

## Decriminalization of Drugs Essential for Democracy

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“The war on drugs has failed”. It has become a common refrain. And for good reason, given that the effects of the current and prevailing approach, at a global level, has only served to fill up prisons without making so much as a dent in the supply, let alone the demand, for narcotics, whether they be as light as marijuana or as ‘heavy’ as heroin and cocaine. And it’s not just the perpetrators of drug related crimes who suffer of course. The profits from the sale and trade of illegal drugs are such that the risks worth taking are huge; so huge that innocent and culpable alike are affected. Stray bullets from automatic guns can’t tell them apart.

It has become a matter of moral and practical necessity to decriminalize all drugs – not just cannabis, which is quickly being *legalized*. Most governments in the world, including those which like to praise themselves for their progressive and liberal approaches, maintain the so-called zero-tolerance policy to drugs. Yet, some of these same governments have plenty of historical evidence to suggest that not only does ‘zero tolerance’ fail, but that it spawns and fuels organized criminality: after all, did *prohibition* work in the United States in the 1920’s?

Cardoso highlights the practical failure of a zero-tolerance approach. A zero tolerance approach to a crime like taking drugs must always fail, in the same way as a zero-tolerance approach to alcohol, prostitution or drugs in sport will always fail. Paradoxically, the worst thing you could do to the drug lords in Rio is not to wage a war on them, but to decriminalise cocaine and marijuana. They would be out of business in one day. Supplies could be monitored, controlled and regulated – the harm to users and third parties significantly reduced.

The case for legalizing drugs has been made often, most recently by Cardoso and by Australia’s foreign minister, Bob Carr, who this week co-signed a report declaring that ‘the war on drugs has failed’. The argument is nearly always put forward in terms of the burdens that the drug war has imposed on us in terms of crime and public health. And it is true that these things give us good reason to abandon Nixon’s war on drugs. But we so rarely hear a moral argument in favour of liberalizing drug laws. This is a mistake. Although experts have told us time and time again that things would be better without the drug war, politicians have ignored the expert advice because voters do not want drugs laws to be loosened. And voters feel this way not because they think they know better than the experts, but because they have moral objections to drug use. There is a hidden moral debate driving the war on drugs that we never seem to bring out in the open.

The original drug prohibitions had a moral rationale rather than a practical one. It began with the American prohibition of opium, which was primarily motivated by a moral objection to white

people smoking in Chinese-run opium dens. This began a prohibition movement in the United States. In 1913, marijuana—which was used almost exclusively by Mexican and Indian immigrants—was prohibited for the first time by the state of California.

Today, when new drugs are added to the long list of illegal substances, it is because they are judged to be “addictive”, not because they are harmful. The United States’ Controlled Substances Act calls for a drug to be prohibited ‘a high potential for abuse’ and if it ‘may lead to severe psychological or physical dependence’. The drug does not have to be harmful in any other sense. According to US government statistics, paracetamol (acetaminophen) is involved in nearly five times as many emergency room visits as MDMA, and it remains available in supermarkets around the world.

So the main reason that drugs like alcohol and caffeine are legal, but cocaine and MDMA are not, is that the latter are judged to be “addictive”. (Suspend for a moment the true belief that alcohol and caffeine are addictive.) Addiction does harm the addict, to be sure. But self-harm cannot provide grounds for prohibiting a substance. As Mill famously put it, the sole legitimate reason for interfering with a person’s liberty is when he risks harming others. And while it is sometimes argued that the ‘drug problem’ makes us all worse off, most of these harms flow directly from the zero-tolerance approach—drug prohibitions harm others when they are robbed, beaten or killed by those who run the black market of drugs.

It is sometimes argued by liberal-minded people that addictions warrant state interference because they render the addict incompetent, powerless to make an autonomous decision to take drugs. The addict becomes like a child in need of parental protection—or in this case the protection of the state. In this way ‘addiction’ becomes a moral concept, not a form of harm. It is a condition that robs us of our moral status.

We have argued in a number of articles (1, 2, 3, 4, 5) that such a view of addiction is false. People who take drugs are not suffering from a disease and they do not necessarily have some pathological failing of will power. They may be imprudent or irrational in taking drugs, but then again, we all are, nearly every day, in various ways when we eat unhealthily, engage in risky sports, smoke, drink or gamble. Addicts may place to greater value on pleasure, or on excitement, or escape from reality, but their addictions are not different in kind to desires for other pleasurable activities. People become “addicted” to gambling, videogames, internet use, exercise, sex, carrots, sugar and water. These substances or activities do not “hijack” the brain—they provide pleasure utilising the same brain pathways as drugs.

Every pleasurable activity is ‘addictive’.

The public discourse on drugs includes liberty, health, and crime, but it so rarely includes the value of pleasure. We do not have to be hedonists to believe that pleasure is one of the important goods in a person’s life. A liberal society should be neutral with regard to which pleasures people may pursue; it should not force people to conform to a particular conception of ‘good’ and ‘bad’ pleasures. But more importantly, if every pleasurable behaviour can be addictive, then there can be no reason to believe that the pleasures of drug use are less important than the pleasures of good food and wine, of rock-climbing and football, or of browsing the internet. Each of these things is pleasurable, and hence each is addictive, and each can be harmful if done to excess. But we all have a right to pursue the pleasures we find valuable, even though each of

these pleasures puts us at risk of addictions or addiction-like problems: alcoholism, pathological internet use, sex addiction, binge eating disorder, and so on.

The right to pursue pleasure gives us reason to legalize drugs, while addiction and self-harm fail to give us good reason to prohibit them. That is the essence of a strong moral argument against the war on drugs.

There remains one possible ground for interfering in liberty and retaining the ban on drugs. That ground is the public interest. If society were to be severely impaired by liberalisation of drug laws, that might be an extreme case that warrants a ban on drugs. But our (admittedly limited) experience suggests the opposite — the Netherlands appears to have reduced its drug problem, without increasing its overall rate of drug use, by enacting relatively liberal drug laws for ‘soft’ drugs like marijuana. And as Cardoso argues, a complete ban seems to be strongly against the public interest, keeping drug lords in business and the user and others in a position of severe vulnerability.

In the future, perhaps we will give up our squeamishness about drugs which provide pleasure. We could use modern pharmacological science to select or even design drugs which give us the pleasure or experiences we seek, but cheaply and without serious acute or chronic health risks. For the present, the drug which we can most freely obtain is one of the most addictive, one which contributes to violent behaviour, one which produces terrible chronic health effects and the worst withdrawal syndrome of all drugs. Alcohol.

The time has come to take a rational approach to drugs.

During the 1990s, the Portuguese authorities faced the problem of drug use, especially heroin. João Goulão, today head of Sicad, the Portuguese government agency for drug addiction, said that drugs arrived in Portugal in massive quantities after the end of the dictatorship, in 1974.

On the one hand, they were one of the symbols of rediscovered freedom; on the other hand, the Portuguese youth had very little experience in the field, and the arrival of heroin in large quantities and at low prices from Pakistan and Afghanistan, in the 1980s, led to a very rapid spread even compared to other European countries.

Drugs soon became a nation-wide problem. Around 1995, the number of drug addicts in Portugal was estimated at around 100 thousand people, out of a population of ten million. The approach of the Portuguese authorities was typically repressive: the possession and use of drugs could lead to arrest and prison sentences. The government promoted commercials on national TV that had the clear aim of frightening the viewer, comparing the dependency to mental illness and showing it as a safe way to crime.

Why must legalize all drugs? For two reasons: ethical and practical.

The ethical reason is that each of us is the owner of our own body, and therefore it is free to do with it what it wants, provided of course that it is an adult in the fullness of its faculties, and that it does not harm others. It is not a new principle: we use it already with the consumption of alcohol.

No Italian law prevents an individual today from getting drunk to the point of brutalization. What it cannot do is drive while intoxicated, and this may cause an accident involving other people.

There are usually two objections to this topic.

1) The first one says that the toxic substance could make his family suffer or the people who are related to him, causing them psychological damage. True. But this is not a good reason to throw him in jail.

Drug addiction is a medical problem, not a legal one. Criminalizing a medical problem makes no sense and can only make the situation worse.

2) The second objection says that toxicants cost the national health service more than the average population. And then one could say: “Why should I pay with my taxes the expenses for the hospitalization of an overdose drug addict?”

This objection is actually an argument in favor of the legalization of drugs.

By legalizing drugs it would be possible, in fact, to tax them, and to use taxes to finance public health. In this way it would be the junkies – and only them – who would finance the additional costs due to their lifestyle.

In addition to ethical reasoning, there are also a number of practical reasons for legalizing drugs. Like it or not, there is a high demand for drugs among people. Making it illegal to eat does not make it go away.

It only creates a giant black market that brings billions to organized crime. Billions that could instead flow into the pockets of honest drug manufacturers and retailers, as well as into the state coffers.

Not only. But the war on drugs favors the formation of large criminal groups, such as the South American cartels and the mafia.

The reason is simple: very expensive large-scale operations are required to produce, smuggle and illegally sell large quantities of drugs. Only large and powerful multinational cartels can perform such operations.

If instead the drug becomes legal, it could be produced by many small producers locally and in the light of the sun. Not to mention that the mafias would be deprived of a very lucrative source of income.

But that's not enough. Have you wondered why the amount of active ingredient present in drugs has been increasing in recent years? The reason is that the drug dealers, fearing to be arrested, want to take the least possible amount of drugs with them.

There are other practical reasons why it is worthwhile to legalize drugs. At this time one third of the Italian prison population is made up of people who have ended up behind bars for drug-related crimes.

Do you have any idea how much it costs us in terms of police, courts, prison officers to arrest all those people?

And I'm not just talking about monetary costs, but also about security costs. Because every agent who is used to pursue a drug dealer or a junkie is an agent who can no longer chase after a robber, a rapist or a murderer.

Do you want more security in less crowded streets and prisons? Legalize drugs. Legalize them all.

But the question of addictions was taking on the dimensions of an emergency and the police measures did not seem able to check it, as the neighborhoods where drug use was endemic demonstrated dramatically. The most famous was on the edge of the Lisbon area called Casal Ventoso, from which the media periodically displayed images of people using heroin in the street – and from time to time they died there. It was clear that something had to be done.

A commission of eleven experts was established, including Goulão, then director of a clinic in the Algarve, to study the phenomenon. In 1998, this concluded that the best way to reduce the social and economic impact of the problem itself in the decriminalization of possession and consumption of drugs (legalization was also considered, but was not possible due to different international treaties).

The principle was simple: no longer to treat drug users like a criminal. The government of the Social Democrat António Guterres approved the commission's considerations and started the legal process to put them into practice.

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On 1 July 2001, a law came into force in Portugal which has since decriminalized all drugs, from cannabis to cocaine and heroin. Ownership for personal use and consumption remains illegal, but does not constitute a crime. Instead they are administrative offenses, while drug trafficking continues to be a criminal activity.

Opponents of the law – approved by parliament last October – had painted apocalyptic scenarios. Paulo Portas, leader of the Conservative-oriented Popular Party, said: “There will be planes full of students going to Portugal to smoke marijuana and take a lot worse, knowing that we won't put them in jail. We promise sun, sea and any favorite drug ». The law passed thanks to the parliamentary majority of the center-left government.

No one among the major Portuguese parties today asks that, on decriminalization, we go back.

Years later, no political force – except for some extreme right-wing movements – calls for a return (Portas is currently a deputy prime minister in a conservative government). The reason is very simple: data in hand, the new approach seems to have worked well, even if a certain debate has developed around it.

Success, however, seems not so much with regard to the number of drug users, but above all with regard to the number of sexually transmitted diseases, drug-related deaths and those who have access to and use treatments for care from addictions.

### **How the Portuguese law works**

Portugal remains the only EU country with a law that explicitly decriminalizes all drugs. The central change concerns the way in which use and consumption are treated: instead of being considered a crime to be dealt with in court and which can lead to prison sentences, it is treated as an administrative offense – we say how to park in prohibition of stop – removing it completely from the criminal sphere. This is not what the so-called “decriminalization”

approach, common in many other European countries, does, which is limited to excluding the possibility of prison sentences but maintains punitive tools typical of crimes.

The Commissions have the main objective of identifying a rehabilitation program and the possible need for medical assistance

With the new law, those found in possession of drugs in quantities considered by the law “for personal use” must appear within three days in front of the local Commission for deterring drug addiction . The quantities, equal to the average individual consumption for ten days, are about one gram of heroin, two of cocaine and 25 grams of marijuana or five of hashish. No more fingerprints, police registration, hearings before a judge.

Established with the law of 2001 and composed of a doctor, a social worker and a lawyer, the Commissions have the main objective of identifying a rehabilitation program and the possible need for medical assistance. I am the only institution that can assess cases of detention and drug use and possibly impose penalties.

The fines are in fact still possible, but in fact only as a last resort, in the case of habitual consumers: in fact, they are imposed more or less in 15 percent of the cases. In three quarters of cases, the commission considers the situation unsafe and limits itself to a verbal warning, with cancellation of the affair within a few months if there are no recurrences.

Those who appear before the committee usually undertake to support some type of care path, even if they are not legally obliged to follow it. As a 2009 Cato Institute report wrote , “every step of the process is structured to take away emphasis or eliminate any notion of” guilt “from drug use and instead emphasize its health and treatment aspects.”

This approach leads drug users to be much less afraid to go to public health care facilities: before decriminalization, many were afraid to accept help fearing arrest or opening legal proceedings against them.

In 1998, the number of people who appeared before a court for the simple use of drugs was more or less equal to that of people accused of drug dealing (about 2,500). That same year, 60 percent of drug-related arrests were for use or possession, rather than for sale or possession for drug dealing. The social condemnation that accompanied a drug trial was very high and prevented, in practice, many seeking help from health facilities.

### **The effects of the law**

After the decriminalization of drugs Portugal has achieved several notable , albeit somewhat controversial, results. Between 2001 and 2006, drug use among 13- to 18-year-olds fell for almost all the substances considered. The data of a new national research referring to 2012 showed that the trend continued also in the following years.

The use of substances by the Portuguese remains below the European average, although, outside the age range considered – the one often considered most at risk – there have been increases in percentage for most substances and population groups .

There has been a lot of debate around these numbers, with supporters and opponents of the law having depicted his results as “a resounding success” or “a disastrous failure”. In a review of the contrary positions published in 2012 on the Drug and Alcohol Review , two scholars have

concluded that with regard to drug use there has been “a net positive benefit for the Portuguese community” .

But more important is to note that drug-related healthcare support services have improved rapidly in terms of resources and people who have resorted to them. Many resources have been released due to the fact that fewer people appeared before courts or were imprisoned and assistance services are the area in which the positive effects of the Portuguese approach became more visible.

It is important to point out that the possible benefits of decriminalization cannot be separated from public health initiatives and from greater investments in structures and support programs that accompanied the introduction of the 2001 law.

Between 1999 and 2003, the number of Portuguese in substitution treatment went from just over six thousand to almost fifteen thousand, thanks also to a new national program for the distribution of methadone. The percentage of people in prison for drug-related crimes decreased from 44 percent in 1999 to 24 percent in 2013 – while the amount of substances seized by the authorities increased slightly, a sign that the fight against drug trafficking remained similar before and after decriminalization (Portugal is one of the two main access points for cocaine in Europe).

Meanwhile, new cases of HIV and AIDS have decreased, thanks also to awareness campaigns and programs for the distribution of sterile syringes.

In 1999, Portugal had Europe’s highest percentage of HIV cases among drug addicts who used venous drugs. The number of new HIV-related cases decreased by 17 percent between 1999 and 2003, and decreased in absolute numbers from 1575 in 2000 to only 78 in 2013, according to data from the Portuguese Sicad. In the same period, the new cases of Aids have gone from 626 to 74. The deaths linked to the use of heroin, constantly increasing since the end of the 1980s, have decreased from 281 in 2000 to 133 in 2006 and to 16 in 2012 .

Today the debate around the best solutions to combat drug abuse has received a new stimulus from the legalization of marijuana in various American states: but we cannot avoid noticing that little or nothing moves us, despite the rejection of Fini – Younger than a year ago. The case of Portugal shows that an approach to drugs based on so-called harm reduction – which does not consider the user a criminal and focuses on making assistance available, if he wishes to use it – produces concrete results.