

HCLU on Prohibitionist Drug Policy

The Drug War Has Failed

While the use of drugs is coeval with human life on Earth, the first attempts to regulate drug consumption on a massive scale through the means of criminal law were made in the 20th century. Paternalist state action against drugs is most clearly exemplified by the “drug war” which was officially launched in the United States in 1971 by President Richard M. Nixon. The aim of this program is to bring about a drug-free society through a complete phasing out of drug use. Ever since it was started, the U.S. government has spent billions of dollars on this “war”. With the United States in the center of its operations, the war has since spread to other countries including Columbia, Mexico and Peru. The American approach has since served as a model for several countries for their own restrictive drug policies.

Prohibitionism

Central to the prohibitionist approach is the notion that all forms of behavior involving illegal drugs – including consumption – are to be punished under criminal law and that criminal law is to be given priority in drug policies. Arguments marshaled in support of the legitimacy of this policy include the assertion that the amorality of consumption and the personality disorders accompanying it are endangering not only the consumers themselves but society in general, and are therefore not to be tolerated. Based as it is on the ideal of a drug-free society, the prohibitionist drug policy has by now turned out not to be a viable policy to pursue. The ideas of a drug-free society and the objective of putting an end to drug consumption are illusory notions. The restrictive measures deployed at various levels have been in vain: the number of people wishing to use drugs has increased rather than decreased in the advanced as well as in the developing countries, and prohibitionist policies have been shown to enhance rather than reduce the harmful effects of drug use on both the individual and society in general. An increasing number of experts are realizing these days that the practice of prohibitionist drug policy espoused and maintained by the United States is at least as harmful as the drugs themselves.

Prohibitionism is exposed to a number of counter-arguments:

- A prohibitionist drug policy results in a number of infringements of constitutional rights. Millions of people in the United States are exposed, even in the absence of reasonable suspicion, to random urine tests and searches during raids at places of entertainment and, if there is reasonable suspicion, to detention and interrogation. Anyone may have his personal property seized without a trial if police suspect that it derives from drug-related sources. In the US, a country where liberties are numbered among the supreme social values, law-abiding citizens have become targets of arrest and conviction. The drug war leads to infringements of the most fundamental constitutional rights of citizens such as the right to autonomy or the right to having one’s privacy respected. One of the most glaring examples is the increasingly widespread use of tests designed to prove drug consumption.
- Prohibitionist drug policies are very expensive. Prisons become crammed with drug offenders, courts and the administration of justice generally become overburdened. A disproportionately great part of government funds are spent to enforce prohibition of feeble effect, rather than to prevent the problem and to treat drug addicts.
- Despite the prohibition drugs are widely available. Surveys have shown that drugs are accessible even in prisons, which raises fundamental doubts about the legitimacy of the strategy of criminalization.

- By contributing to the rise and expansion of a black market, the prohibitionist policy supports groups, which engage in drug trafficking. This, in turn, creates further problems, resulting in organized crime, corruption, frequent violence, and people taking the law into their own hands. These are natural concomitants of a black market and illegality. Certain data reveal that Columbian drug cartels spend 100 million dollars only to bribe officials.
- The stricter legal rules on drugs, the more likely it is that control over drug trafficking will be taken by the criminal gangs which are better organized, stronger and better at conspiracy. The effects of the prohibition of alcoholic drinks in the United States in the 1920s – supporting the Mafia in acquiring power and getting a lot of money -provide a similar example.
- The ban limits supplies, which leads directly to a rise in the price of drugs, which, in turn, raises the amount of realizable profits. As a result of the prospect of high profits, every time a drug dealer is arrested, new ones to step in their place are easy to find. UN statistics reveal that one-kilogram of heroin which costs USD 2720 in Pakistan is sold at USD 129 380 in the United States.
- In addition to supporting organized crime, prohibitionist drug policy also turns consumers into criminals. Less directly, it leads to a further spread of crime among consumers by driving up the price of certain illegal drugs, which leave their users with no other option than to get the amount of money needed to buy their drugs through criminal activities.
- According to a widely held view prohibition leads to the consumption of drugs of higher concentration levels, since the economic logic of smuggling makes smugglers interested in selling drugs with a higher concentration of active ingredients. The practice, which came to be established during the prohibition years in the United States in the 1920s, is again a case in point. During the prohibition years harder alcoholic drinks such as gin or whisky were preferred to beer or wine. When the prohibition was lifted, the consumption of hard liquors dropped dramatically and gave way to the consumption of beer and wine, which are less harmful to the health.
- Since drugs become illegal as a result of the prohibition, no one checks their quality or active ingredient content. The mere fact that the active ingredient content varies often leads to severe harm, at best, or lethal overdose, at worst, among intravenous drug users.
- Prohibitionism sometimes produces effects contrary to its aims, i.e., it enhances interest in drugs. Using drugs may become a way of expressing an attitude of opposition to “the powerful”, or a desire for them may be generated by the logic of “the forbidden fruit”. These effects are only underscored by the constant publicity the topic receives, which originally aims at bolstering the legitimacy of prohibitionist measures.
- Under prohibitionism consumers have small chances of improving the quality of their lives, being often prevented from seeking expert advice by their fear of the authorities. Once sent to prison on drug charges, consumers become stigmatized, which leads to great social harm. A drug policy which emphasizes punishment helps to maintain an atmosphere of prejudice against consumers and the general lack or inadequacy of information.

Is there a Crime without Harm to Others?

According to a statement made by the American Civil Liberties Union, as long as a drug user causes no harm to others, he is not punishable even if he harms himself by his use of drugs. While the state deprives people of their right to consume drugs, it is unsuccessful in reducing access to drugs, on the one hand, and it creates poor conditions for public health and favorable conditions for criminal activities, on the other. People are born with certain liberties. It is their own responsibility to make themselves happy or unhappy, by doing whatever they please to do as long as they do not infringe upon other people’s interests. The state is not allowed to

punish its citizens for what they do with their own bodies or by altering their state of consciousness. Another argument against prohibitionism derives from the right to autonomy. While the State severely punishes the consumption of certain substances with reference to the interests of public health and to the protection of society in general, it tolerates the consumption of certain other consciousness-altering substances such as alcohol, and even makes huge incomes from the consumption of these legal drugs. If no distinction can be made between certain substances in terms of the health hazards incurred as a result of their consumption (as e.g. in the case of cannabis and alcohol), the state's practice to criminalize the consumption of only one of them is rather dubious.

The Role of UN in the War Against Drugs

The international coalition of groups fighting for reform in drug legislation has recently sent a letter to UN Secretary General Kofi Annan, asking him to initiate global steps against the increasing threat posed by drugs. The letter states: "We are all deeply concerned about the threat that drugs pose to our children, our fellow citizens and our societies. There is no choice but to work together, both within our countries as well as across borders, to reduce the harm associated with drugs. We believe that the global war on drugs is now causing more harm than drug abuse itself."

As part of the activities pursued by UN, international agreements are signed almost every tenth year, most of which address problems of criminalization and methods of punishment, thus thwarting the efforts that are taken by states to find appropriate ways of dealing with the local problems caused by drugs. Supported by UN, repression only results in the continued application of measures of control which are increasingly severe and expensive. International agreements, such as the New York Convention (1961) or the Vienna Convention (1971), also raise a number of interpretation problems which add to the difficulty states already have in introducing reform. One of these problems is due to the fact that, according to international agreements, particular states are not obliged to criminalize personal consumption, but the possession of illegal drugs is to be punished even in cases when it serves personal use only. According to a UN estimate, the annual income produced by illegal drug trafficking totals USD 400 billion, which is roughly equivalent to 8% of total international trade. The drug reports issued by UN every year emphasize the fact that drug dealing has contributed to the rise in organized crime, corruption and terrorism. The same reports remain silent on the fact that the illegality of certain drugs itself is the root of the existence of illegal drug trafficking. The binding force of international anti-drug agreements, i.e. the fact that these contracts prohibit the introduction of more liberal-minded methods, is often cited as an argument to justify maintaining the prohibitionist policy. Two remarks on this seem apposite. First, the governments which refer to the importance of international agreements to bolster the legitimacy of prohibition, are the very same governments as those that find no difficulty in neglecting "outdated" contracts in the interest of regulating some other problem area. Secondly, countries which make their drug laws more permissive and introduce more liberal policies can usually do so without tearing up relevant contracts or incurring disapproval from UN.

Zero Tolerance

In countries which pursue a prohibitionist policy, the effects of the ban come to be felt in every area. The authorities which prosecute crime often take steps in areas where they would have nothing to do under a reasonable drug policy. Prevention and education are typical examples. Police in prohibitionist countries take an active part in these activities. The

efficacy of such projects for “prevention by the police” is very doubtful, because the most emphatic, often the only preventive message, is “just say no”, which prepares young people only for why and how they should refuse to try drugs. This message, however, has little import for, and hardly any effect on, those youths who have already tried the prohibited substances, - and surveys show that their numbers are increasing in virtually every country under a prohibitionist drug policy -, so it is to be feared that these prevention projects simply miss the most crucial part of their target. One might also wonder why a police officer should be better able to make the harmful effects of drugs on health stick in the mind of a sixteen-year-old than a physician or a psychologist.

In countries which emphasize prohibitionism police often provide a drug “aid” hotline free of charge for citizens who might seek help with some drug-related problem. The question, again, is whether it is realistic to expect a person to ask for help relating to medical treatment from the police. As a matter of fact, police officers are in a difficult situation, being under constant pressure from society as a result of the punishability of drug consumption. To meet the demands that are made on them, police tend to take steps against consumers who provide an easy target, on the one hand, and feel entitled to keep under control establishments which offer medical treatment for drug addicts and the entire question of drugs, on the other.

Prohibition and Cannabis

The legal position of cannabis derivatives, i.e. marijuana and hashish, is one of the questions in drug policy most fraught with contradictions. Cannabis is the most widely used illegal drug in the world and the one that ranks fourth in the list of the most popular psychoactive substances after coffee, alcohol and tobacco, which is used by 140 million people around the world, according to U.N. statistics. A statement issued by UNDCP in 2000 described the health and social damage caused by cannabis use as substantially slighter than those caused by the use of cocaine and heroin, despite the fact that cannabis is used by a substantially greater number of people than the other two substances. Several scientific investigations attest to the fact that the consumption of marijuana is hardly more harmful, if at all, than the consumption of alcoholic drinks. Despite these facts cannabis is a prohibited substance in most counties of the world, and its use as a medicament is also prohibited in most countries despite the fact that its curative effect in the treatment of certain diseases has been well known for hundreds, indeed thousands, of years.

According to the argument most often invoked in support of the criminalization of the use of marijuana, legalizing or even de-criminalizing marijuana would impart a “sinister message” to society. On the other hand, whether prohibition is a beneficial and effective message can be seriously doubted, with most surveys showing that the use of cannabis by young people is fairly widespread in most countries and is still increasing. Also importantly, people who use this substance regularly differ greatly from those who use other illegal substances on a regular basis. The former rarely ever break any other rule of criminal law than the one that criminalizes the use of cannabis.

Other arguments employed in justification of the prohibition against cannabis include views, which used to be widely accepted but have since been shown to be poorly founded on scientific facts. The “gateway drug concept” is a case in point: it argues that people who use marijuana will switch to much more dangerous drugs after some time. This theory is contradicted by the statement emphatically advanced in a report by WHO that “the assumption that users of marijuana become users of heroin after some time takes for granted the least likely of all the possible outcomes.” The same report also pointed out that if cannabis is treated as an illegal drug along with the rest, this really increases the chances that users of cannabis will give other substances a try. One need only reflect the simple fact that an illegal

drug dealer is in a more advantageous position to offer other illegal drugs (in the hope of greater returns) than a vendor of legalized cannabis.

A Commonsense Drug Policy

If policies were adopted which faced up to the problems as they really are, the undesirable side effects detailed above would be reduced, or at best, cease to haunt society. More and more experts today are opposed to the idea of “zero tolerance” and are looking for a more liberal alternative arrangement which would be more responsive to the social problems that there are.

The cornerstone of a more realistic approach is the belief that society cannot be completely purged of drugs once and for all. We have lived with prohibitionism for 80 years now and with massive drug consumption for 30 years. This history of drug use and prohibitionism leaves no doubt that there will always be people who defy prohibitions and choose to live with drugs. Despite tough measures to halt the use of illegal substances it seems clear that the use of drugs cannot be phased out and that drug use has become a social problem over the past few decades which cannot be solved by using primarily the means of criminal law. If we recognize that the idea of a drug-free society is an illusion, we can easily come to see that a realistic drug policy has to focus on efforts to minimize the harm to individuals and society caused by drug policies. Most experts who reject prohibitionism agree on the following points:

- most of the harm and misery attributed to illegal drugs is due to prohibitionist policies rather than the drugs themselves;
- means for significantly reducing health and social problems for individual consumers as well as society are available.

The aim of harm reduction drug policy is to reduce the harm caused by drugs and misguided regulation as much as possible. Harm reduction measures include needle exchange schemes which are designed to prevent the spread of HIV/AIDS infections, methadone or heroin maintenance schemes for those who are unable or unwilling to give up using drugs, safe injection rooms and adequate prevention and education schemes. The liberalization of the use of cannabis derivatives itself can be viewed as a form of harm reduction since statistics show that liberalizing the consumption of “soft” drugs has a favorable influence on the consumption of more dangerous drugs. To put it quite simply, if marijuana is legally available, fewer people will try heroin.

“Angel Declaration” for Legalization

Drafted by organizations which press for drug law reform, the “Angel Declaration” issued in the United Kingdom rejects prohibitionism on account of its side effects, which we have discussed above. To avoid the undesirable effects of prohibitionist policies – the parties to the declaration state –, the “black market” must be replaced by a legalized distribution system under permanent quality control. Further areas where reform is to be introduced include education, methods of treatment and harm reduction. The system devised by the signing organizations would be operated by a National Drug Supervisory Board which would see to administrative, licensing, regulatory and executive tasks – such as licensing, the giving of expert opinions, preparation of guidelines, minimalization of harmful effects on health – as well as act as a coordination, advisory and interest representation forum. All production and realization of drugs outside the scope of this organization would be legally punishable. Those committed to prohibition often invoke against comprehensive legalization the example of the legalization of heroin in Great Britain in the 1920s, after which heroin could be

obtained on a physician's prescription. On their interpretation, it was a result of this move that the consumption of heroin had grown considerably by 1960. Prohibitionists, however, tend to forget that the consumption of heroin reached considerably higher levels in the United States, a country where it was prohibited, at the same time. They also glide over the fact that the proportion of overdosage cases in Great Britain was considerably lower and that drug-related crime caused much less concern to society in Great Britain during the period in question.

“The Toughest Drug Law in Europe” – Drug Policy in Hungary

The words in quotation marks above were originally used by the spokesman for the Hungarian government in 1998 in his public announcement of the government's intention to tighten drug laws. Hungary has since seen the drug policy of the United States as a model to be followed, as the Prime Minister commenting on the recent hard-line approach of legislation admitted in a radio interview in 2000. Reading the National Drug Strategy adopted by the Hungarian Parliament in 2000 we may easily forget the realities of Hungarian drug policy. The Strategy seems to be out of harmony with the tough drug legislation which came into force three years ago. It is characterized, on the one hand, by the criminalization of consumption and the application of increasingly severe sanctions, and an emphasis on prevention, education and medical treatment on the other. The two cannot be reconciled in practice, we are afraid. The prohibitionist approach can be seen to “sneak into” all areas of the drug issue, including e.g. medical treatment and examinations of the efficacy of prevention projects. In the former area, physicians sometimes report drug users to the police, which in effect keeps patients from seeking medical help. In the area of questionnaire-based surveys, interviewees are found reluctant to cooperate, probably for fear of consequences. In both areas, the fear generated by harsh legal rules spreads well beyond the sphere of the strictly legal. The Penal Code makes no distinctions between hard and soft illegal drugs, imposing the same sanctions on a person who passes on marijuana as on another who passes on heroin. It makes some distinction between addicts and occasional users but, when translated into the terms of practical consequences, this distinction amounts to no more than that the occasional user is deprived of the option, open to some addicts, to choose treatment at a drug outpatient advisory service as an alternative to being prosecuted. A teenager, e.g., who gives marijuana a single try, has to face prison, while, before the 1998 drug law, he had the opportunity to choose treatment instead of imprisonment. At the present state of legislation, criminal prosecution has to be initiated. A sixteen-year-old secondary school student who passes on marijuana to his friend at a party as part of their sharing of a “joint “ is now risking a 5-10-year prison sentence.

The Main Goals of HCLU in the Area of Drug Policy

- Hungary should give up shaping its drug policies after the unjust, expensive and unsuccessful prohibitionist model adopted in the United States.
- Prevention and education schemes should impart unpretentious and realistic messages and should help people get rid of fears and prejudices concerning drugs.
- Instead of prosecuting drug patients, the State should spend its energies on treating and rehabilitating them; it should stop turning into criminals those of its citizens who generally abide by social norms except for those that relate to drug consumption.
- A genuine dialog between experts and citizens on the softening of drug-related legislation should be initiated.
- The consumption of drugs and the acquisition and possession of moderate amounts of drugs for personal use should cease to count as a criminal act.

- Cannabis derivatives should be treated separately from other illegal substances. Their consumption and distribution should be subjected to regulatory rather than criminal restrictions, as it is done in an increasing number of European countries.
- Decisions on drug policy should be based, among others, on internationally available results of scientific research. Schemes which have been found workable in other countries should be tested in Hungary.
- Hungary should look for examples to countries which have incorporated harm reduction in their drug policies and which have proved that long-term success can only be expected of a policy guided by realistic public health considerations, scientific results and by respect for human rights.

Keretes anyagokq

Urine Tester

The need for drug testing equipment and know-how has given rise to an entire branch of industry in the United States. The use of drug tests came to be established as a result of a belief held by many employers – which had been created by the panic unleashed by the Drug War and the branch of industry which has a vested interest in drug testing – that drug consumption is very wide-spread among employees and that it results in lower productivity. All surveys conducted to support these statements, however, suffer from vagueness: they do not feature comparative data on production. Recent surveys have shown that drug testing at work decreases rather than increases productivity. Compulsory urine tests at work are imposed on millions of employees in the United States. A billion dollars are spent annually on drug testing, and the identification of a single drug consumer is estimated to cost around USD 77 000. These tests identify mostly users of marijuana, the drug with the least harmful effect on health. Cannabis traces stay longer in urine than those of other drugs and cannabis is also the most frequently used drug. One might wonder why employers are so willing to spend such a great amount of funds on filtering out marijuana consumption when scientific experiments have shown that marijuana users do not differ from those who live without this particular drug. Some are also concerned about the way drug tests spread from use in the military forces and among pilots to office staff and finally to an increasing number of secondary school students, the latest group, to date, to become targets of drug testing.

The American Drug War in Figures

The Federal Government of the US spent one billion dollars on the drug war in 1980. The same index in 2000 was 20 billion. More or less the same sum is spent on the drug war by the federal states and over two thirds of these staggering sums of money are spent on the prosecution and punishment of drug users. It takes 8.6 billions of dollars to bring drug offenders before a court and to finance places in prisons for drug-related offenders. Before the war on drugs started, there were 50 thousand people in US prisons for drug-related offenses a year; today there are nearly 50 thousand on any day of the year. 5% of the world's population and 25 % of the world's prisoners live in the US, where more people are imprisoned for drug-related offences every year than in all states of the European Union for all criminal offences (and the European Union has almost 100 million more inhabitants than the US). As a result of the drug war the biggest item in the budget of several federal states in the 1980s and 90s was the sum assigned to the construction of new prisons. Yet the war does not seem to take real effect. Almost 50% of 18-year-olds in the US in 2001 had tried cannabis at least once and 5-

30% (varying from state to state) had tried extasy. These indices are much lower in e.g. the Netherlands.

A Liberal Solution

The Netherlands is a leader in drug liberalization in Europe: marijuana and hashish have been legally available, on certain terms, in this country for 25 years and harm reduction methods are fairly widespread and accessible. The opponents of the Dutch policy on drugs often argue, with reference to a widespread misconception, that the soft drug policy adopted in the Netherlands has lead to an increase in the number of drug users. The facts, however, do not support this view: Dutch statistics on drug use are practically the same as in other European countries and reveal substantially lower figures than corresponding data gathered in the US or Great Britain.

As a result of the partial liberalization of the drug market the rate of drug-related deaths is the lowest in the Netherlands among all the European countries. The rate of violent crime, and the rate of HIV/AIDS passed on through intravenous drug use is significantly lower there than, e.g., in the United States. The incidence of corruption in public offices is surprisingly modest even in an all-European comparison. Since the liberalization of cannabis, the number of young people among drug addicts is decreasing and the average age of hard drug users, at 36 at present, is continuously on the rise.

Képek aláírása: Photo:MTI

A 2. képnek címe is van (lány kezében marihuana level): Cannabis March in London (1999)

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