

Should recreational drug use be criminalised?

Professor David Clark continues his look at the regulation and control of drugs by presenting the views of the philosopher Douglas Husak about the justice of drug laws in the United States.

Douglas Husak combines hard fact and rigorous moral reasoning in his cogent analysis of the drug law debate in his recent book *Legalize This! The case for decriminalising drugs*. We summarise his arguments – and do not offer our own view - to help the reader decide how they feel about the central question of the justice of drug laws. Whilst Husak argues about the situation in the US, much of what is said is relevant to the UK.

Husak points out that we need to ask the right question when looking at drug policy. He emphasises that the onus has always been on those who want to change drug laws to justify why there should be changes. In fact, the onus should be on those who support current policy to justify their position. This rarely happens.

The critical question to be answered is: should recreational drug use be criminalised? Husak analyses the reasons put forward by prohibitionists to justify why people should be punished for recreational drug use.

The most pervasive argument is that drug users should be punished to protect children. Husak argues that the state is not committed to child welfare generally, since millions live in poverty and lack health insurance, and schools are under-funded, etc. Moreover, concern for the welfare of children vanishes when a child begins to use drugs – there is a growing trend in the US to prosecute and sentence children as if they were adults. The concern that children remain drug free disappears when doctors purport to detect a syndrome that requires the use of drugs, eg about five million children in the US take ritalin, an amphetamine-like stimulant.

Husak asks how punishing adults protects children. Are not adults instigating the behaviour we are trying to prevent? The myth of the pusher at

the school gates has been wholly discredited – peers introduce children to drugs.

The Office of National Drug Control Policy (ONDCP) argues that the second most important objective of US drug policy is ‘to increase the safety of America’s citizens by substantially reducing drug-related crime and violence’.

Prohibitionists often point out that a high percentage of criminals test positive for illicit drugs. More



meaningful, is the fact that an extraordinarily low percentage of drug users commit non-drug crimes. If drug use causes crime, why do the vast majority of drug users not engage in crime?

Three types of crime are linked to drug use. Systemic crimes occur because drug use is illegal and illicit drugs are bought and sold in black markets. A major study conducted in New York in 1988 revealed that 85 per cent of all crack-related crimes were systemic crimes: they were caused by

the market culture associated with crack sales, primarily territorial disputes between rival dealers.

Economic crime arises because some addicts need money to pay for their drug use. Husak points out that only 25 per cent of adult prison inmates in the US who use illegal drugs and commit economic crimes cite their drug use as a primary motivation for becoming involved in criminal activity. Many such people are

‘I think the sheer scale of incarceration of drug users makes prohibition the worst injustice perpetrated by our system of criminal law in the 20th century. Only the institution of slavery and the despicable treatment of the Native Americans are greater injustices in the United States.’

Douglas Husak

committing economic crimes before they started taking drugs.

Psychopharmacological crime arises from the effects of the drugs themselves. The drug that most likely causes psychopharmacological crime is alcohol. In 1998, it was reported that 21 per cent of persons in US state jails or prison for violent crime were under the influence of alcohol and no other drug at the time they committed the crime. Only 3 per cent were under the influence of cocaine or crack alone, and

1 per cent were under the influence of heroin alone.

It is argued that drugs are bad for our minds and bodies. Whilst few prohibitionists state explicitly: ‘The state is justified in punishing drug users because illicit drugs are bad for our health’, this rationale is endorsed implicitly.

Illicit drugs do pose risks to physical and psychological wellbeing. However, whilst the state has a central role in protecting the health of its citizens, it does not ordinarily perform this function by punishing the very people whose health it endeavours to protect. If you eat spoiled meat, do you get sent to prison?

Prohibitionists also emphasise the public expense incurred when people make unhealthy choices. So does this mean we should send people who use drugs recreationally to prison in order to reduce insurance premiums and conserve public resources?

Husak also asks how criminalisation improves health? He questions whether the health of drug users improves in prison.

According to the ONDCP, about 25,000 Americans die each year from using illicit drugs – the majority are caused by drug prohibition, not by the drugs themselves. Approximately 100,000 people die each year from adverse reactions to prescription medications, whilst over 100,000 people die each year because of alcohol. At least 430,000 die each year because of tobacco.

Many activities that do not involve use of a drug are far more risky to health, even though no-one would dream of using the criminal law to prohibit them. More than half of all Americans are now overweight. According to the Centre for Disease Control and Prevention, obesity accounts for about 300,000 deaths a year.

Husak finally refers to the moral view of prohibitionists. The former drug czar William Bennett said, ‘I find no merit in the legalisers’ case. The simple fact is that drug use is wrong. And the moral argument, in the end, is the most compelling argument’.

A more detailed description of Husak’s arguments can be found in his book – an excellent read – or in the About Drugs section of www.substancemisuse.net.