proposed.

Supporters of prohibition also frequently present any steps toward legal regulation of drug markets as “radical,” and therefore innately confrontational and dangerous. However, the historical evidence demonstrates that, in fact, it is prohibition that is the radical policy. Legal regulation of drug production, supply and use is far more in line with currently accepted ways of managing health and social risks in almost all other spheres of life. Yet prohibition has become so entrenched and institutionalized that many in the drugs field, even those from the more critical progressive end of the spectrum, view it as immutable, an assumed reality of the legal and policy landscape to be worked within or around, rather than as a policy choice.

Given that the war on drugs is predicated on “eradication” of the “evil” drug threat as a way of achieving an (entirely fantastical) “drug-free world,” it has effectively established a permanent state of war. A curiously self-justifying logic now prevails in which harms that are a direct result of drug prohibition—such as children killed in drug gang drive-by shootings, drug-fueled conflict, environmental damage, corruption or deaths from contaminated street drugs—are confused and conflated with harms related to drug use. These policy-related harms then bolster the “drug menace” rhetoric and justify the continuation, or intensification of prohibition.

This has contributed to a high level policy environment that routinely ignores critical scientific thinking, and health and social policy norms. Fighting the threat—defending the vulnerable from

the evil of drugs—becomes an end in itself, one that is seen as intrinsically righteous, and as such it creates a largely self-referential and self-justifying rhetoric that makes meaningful evaluation, review, and debate difficult, if not impossible. Indeed, while the drug-related victimhood of the child is a key part of prohibition narrative, furnished with emotive anecdotes of wasted youth and bereaved parents, prohibition's effect generally, and its influence on children specifically, remains largely immunized from meaningful scrutiny and evaluation.

Practical and Intellectual Challenges to the Prohibitionist Status Quo

Despite this hostile ideological environment, two distinct policy trends have emerged in recent decades—harm reduction and decriminalization of personal possession and use. While both nominally permitted within existing international legal frameworks, they pose serious practical and intellectual challenges to the overarching status quo. Both have been driven by pragmatic necessity; harm reduction emerging in the mid-1980s in response to the epidemic of HIV among injecting drug users, and decriminalization in response to resource pressures on overburdened criminal justice systems (and to a lesser extent, concerns over the rights of users).

Both policies have succeeded in demonstrating effectiveness to the extent that harm reduction is now used in policy or practice in ninety-three countries,² while decriminalization (in various forms) has spread across mainland Europe, Central America, and Latin America, with cannabis-only decriminalization more widespread still—including states in Australia and the United States.

Decriminalization has demonstrated that less punitive approaches do not necessarily lead to increased use, most notably in Portugal, where even though drug use more generally has risen in line with its European neighbors, use among young people has actually fallen since the 2001 decriminalization of personal possession of all drugs (now dealt with via civil/administrative interventions).³ While we should not assume a causal link between this positive development and the decriminalization itself—there being many other policy and wider environmental variables at play (not least the substantive investment in public health programs)—the fact that the apocalypse

predicted by many doomsayers has failed to materialize remains significant.

More broadly an extensive World Health Organization study concluded:

*Globally, drug use is not distributed evenly and is not simply related to drug policy, since countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones.*⁴

Similarly, cannabis decriminalization states in the United States do not have higher levels of use than those without, and more significantly, the Netherlands, with its de facto legally regulated cannabis availability (for adults), does not have higher levels than its prohibitionist neighbors (for all age groups).⁵ If there is a deterrent effect from increasingly punitive responses to drug use, the evidence base for it is strikingly weak. The near universal research aversion of governments to this question, despite the central role of punitive deterrence in the drug war narrative, is a particularly telling indicator of the paradigms roots in populist polemic, rather than science.

Without diminishing the importance and effect of these emerging policy trends, they can, however, be seen primarily as symptomatic responses mitigating against harms created by the prohibitionist policy environment. Neither directly addresses the public health or wider social harms created or exacerbated by the illegal production and supply of drugs.

The logic of both, however, ultimately leads to confronting the inevitable choice: nonmedical drug markets can remain in the hands of unregulated criminal profiteers or they can be controlled and regulated by appropriate government authorities. There is no third option under which there are no drugs in society. There is a need to make this choice based on a rational objective evaluation of which option may deliver the best outcomes in terms of minimizing harms, both domestic and international, associated with drug production, supply, and use. The impact on different policy regimes on vulnerable populations will naturally be one of the priority indicators of any policy's success or failure.

Exploring legal regulatory approaches does not preclude demand reduction as a legitimate long-term policy goal, indeed it is argued that it may facilitate it among vulnerable groups. Acknowledging

the need for regulation does, however, accept that policy must also deal with the reality of high levels of demand as they exist now. However, a historical stumbling block in this debate has been that the eloquent and detailed critiques of the drug war have not been matched by a vision for its replacement. Unless a credible public health-led model of drug market regulation is proposed, the myths and misrepresentations will inevitably fill the void. So what would such a model look like?

A “Blueprint for Regulation”

Transform Drug Policy Foundation’s 2009 *After the War on Drugs: Blueprint for Regulation* attempts to answer this question by offering a menu of options for controls over all aspects of production, supply/availability, and use. This includes controls over products (dosage, preparation, price, and packaging); vendors (licensing, vetting and training requirements, marketing, and promotions); outlets (location, outlet density, appearance); where and when drugs can be consumed; and, crucially for this discussion, who has access to the legally regulated availability including age controls, along with explorations of licensed buyer and club membership access models.⁶

Blueprint then rationally explores options for different drugs and different using populations to suggest the regulatory models that may deliver the best outcomes. Lessons are drawn from successes and failings with alcohol and tobacco regulation in the UK and beyond, as well as controls over pharmaceutical drugs and other risky products and activities that are regulated by government. Such regulated models occupy a space on the continuum of policy options between the poles of the absolute prohibitions of a war on drugs and entirely unregulated free market models (such as the online sales of “legal highs” such as mephedrone).

Moves toward legal regulation of drug markets would naturally need to be phased in cautiously over a number of years, with close evaluation and monitoring of results and any unintended negative consequences being essential elements of any roll out—not least the negative effects on the most vulnerable. Where problems emerge controls could be adapted with alternative approaches or increased levels of regulation.

Clearly, there are particularly important lessons to be learned from

alcohol and tobacco policy, most significantly the corrosive effects on public health of unregulated commercial promotion aimed at children and young people. These experiences and the variety of responses to them over the past century do, however, mean that we now at least have a clear idea of how to effectively regulate these products to reduce the harm they cause to society. This understanding—while far from universally adopted—is clearly outlined in guidelines produced by the World Health Organization, in documents such as the *Framework for Alcohol Policy in the WHO European Region*, and the *Framework Convention on Tobacco Control*, that in many respects embody precisely the kind of rational public health-based regulatory approaches to drug control being advocated by the drug law reform movement.

There is, of course, no universal regulatory model. A flexible range of regulatory tools would be available and applied differentially across the spectrum of products and production/supply/using environments. Naturally, the more restrictive controls would be deployed for more risky products, and, correspondingly, less restrictive controls for lower-risk products. This potential for differential application of regulatory controls according to risk could additionally help create a “risk-availability gradient.” This holds the potential not only to reduce harms associated with illicit supply and patterns of consumption as they currently exist but also, in the longer term, to progressively encourage or “nudge” patterns of use to move toward safer products, behaviors, and using environments.

An understanding of such processes is emerging from both the literature on alcohol control (for example, progressive tax increases according to alcohol content) and the emerging understanding of *route transition interventions*⁷ aimed at encouraging injecting drug users to move to lower risk noninjecting modes of administration via, for example, providing foil for smoking heroin. This process is the precise opposite of what has happened under prohibition, where an unregulated profit-driven dynamic has tended to tilt the market toward ever more potent (but profitable) drugs and drug preparations, as well as encouraging riskier behaviors in high-risk settings.

The oversight and enforcement of new regulatory regimes would fall to a range of public health, regulatory, and enforcement agencies—including established health and safety and policing infrastructure. Activities that take place outside of the regulatory framework would

naturally remain prohibited and subject to civil or criminal sanctions, or appropriate nonpunitive interventions for nonadults as deemed appropriate and established to be effective.

Children in a Post-Prohibition Model?

Restricting or preventing access to drugs by nonadults is a key element of any existing or future regulatory models. Any rights of access to psychoactive drugs and freedom of choice over drug-taking decisions should only be granted to consenting adults. This is partly because of the more general concerns regarding child vs. adult rights and responsibilities. More important, however, in line with a risk-based regulatory logic, the specific short- and long-term health risks associated with drug use are significantly higher for children, and, of course, the younger they are, the greater the risks.

This combination of legal principle and public health management legitimizes a strict age-control policy. In practical terms, it should also be noted that stringent restrictions on young people's access to drugs—while inevitably imperfect—are more feasible and easier to police than population-wide prohibitions. Generally speaking, children are subject to a range of social and state controls to which adults are not. More specifically, drug restrictions for minors command near universal adult support—making them a more practical proposition than the widely flouted laws criminalizing adult drug use.

Combined with this is the fact that while markets created by any prohibition will always attract criminal interest, the nonadult market for drugs is a small fraction of the total adult market. Thus, enforcement could be brought to bear on it with far more efficiency, and correspondingly greater chances of success.

It is also worth pointing out that one ironic and unintended side effect of prohibition can potentially make illegal drug markets, that have no age thresholds, easier for young people to access than legally regulated markets for (say) alcohol or tobacco. According to the U.S. drug use surveillance systems funded by the U.S. National Institutes on Drug Abuse, over the past thirty years of cannabis prohibition, the drug has remained “almost universally available to American 12th graders,” with 80–90 percent over this period saying the drug is “very easy” or “fairly easy” to obtain.⁸

Of course, there is an important debate around what age constitutes an acceptable age/access threshold. Different countries have adopted different thresholds for tobacco and alcohol, generally ranging from fourteen to twenty-one for purchase or access to licensed premises. Where this threshold should lie for a given drug product will depend on a range of pragmatic choices. These should be informed by objective risk assessments, evaluated by individual states or local licensing authorities, and balanced in accordance with their own priorities.

As with all areas of regulatory policy there needs to be some flexibility allowed in response to changing circumstances or emerging evidence. In the UK, for example, the age of access for tobacco purchase has recently been raised from sixteen to eighteen, while in the United States there is a growing debate over whether the alcohol age threshold of twenty-one is too high. The Amethyst Initiative (supported by 135 chancellors and presidents of U.S. universities and colleges) argues, for example, that the age twenty-one limit has created “a culture of dangerous, clandestine ‘binge-drinking’—often conducted off-campus” and that “by choosing to use fake IDs, students make ethical compromises that erode respect for the law.”⁹ Even within a legal regulatory framework, inappropriate prohibitions evidently have the potential to create unintended consequences. They can undermine, rather than augment, the development of social controls and responsible norms regarding drugs and drug use. It is clear that age limits need to be realistic and, crucially, properly enforced to be effective.

In the UK, for example—where “binge-drinking” among young people has been a growing problem—there has been a widespread lack of age restriction enforcement, with Alcohol Concern reporting that: “10–15% of licensed premises are found to persistently sell alcohol to the under-aged yet only 0.5% licensed premises are called up for review.”¹⁰ Secondary supply of legitimately obtained drugs to nonadults will also require appropriate enforcement and sanction, perhaps with a graded severity depending on distance in age from the legal threshold.

Legal age controls can, of course, only ever be part of the solution to reducing drug-related harms among young people. Effective regulation and access controls must be supported by concerted prevention efforts. These should include evidence-based, targeted drug education that balances the need to encourage healthy lifestyles

(including abstinence) while not ignoring the need to reduce the related risks. Funding for such programs could be easily met by the inevitable savings in criminal justice and enforcement expenditure as a program of reform is rolled out.

Drug Policy: Trying to See the Bigger Picture

Perhaps more important is longer-term investment in social capital. Young people—particularly those most at risk in marginal/vulnerable populations—need and should be given meaningful alternatives to drug use, and there is a strong evidence base to support the effectiveness of such interventions. The SMART program in the United States, for example, which works on public housing estates, has found that providing youth clubs has a real influence on reducing drug use, dealing, and overall criminal activity in both young people and adults.¹¹ It is also worth noting that the Netherlands and Sweden regularly top the United Nations Children’s Fund (UNICEF) child well-being table and have relatively low levels of drug misuse (despite markedly different drug policies), while the United States and the United Kingdom invariably sit at or near the bottom and have relatively high levels of misuse and a lower age of misusers.¹²

It is increasingly clear that levels of problematic drug use (among all age groups) primarily reflect a complex interplay of social, economic, and cultural variables. Key drivers include social deprivation, inequality, and broader measures of personal and social well-being. The corollary of this is that the results of drug policy as traditionally conceived (prevention, treatment, and enforcement) should not be overestimated, may be marginal, and, in many cases, irrelevant, relative to the underlying social determinants of drug-using behaviors.

This analysis—that problematic use is essentially a barometer of a social well-being (or its lack)—has obvious implications for longer-term prevention and harm reduction strategies. It suggests that success is likely to flow more from investing in social capital and addressing multiple deprivation and inequality issues, particularly as they affect young people, rather than from pouring ever more money into more conventional interventions that are poorly supported by evidence. This naturally points to a much broader program of social policy reform and investment, and notably highlights the need for

drug policy to emerge from its drug war bunker mentality, adopt a more holistic worldview, and integrate far more effectively with parallel disciplines and institutions involved with social and public health policy.

While conventional drug policy may only be able to achieve, at best, fairly marginal effects with respect to the prevalence of problematic use, the overarching prohibitionist legal framework can clearly have a dramatic influence on levels of harm associated with drug use, both by increasing health risks associated with use, and through the wider social harms created or exacerbated by the illegal drug market.

While it is specifically not envisaged that legal availability of drugs would be extended to children, it remains the case that illegal production and supply serves to maximize the risk associated with use itself for all age groups. As already discussed, an unregulated market serving the interests of criminal profiteers will tend to shift toward the most concentrated products—for example, why you can buy crack on the streets of London, but not coca. Furthermore, illegal products are of unknown strength and purity, often cut or contaminated, and without packaging information about dosage, safety, or risks. Legally regulated products—even if sold or passed on in an informal secondary marketplace or via peer networks—would be intrinsically less risky than their illicit counterparts. Furthermore, barriers and distrust between youth and authority figures perpetuated by punitive prohibitions—be they educators or law enforcers—would be progressively reduced, facilitating more effective communication and dialogue about drug risks and healthy lifestyles.

Arguably much more significant would be the reduction in harms to children and young people that would follow the progressive contraction of the illegal drug market as the trade shifted into the legally regulated models. As has been so eloquently described elsewhere in this collection, the harms to children from the war on drugs and its unintended consequences—quite aside from drug use—are profound and terrifying in scale. Even a small reduction in the extent of these harms, which include the brutality of the markets whose frontline children live on, the conflict fueled by illicit drug profits, and the destabilization of social infrastructure by illicit drug market-related corruption and violence, would be a huge social positive.

Prohibitions on commodities for which there is high demand

inevitably create criminal opportunities, pushing production, supply, and consumption into an illicit parallel economy. Such illicit activity is flexible and opportunistic, naturally exploiting the most vulnerable workforce and seeking out locations where it can operate with minimum cost and interference, hence the attraction of geographically marginal regions and fragile, failing or failed states. As a result, many countries or regions involved in drug production and transit have weak or chaotic governance and state infrastructure.

The illegal drug trade can be seen as providing a vital income stream for a range of insurgents, militias, and terrorist groups. The cocaine trade, for example, directly fuels the long-running civil wars in Colombia, and now undermines emerging transit states in West Africa, such as Guinea Bissau. The opiate trade similarly contributes to wider regional conflicts in Central Asia—prominently in Afghanistan, now spilling over into Pakistan, in which the Taliban and various rival political factions and warlords are substantially funded via their control of the opium/heroin trade.

At the same time, Mexico has witnessed a horrifying explosion of violence, with estimates of as many as 28,000 deaths in the past four years, as the government has tried and failed to use military force to crush the drug cartels (sustained by an impoverished population providing a ready supply of young foot soldiers), which are now powerful and rich enough to outgun state enforcement efforts. A similar, although largely unreported, level of violence has unfolded in Venezuela, which is also fighting its own very real, but equally futile, war on drugs.

Large-scale illicit activity can thus undermine governance and social infrastructure at local regional and even national levels, feeding into a downward development spiral. In such a spiral, existing social problems are exacerbated and governance further undermined through endemic corruption at all levels of government, judiciary, and policing, another inevitable feature of illicit drug markets entirely controlled by organized criminal profiteers.

As with all wars, in the drug war it is the young, poor, and marginalized who are most vulnerable to the violence and wider social harms that conflict creates.

Clearly, any high-value natural resources, whether legal or illegal, can potentially fuel conflict. Legal examples include oil, diamonds,

and coltan. But for these legal products high value is intrinsic and relatively consistent, regardless of international legal frameworks. By contrast, drug crops such as opium poppy and coca are essentially low-value agricultural commodities. They have only become high value as a result of a prohibitionist legal framework (a combination of unregulated profiteering and the high risk to producers/traffickers is passed on to the consumer), which in turn encourages expanded criminal control of the trade. By the time they reach developed world users, the alchemy of prohibition is such that they have become literally worth more than their weight in gold.

Progressive shifts toward legal regulation of these products would naturally undermine the markets, remove the extraordinary profits on offer, and choke off a key a source of funding for so much of the conflict and corruption. About half of the world's opium production is entirely legal and regulated—that is, for the medical market. This legal production of opium (and indeed coca—albeit on a smaller scale) is associated with few, if any, of the problems highlighted above.¹³ In this legal context, they essentially function as regular agricultural commodities—much like coffee, tea, or other plant-based pharmaceutical precursors.

Under a legal production regime, drug crops would become part of the wider development discourse (and drug products more resemble conventionally controlled pharmaceuticals). While such agricultural activities still present a raft of serious and urgent challenges to both the local and international communities—for example, coping with the whims of global capitalist markets and the general lack of a fair trade infrastructure—dealing with such issues within a legally regulated market framework means they are not additionally impeded by the negative consequences of prohibition and the criminal empires it has created.

Similar effects would be seen in the reduction of all specifically drug war-related harms: increased regulation of production would reduce the environmental impacts of the unregulated parallel trade; a key driver of urban gang violence would be reduced; family breakups related to incarceration of parents and caregivers would be reduced; and so on.

We should be careful not to imagine such reform as a silver bullet solution or panacea for the people or regions of the world blighted by the unintended fallout of prohibition, or that change could happen

overnight. Instead it should be realistically considered more as a gradual, probably generational, process of removing a key driver of personal and social harms, and an obstacle to longer-term social and economic development.

There can, however, be hope that reform would help facilitate more positive change, albeit indirectly, via the potential for the billions, *even trillions*, of dollars still being poured into failed, futile, and actively counterproductive enforcement efforts—to be redirected toward more socially beneficial ends, be it housing, food security, education, public health, environmental protection, or any number of worthwhile social programs. This holds enormous promise for the children and young people negatively affected by the war on drugs—and indeed, the poor and marginalized in society more broadly.

Different social environments will require different approaches in response to the specific challenges they face. Transform’s *Blueprint* does not seek to provide all the answers—but rather seeks to move the debate beyond “should we end the war on drugs?” to “what could the world look like after the war on drugs?”

Endnotes

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