

After the War on Drugs

Options for Control

A report by

TRANSFORM
DRUG POLICY FOUNDATION

Transform Drug Policy Foundation

Our Mission:

Transform Drug Policy Foundation exists to minimise drug-related harm to individuals and communities by bringing about a just, humane and effective system to regulate and control drugs at national and international levels.

Our Activities:

- Research, policy analysis and innovative policy development
- Challenging government to demonstrate rational, fact-based evidence to support its policies and expenditure
- Promoting alternative, evidence-based policies to parliamentarians, government and government agencies
- Advising non-governmental organisations whose work is affected by drugs in developing drug policies appropriate to their own mission and objectives
- Providing an informed, rational and clear voice in the public and media debate on UK and international drug policy

Our Vision:

- **Social justice:** restoration of human rights and dignity to the marginalised and disadvantaged, and regeneration of deprived neighbourhoods
- **Reduced social costs:** an end to the largest cause of acquisitive crime and street prostitution, and consequent falls in the non-violent prison population
- **Reduced serious crime:** dramatic curtailment of opportunities and incentives for organised and violent crime
- **Public finances:** the financial benefits of discontinued drug enforcement expenditure and the taxation of regulated drugs
- **Public health:** creation of an environment in which drug use can be managed and drug users can lead healthier lives
- **Ethics:** adherence to ethical standards and principles in the manufacture, supply and distribution of drugs, including fair trade
- **Reduced war and conflict:** an end to the illegal drug trade's contribution to conflict and political instability in drug producer and transit countries

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1. Introduction

Options for Control

This report is the culmination of over a decade's thinking and experience of campaigning for drug policy reform. This process has been informed recently by the 'Options for Control' seminar series held in conjunction with the Mannheim Centre for the study of Criminology and Criminal Justice in May and July 2004.

The report fulfils four aims:

- provides a critique of the failings of prohibition
- offers a framework for regulating drugs and for developing effective drug policy
- suggests a roadmap for reform
- offers opportunities to influence progressive reform

The report will be updated periodically to take account of developments. The hope is that this work will be a practical aid to the development of more effective drug policy and feedback is welcomed.

Legalisation: regulation and control

If you are around in 2020, the chances are that you will see drugs prohibition replaced with a system of regulated and controlled markets. If Transform's timeline is right, by 2020 the criminal market will have been forced to relinquish its control of the drug trade and government regulation will be the norm once more. Users will no longer 'score' from unregulated dealers. They will buy their drugs from specialist pharmacists or licensed retailers. Or, for those with a clinical need, via a prescription. At its simplest, that is what legalisation, control and regulation will mean – shopping and visiting the doctor. It is simply a question of transferring the policy paradigm of management and regulation to currently illegal drugs. This report provides the detail behind this simple vision.

Prohibition – a policy whose days are numbered

Like many failed prohibitions of the past, drug prohibition has become unworkable. Unfortunately it has survived into the twenty-first century, with disastrous results.

The economics of global prohibition have inflated the price of heroin and cocaine to such an extent that, by the time they reach the UK, any attempt to eliminate the market domestically is futile and

counterproductive. Prohibition is a failed policy, and the magnitude of the error is becoming more obvious as increased demand for illegal drugs has collided with outdated legislation that seeks to prohibit them. Thankfully it is a failure that can be rectified. Whilst the obstacles are great, prohibition contains within it the seeds of its own destruction, its counter-productivity making it untenable in the long term. Once the political will exists to terminate prohibition the perceived obstacles will evaporate.

Legalisation and regulation – a policy whose time has come

The effects of legalisation will be profound, wide ranging and global. The drug war has created mayhem at all levels of public life, from local communities to nation states, and its termination affords opportunities to improve the lives of millions, bringing greater peace and stability to areas as diverse as Bogota, Kabul, Moscow and Brixton. Legalisation and regulation removes one of the world's most counterproductive policies, and frees up resources for a post-drug war Marshall Plan.

In the UK, the prison population and property crime could be halved, drug-related prostitution would end, opportunities for organised crime would reduce substantially, prohibition-related corruption would disappear, drug turf wars would end, urban environments could be regenerated, billions of pounds could be reallocated to improving public health, millions of hours of police time would be freed up, police community relations would improve and one of the largest causes of social exclusion would disappear. At an international level, legalisation would transform the politics of much of the world, including Latin America, Central and South-East Asia and the Caribbean.

Prohibition - An evidence-free zone

Until recently overwhelming evidence of prohibition's failure has been no obstacle to its continuation. Illegal drugs inhabit an area of policy-making almost unique in its lack of intellectual engagement. A hundred years of demonisation and moralising have created a no-go area that has deterred almost every attempt to engage critically with prohibition's obvious failings.

Prohibitionist drug policy has not evolved in response to evaluation, but rather in response to an accretion of influences – historical, moral and

political - that are predicated upon the increasingly fantastic objective of eliminating the production, supply and use of a specific group of psychoactive substances. This simplistic policy of elimination persists in ever starker contrast to policies that seek to manage the use of alcohol, tobacco and tranquillisers.

For decades UK drug policy has been explicitly based upon the simple premise that drugs are bad and should be banned. Questioning this orthodoxy was, until fairly recently, regarded as unacceptable. But the negative consequences of pursuing prohibition are now so overwhelming that even hard-line prohibitionist positions are crumbling beneath the weight of evidence.

Withdrawing from the Drug War battlefield

By endless repetition of the dangers of illegal drugs and the demonic nature of dealers, policy makers have argued themselves into a corner where a fundamental rethink on drug policy seems impossible. A climate of fear has been created amongst the public and politicians alike, within which rational exploration of policy alternatives is itself perceived as dangerous.

Yet even within this climate of fear and the well funded public information campaigns which seek to perpetuate it, public support for reform has grown significantly over the last decade. Thus far, support has been strongest in the case of cannabis; increasingly, understanding of the links between crime, public health and prohibition are extending this scepticism across drug policy as a whole.

An authoritative and independent evaluation of the broader impacts of current policy will create an unprecedented opportunity for change. By providing clear evidence of what works and what does not, initially in the form of a full audit of the effectiveness of drug enforcement spending, evaluation allows fearful policy makers to move away from the drug war rhetoric and make a credible case for pragmatic reforms. As the negative impacts of prohibition and benefits of regulation are better understood by policy makers and the wider public, pragmatism will triumph over drug war populism, and the lingering resistance to reform will rapidly crumble away.

As long as individuals and organisations remain silent, the UK will continue its 'war' against forces created by its own myopic pursuit of a 'drug free world'. With each year that passes, this silence

helps maintain prohibition, bringing social and economic costs that vastly outweigh any perceived benefits. Now we need to join forces to bring about its early demise, creating opportunities to achieve real improvements in the quality of life for millions, here and across the globe. Some form of control and regulation is the only option. It is now only a question of time.

Danny Kushlick
Director, Transform Drug Policy Foundation
September 2004

2. The problem with prohibition

Summary:

Prohibition is a globalised legal system (under the UN drug treaties 1961, 1971, and 1988 signed into domestic law of 150 states) that mandates criminal sanctions in an attempt to eliminate the production, supply and use of certain drugs from society. This policy has failed on its own terms, globally and in the UK, with drug use and misuse rising dramatically, and drugs cheaper and more available than ever before.

The collision of prohibition with rapidly rising demand for drugs has created serious problems associated with illegal drug markets, maximising drug related harms to users and the wider community.

Policy related harms include:

- *The creation of crime at all levels*
- *A crisis in the criminal justice and prisons system*
- *Harm maximisation for drug users*
- *Political, economic and social instability in drug producer and transit countries*
- *Mass criminalisation and the undermining of human rights*

Enforcement is either ineffective or actively counterproductive and policy related harms are now far greater than harms caused by drug misuse.

Harm reduction initiatives are largely mitigating against health harms created or exacerbated by prohibition, whilst new resources for drug treatment are primarily an attempt to reduce prohibition-related crime. Neither addresses the intractable problems associated with illegal drug production and supply.

A history of failure

The last significant drug prohibition was the US attempt to prohibit alcohol (1920-32). This policy was a result of societal concerns about drink related illness, particularly for low-income households, combined with a paternalistic, temperance-motivated government. This 'noble experiment' lost the support of the public almost immediately and in the thirteen years before its repeal the illicit trade led to an escalating criminal culture of corruption and violence, and established organised crime and the mafia in the US.

After alcohol prohibition was repealed, resources were progressively diverted to new prohibitions of emerging drugs. The world began a process that would eventually globalise drug prohibition in the form of the UN Convention on Drugs in 1961, followed by two further treaties in 1971 and 1988, to establish criminal penalties for the production, supply and use of drugs in the domestic law of over 150 states. The UK's substantive domestic response came in the form of the Misuse of Drugs Act 1971.

In its stated goal of eliminating the supply and use of certain drugs, prohibition has proved to be an

Alcohol prohibition

"The prestige of government has undoubtedly been lowered considerably by the prohibition law. For nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced. It is an open secret that the dangerous increase of crime in this country is closely connected with this."

Albert Einstein 1921 'My First Impression of the U.S.A.'

unequivocal failure:

- Drugs are cheaper and more available than ever before. Over the past decade, inflation-adjusted prices in Western Europe have fallen by 45% for cocaine and 60% for heroin (2).
- Global Levels of drug use and misuse have risen persistently. The UN's own report 'Global Illicit Drug Trends 2003' reveals that of the 92 countries reporting to the UN in 2001 only 15% reported decreases in use, while 85% reported that use had either remained the same or had risen. Georges Estievenart, Executive Director of

Families
campaigning
against alcohol
prohibition in
1930s USA



the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has recently commented that 'overall, the drug use trend remains upwards and new problems are emerging'(3).

- In the UK the upward trend has been especially marked in the last two decades for the most problematic drugs, heroin and crack cocaine. There were approximately 6 – 15 000 problematic illegal drug users in 1971; in 2002 there were estimated to be between 161 000 and 266 000 (4).

When prohibition collides with rising demand

There is some evidence that prohibition can prevent the availability of commodities when demand for them is low. However, once demand is established, the effect of prohibition is to establish a high level of arbitrage between supplier and consumer, and thus to encourage a lucrative criminal market. At this point – which we reached a generation ago – prohibition becomes a 'gangster's charter', and the original drug problem becomes subsumed into a vast criminal economy.

As the market absorbs risks, including the costs of avoiding enforcement, wholesale drug prices inflate by as much as 2000% (5). The unfortunate and unintended impact of this price hike is simultaneously to make the trade immensely attractive to organised crime and raise street prices to levels where dependent users often resort to acquisitive crime to support a habit. Even if enforcement was successfully reducing availability (which it is not) the effect would merely be to push up the price and create still more crime amongst dependent users. The more prohibition is enforced, the worse the problems get.

As demand for illegal drugs has accelerated in recent decades, organised criminals and unregulated dealers have moved to exploit the growing profit opportunity to devastating effect. The collision of laws that prohibit drug use with rapidly expanding demand for drugs has created catastrophic negative impacts that were never foreseen when the UN treaties were first drafted (some of the text in the 1961 UN treaty was drafted in the 1940s). Far from reducing the harms associated with drug use, prohibition has in reality maximised drug related-harms and created a crisis in our criminal justice system.

It is testimony to the failure of imagination in drug policy thinking in the 33 years since 1971 that it has taken such a catastrophic policy failure for the reform debate to achieve any level of visibility. On almost any measure prohibition has been either ineffective or actively counterproductive, creating problems that were previously minimal or non-existent. In the process the inability to acknowledge its ineffectiveness, and the glaring mismatch between the government line and reality, have been significant contributors to the loss of public trust in government.

Harms created by prohibition

When reviewing the effectiveness of current policy, and considering options for reform, it is important to make the distinction between the harms that result from drug misuse and the harms that are a result of policy, specifically the enforcement of prohibition. The key harms created by prohibition are:

1. Creation of five types of crime

- **Organised Criminal Gangs (International)**

Violent criminal networks now control an international trade worth over £100 billion a year and a market turnover approaching £300 billion a year (6). Drug magnates and cartel bosses have become the Al Capones for a new generation, exploiting drug prohibition for profit and power and located beyond the reach of the law. They are routinely involved in violence and murder, corruption, fraud, money laundering, illegal arms trading and terrorism.

- **Organised criminal gangs (local)**

Criminal gangs battling for a share of drug profits are a significant source of antisocial behaviour and street violence in the UK. Such 'turf wars'

have fuelled the alarming recent rise in gun crime, murder, assault and intimidation, making some inner city areas virtual no-go zones.

- **Acquisitive crime: low-income problematic drug users**

Low-income problematic users (primarily of heroin and crack cocaine) frequently turn to offending to raise money to pay the inflated prices of illegal street drugs. Whilst many of these individuals may have been involved in offending before becoming problematic users, it is clear that the need to fundraise dramatically increases the intensity and volume of offences (precisely the reason that abstinence-based treatment is so central to the Government's crime reduction strategy). Prohibition has created the conditions whereby a relatively small number of problematic users are now responsible for the majority of shoplifting, burglary, theft from motor vehicles, robbery and nearly half of all fraud (*unpublished Number 10 Strategy Unit report, 2004*).

- **Street sex workers: low-income female problematic drug users**

For female problematic users with no other source of income, prostitution often becomes the most viable source of fundraising to buy drugs. The Home Office estimates that 95% of those involved in street soliciting are problematic users (7). This is the most visible and dangerous tier of sex work, and these individuals are themselves frequently victims of violence.

- **Prohibition crimes (as specified under the Misuse of Drugs Act 1971)**

Prohibition criminalises all activities involved in the production, supply, and possession of certain drugs, making criminals of a significant proportion of the population. A 2002 ICM poll found numbers of regular users of the following drugs: Cannabis 5.1 million, Ecstasy 2.4 million, Amphetamine 2.1 million, Cocaine 2 million and Heroin 426 000 (8). If lifetime use is included, prohibition is now criminalising one quarter of the adult population, and approaching half of all young people. These remain serious and imprisonable offences, and the accompanying criminal record has serious implications for employment, housing, travel and personal finance.

2. A crisis in the criminal justice system and prisons

- As was recently acknowledged in an unpublished Number 10 Strategy Unit report (9), UK police

enforcement efforts have had, at best, a localised, temporary and marginal effect and failed to make any meaningful impact on illegal drug supply. In the US, where the war on drugs is prosecuted with unprecedented intensity, the drug market still thrives and drugs are, as in the UK, cheaper and more available than they have ever been. Police attempts to stamp out this trade have always failed precisely because it is so lucrative. With the inflated prices and extraordinary profits on offer, criminal entrepreneurs view the efforts of police and customs as an occupational risk. If there is a police crackdown in one area the market simply moves to another. If one smuggling network is smashed another rapidly emerges to fill the void. If one dealer is arrested there is a queue of willing replacements. Even high security prisons are awash with drugs. When demand is high prohibition simply cannot succeed.

- The deepening prisons crisis is fuelled by prohibition-related offending. On top of the exponential rise in the number of imprisoned drug offenders over the last decade (increasing ten-fold for women and eight-fold for men between 1992 and 2002) anecdotal evidence from prison governors suggests that over 50% of prisoners are inside for crimes relating to fundraising to buy illegal drugs. Today nearly half of all women in prison in the UK are there for drug offences, over half have a child under the age of 16, and nearly three quarters have had a drug problem (10). The UK is now the leading per capita incarcerator in the European Union (11).
- The discretionary nature of drug enforcement, in particular stop and search powers, has made drug enforcement a driver for prejudice and racism within the criminal justice system. In the UK black offenders receive harsher treatment at every stage of the criminal justice process, being more likely than whites to be stopped and searched, arrested and prosecuted, and they receive longer sentences. As a result black drug offenders are significantly over-represented in prison and prosecution statistics, despite the black community having a per-capita level of drug use lower than whites (12).
- A Home Office study estimated that the economic and social costs of class A drug use in England and Wales in 2000 was between £11.1 - £17.4 billion. Of this total 99% was due to problematic users, and 88% (between £10-16 billion in one year) was costs of crime committed by problematic users (13).

3. Billions in wasted expenditure and lost tax revenue

- Direct annual expenditure on 'tackling drugs' in the National Drug Strategy for 2002/3 was £1026 million, of which approximately two thirds was spent on enforcement. Over and above this total (on the basis of the Government statistic that a third of all crime is illegal-drug related (14)), a significant proportion of all resources flowing into the criminal justice system, in policing, courts, prisons and probation, is now absorbed by the enforcement of prohibition and dealing with its negative consequences. The precise size of this wasted expenditure is uncounted but certainly runs into billions every year.
- The UK illegal drug market is now conservatively estimated to be worth around £6.6 billion a year in untaxed criminal profits (15). Others have estimated that the cannabis market alone is worth £5 billion a year (16). Whatever the exact figure, it is clear that substantial tax revenue, totalling billions annually, is being lost to illegal profiteers as a result of prohibition.

4. Undermining public health and maximising harm

- Prohibition abdicates control for drug production and supply to criminal networks, and in doing so maximising the risks associated with their use. Illegal drugs are of unknown strength and purity, contain unspecified contaminants and come with no health or safety information. The UK now has the highest level of drug related deaths in Europe (17).
- The risks of illegal drug use are particularly acute for injecting users with high rates of HIV infection and over a third of injectors in the UK and Wales infected with Hepatitis C. Over 50 people died from a single batch of biologically contaminated heroin in 2000 (18).

5. Destabilising Producer Countries

- Illegal drug markets now form a significant proportion of the economies in key producer and transit countries such as Afghanistan, Colombia and Jamaica, undermining their social, economic and political stability.
- Illegal drug profits are used to corrupt officials at all levels of politics, judiciary, police and military. It is estimated that Colombian drug cartels spend more than \$100 million each year on bribes to

Colombian officials (19).

- Illegal drug profits are helping to fund and arm paramilitary groups, guerrilla groups, and terrorist organisations across the globe, fuelling violence in conflict zones.

6. Undermining Human Rights

- Only a few decades ago problematic drug users were treated in the UK for what they were – vulnerable people in need of help. Prohibition turns the majority of those without substantial private means into criminal outcasts, exacerbating social exclusion and throwing yet more obstacles in the way of achieving employment, housing, personal finance, and a generally productive and healthy life.
- Millions of otherwise law abiding individuals are being criminalised in a way that is arbitrary, unjust, and incompatible with the European Charter of Human Rights. (*see morals and messages p.28*)
- There is widespread use of the death penalty for drug offences in violation of the UN Charter of Human Rights. China routinely celebrates UN world anti-drugs day with mass executions of drug offenders, 64 being executed on June 27th 2002, up from 54 the previous year (20). Over 2000 people have died during Thailand's drug 'crackdown' launched in 2002, many thought to be extra-judicial police executions (21).
- An estimated 2 million people are imprisoned globally for drug offences, one quarter of the total prison population. This places a huge financial and human cost on society with little evidence of benefits.
- Indigenous cultures in some producer countries that have long traditions of medical and ceremonial uses of local drug crops (coca, opium and cannabis) have come under attack through the criminalisation of traditional practices and aggressive eradication programmes.
- It is invariably the weakest links in the illegal drug chain (peasant growers, drug 'mules', and problematic users) who feel the greatest impact of drug enforcement. The most serious criminals have the resources to evade legal consequences and bargaining power as informants if they are caught.

The limits of harm reduction and treatment

Two significant and linked developments have characterised the evolution of drug policy in the UK over the last two decades: the emergence of harm reduction as a new policy paradigm, and a substantial increase in resources for drug treatment.

In the UK both harm reduction and drug treatment are almost exclusively focused on a small population of problematic illegal drug users, attempting to reduce health harms (predominantly blood borne diseases) and drug related offending that have been created or exacerbated by prohibition. As such the effectiveness of both is limited to mitigating against some of the worst symptoms of a counterproductive criminal justice-led policy. They can have positive impacts at the margins but are limited in their ability to deal with the core problems associated with illegal drug production and supply.

Harm reduction

The evolution of the harm reduction paradigm in drug policy thinking has been largely as a response to the epidemic of HIV amongst injecting drug users. The Conservatives, faced with a potential HIV/AIDS epidemic in the late 80s and early 90s, established a series of landmark harm reduction initiatives including needle exchanges. This policy shift continued under the Labour Government which, in the 2002 Updated Drugs Strategy, describes '*harm minimisation*' as one of '*our most powerful tools in dealing with drugs*'.

The emergence of harm reduction within a prohibitionist framework has created a profound policy contradiction as public health necessities have collided with dogmatic enforcement. Prohibition's criminal justice focus and preoccupation with reducing overall prevalence now sits uneasily with the focus on public health and pragmatic acceptance of drug use that underlie the harm reduction paradigm. This was graphically illustrated in 2003 when the distribution of injecting paraphernalia was legalised, making 'injecting kits' (containing clean swabs, ties and citric acid) available to injectors. Supply of the drug itself, however, remains in the hands of unregulated street dealers.

This clash of policy values has also been witnessed at UN level, where extreme wariness of harm

reduction from the UN drug control bodies has contrasted with its rapid acceptance within the World Health Organisation, UN Development Programme and UNAIDS, who use the term as a matter of course. The UN General Assembly Special Session 2001 on HIV/AIDS adopted a declaration that called for "*harm reduction efforts related to drug use*" and "*expanded access to essential commodities, including [...] sterile injecting equipment*".

Whilst harm reduction represents a welcome evolution in domestic and international thinking, it is clear that it has emerged in response to, and is limited to counteracting, some of the worst health harms created by prohibition in the first instance. The illegal market has pushed users towards ever more concentrated (and more profitable) versions of drugs, primarily opiates (from opium to heroin), and coca based drugs (from coca drinks, to cocaine, to crack). The illegal market has similarly promoted injecting as a method of delivery, as users have attempted to 'get a hit' from low-purity heroin.

Harm reduction is a concept that in any other field of social policy would be taken as a given. In drug policy it has been adopted late and reluctantly. Progress is still hampered by the emotive political environment, as is evident by the UK Government's continuing and baffling refusal to countenance heroin consumption rooms, despite the wealth of positive evidence from mainland Europe, Australia and Canada, and support from many police and most drug agencies.

Harm reduction principles should naturally inform policy for legal and illegal drugs. However, running harm reduction initiatives within a harm-maximising prohibitionist framework is clearly not a rational or sustainable policy. It can be very useful for dealing with some of the negative health harms of illegal drug misuse but it has no impact on harms associated with illegal production and supply.

Treatment works

'Treatment works' has become a familiar mantra in the drug policy field: a simple maxim that, for some, offers a potentially neat solution to the twin problems of illegal drug dependence and offending to support a habit. The thinking, now being expressed by both Labour and the Conservatives, is to use the criminal justice system to coerce drug-dependent offenders into abstinence-based treatment.

As a concept it has political appeal, being 'tough on

drugs' yet appearing compassionate and fair at the same time. For Labour, 'treatment works' has become the natural successor to 'prison works' as a sound-bite solution to the drug problem. However, like its predecessor, 'treatment works' has proven to be something of an overstatement.

The emergence of the 'treatment works' mantra followed from the highly influential National Treatment Outcome Research Study (NTORS) (22) with its headline conclusion that every pound spent on treatment saved three pounds in criminal justice expenditure. To this end, increasing Home Office budgets have been directed into criminal justice-administered treatment, and a proportion of local police budgets is similarly redirected to local drug services. But there are two serious problems with this strategy.



Thanks to
Simon Kneebone
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Firstly, 25% of those in the study did not engage in any treatment; these are likely to be the individuals who do not want to quit and the most chaotic and prolific offenders. Secondly, we need to consider what is being asserted here: treatment works compared to what? Spending on enforcement is so overwhelmingly counterproductive that redirecting enforcement budgets to almost anything else would produce better outcomes.

The idea that the criminal justice system should administer drug treatment budgets is essentially perverse. Criminal justice-administered treatment (such as the Drug Treatment and Testing Order or DTTO) is characterised by being coerced rather than sought, based on abstinence rather than maintenance from the outset, determined by courts rather than in consultation between patient and doctor and often enforced with intrusive urine testing and the threat of custody for breaches. The poor outcomes from such treatment programmes were recently highlighted by a National Audit Office report on three pilot areas for the new DTTOs that

found that 80% of offenders on the order had been reconvicted within two years (23).

Despite the poor evidence base for criminal justice-enforced treatment programmes they continue to receive the largest share of available resources. Spending on the treatment of problematic drug users now outstrips spending on treatment of problematic alcohol and tobacco users by over 400%, with more in the pipeline. This is despite the public health impacts of alcohol and tobacco misuse eclipsing all other drugs put together by a vast margin (there are 130,000 alcohol and tobacco-related deaths each year compared to around 3000 for all other drugs combined).

It seems clear that the new resources for drug treatment have not arisen because of an outbreak of compassion for problematic drug users, rather a realisation that enforced abstinence amongst dependent users may reduce offending. The money now flowing into drug treatment, administered by the Home Office rather than the Department of Health, can be seen primarily as a crime reduction measure. No matter how much treatment is made available a significant majority will continue to use and a minority of this group will offend to support their illegal habits.

We are now in a situation where the enforcement of prohibition is creating offenders (see p.8.) then using the same criminal justice system to coerce these offenders into treatment, aimed primarily at reducing offending. It is a perverse undertaking that holds little or no hope of success.

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3. The solution is legally regulated markets

Summary

The failings of prohibition have led to a growing consensus that legal regulation of drugs production and supply is the best option for managing drug use in a way that is both just and effective, minimising harm to users and the wider community.

Legalisation can be defined as the introduction of appropriate legal regulation and control of drug markets, which are currently under criminal control.

Under this model some activities, outside of the regulatory framework, will remain prohibited.

Legally regulated markets will have immediate and dramatic impacts:

- *A dramatic drop in crime at all levels, from property crime, street violence and prostitution, to international organised crime and corruption*
- *A 30-50% drop in the prison population*
- *Lifting a huge resource burden from the criminal justice system*
- *A multi-billion pound 'peace dividend' for the Treasury each year*
- *Improved public health and harm minimisation, fewer drug deaths and opportunities to control HIV and Hepatitis C*
- *Removing the corrupting and destabilising influence of illegal drug profits and drug cartels from producer and transit countries*
- *Ending the criminalisation of millions and ensuring the rights of drug users and non-users alike*
- *Removing the smokescreen of prohibition to reveal the underlying social problems of problematic drug users*

Understanding 'legalisation' as 'regulation and control'

The term 'legalisation' is only loosely defined in the public understanding, leading to much confusion as the current debate has developed. Transform uses a more specific definition; the 'regulation and control of the production, supply and use of currently illegal drugs' (*see definitions p.17*). This definition includes the repeal of prohibition implicit in the term 'legalisation' but specifies more clearly what will replace it. Transform does not advocate the free market model of legalisation as espoused by some libertarians and free market economists.

The various regulatory options for legal drug production and supply are outlined in this report (*see p.18*). Transform is not advocating the 'drugs free for all' that some critics have suggested; we would argue that such a phrase more accurately describes today's criminal drug markets. Equating 'prohibition' and 'drug control' is one of the great ironies of social policy – in reality, prohibition means abdicating control to gangsters and unregulated dealers. Legalisation would, by contrast, put in place the regulations and controls absent from existing illegal markets.

Within a regulatory legalisation model it is important

to note that some activities will remain prohibited. As with currently legal recreational or prescription drugs there will be restrictions as to who produces, can sell and has access to drugs, and when and where they may be consumed. Civil or criminal sanctions would still be incurred when activities occur outside of these legal frameworks, as is the case with, for example, underage sales of alcohol or cigarettes. Public consumption of drugs could remain illegal. Transform recognises that these regulations do not make drug use safe. Drug use can never be risk-free but opportunities to reduce some risks can be created through regulation and control.

What legalisation and regulation can achieve

Dismantling prohibition and legally regulating drug production and supply will have a number of immediate and longer-term positive impacts.

A dramatic decrease in crime at all levels

- The reason that dependent users of illegal drugs commit an enormous amount of crime whilst dependent users of legal or prescription drugs do

not is essentially a matter of economics: illegal drugs are expensive, legal drugs are not. Legally regulated supplies of heroin and cocaine – on prescription or at prices that do not necessitate fundraising-related offending – have the potential immediately to reduce property crime committed by individual users by as much as a half (an effect observed with heroin prescribing projects in cities across Europe (1)). Simultaneously, most street prostitution and street dealing would disappear and there would be significant reductions in turf wars, gang violence and gun crime.

- The largest single profit opportunity for organised crime would evaporate, and with it the largest single source of police corruption.

Relief for the criminal justice system and a huge reduction in the non-violent prison population

- With illegal drug markets dismantled, millions of drug users no longer criminalised, and dependent users no longer forced into offending to support a habit, a huge resource burden will be lifted from the entire criminal justice system, from police and customs, through to the courts, prisons and probation services.
- The prison population would quickly fall by between a third and a half, ending the funding and overcrowding crisis in the prisons system. As an indicator of some of the costs saved consider, for example, the 400 Caribbean women, driven by poverty to become drug mules and now languishing in British jails (at a cost of £35,000 each per year) who could return home to their families. Indeed, the whole concept of a ‘drug mule’ would be consigned to history.

Billions saved in wasted expenditure, and opportunities created to raise tax revenue

- Billions of pounds currently spent enforcing prohibition and dealing with its negative consequences would be saved. This ‘peace dividend’ from ending the drug war would be freed up for other criminal justice programmes, or could be redirected into drug treatment and education, or longer-term investment in reducing the social deprivation underlying most problematic drug use: a post-drug war Marshall plan.
- The illegal drug market in the UK is estimated to be worth at least £6.6 billion a year (2).

Regulating and taxing this market would, as with alcohol and tobacco, create significant revenues for the Treasury, as well as creating the opportunity to control prices.

Improved public health and real reduction in harms associated with drug use

- The harm maximising effects of prohibition would be removed creating an environment in which effective treatment, education and harm minimisation programmes could evolve, funded by redirected enforcement spending. Numbers of drug related deaths would drop dramatically.
- Dependent users would no longer have to face the risks of impure street drugs and blood borne diseases including HIV and hepatitis. They would be able to access drug services without the threat of criminality.

Restoration of human rights and dignity to the marginalised and disadvantaged

- Civil and human rights abuses could no longer be perpetrated under the banner of the drugs war.
- The threat of criminalisation would be lifted from millions of otherwise law abiding citizens.

Restabilisation of drug producer and transit countries

- Colombia, Afghanistan, Jamaica, Burma and many other drug producer and transit countries have become almost ungovernable because of the distorting and corrupting influence of an illegal market that now almost rivals the oil and arms industries in turnover. According to the Economist legally regulated drug markets are a precondition for any hope of a return to stability in these regions (3).

What legalisation and regulation cannot achieve

Despite the many benefits of regulating drug markets outlined above, this is not a panacea for ‘the drug problem’, however it is conceived. Whether drugs are legal or not, a small minority will continue to use them irresponsibly, some will be

harm and some will die. Legalisation and regulation can only get rid of problems associated with prohibition and the criminal markets it has created. It does not directly address the underlying causes of most drug misuse: poverty, unemployment, homelessness, boredom and lack of opportunity, mental health problems and histories of abuse or of being in care.

Ending drug prohibition will not eliminate organised crime. It will remove a significant profit opportunity for existing organised crime networks and will result in a fall in total profits. It is also possible, however, that other organised crime activities may increase as profits from the illegal drug trade dwindle.

Creating an environment in which drug use can be effectively managed

Having acknowledged the limits of drug law reform, we also need to consider it in the context of broader social policy. Transform believes that ending the chaos created by prohibition is an essential prerequisite for more extensive social change. Prohibition is a monolith of outdated legislation that acts as a huge obstacle to developing effective policy responses to problematic drug use. Attempting to negotiate around it has generated a mix of largely ineffective policies riddled with profound contradictions and injustices. New initiatives to reduce drug related harm, drug related crime and social exclusion are attempting to operate within a prohibitionist framework that actively maximises harms, creates crime, and excludes the very people who need help the most.

Stripping the drugs issue of decades of political populism and 'drug war' propaganda will allow us to address it for what it clearly is: an issue of public health and social policy. In the long term the only way to reduce problematic drug use is to deal with its underlying causes. This, in the simplest terms, means reducing the social deprivation that leads to most problematic use and incorporating drug policy into the wider policy context. Problematic drug use is a barometer of social ills, and whilst it can exacerbate existing problems, it is not the primary cause. Prohibition has made drugs, drug users and drugs dealers a convenient scapegoat for many of society's problems, providing a smokescreen for failures in other areas of social policy.

Definitions

Prohibition:

The over-arching global policy paradigm criminalising the production, supply and use of specific drugs and seeking the elimination of drugs from society.

Decriminalisation:

The removal of criminal sanctions (through either legislative change or tolerant policing) on production, supply or use of some or all currently illegal drugs. (e.g. the policies of Holland, Portugal, Switzerland and most recently Russia). Civil or administrative sanctions, such as fines, may remain.

Legalisation (regulation and control):

The redrafting or termination of the UN conventions criminalising production, supply and use of drugs, allowing freedom for domestic governments to legally control and regulate. This can include the criminalisation of some drug-related activities taking place outside of any new regulatory framework.

References chapter 3

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4. Options for the control and regulation of drugs

Summary

Existing models for the regulation and control of currently legal drugs provide the template for future regulation of currently illegal drugs.

Existing options for drug production are:

- *Pharmaceutical drugs – (e.g. diamorphine) - Licensed production by pharmaceutical companies. International licensing of imports/exports*
- *Non pharmaceutical drugs – (e.g. alcohol and tobacco) – manufacture and imports/exports licensed and policed by various local/ national/ international agencies*
- *Unlicensed production – (e.g. fresh magic mushrooms)*

Existing options for drug supply are:

- *Prescription – (e.g. tranquilisers/methadone) licensed doctor and dispensing pharmacist*
- *Pharmacy sales – (codeine preparations, kaolin and morphine) over the counter sales by licensed pharmacist*
- *Licensed sales – Off licenses (alcohol) and tobacconists – licensed vendors*
- *Licensed premises for consumption – public houses*
- *Unlicensed sales – eg magic mushrooms, salvia divinorum, khat, inhalants*

New supply options

- *Specialist pharmacist – licensed to dispense non medical drugs, qualified to offer health advice and information*
- *Licensed users/ membership based licensed premises – entry, purchase and consumption requires membership with restrictions attached.*

Many regulatory models already exist for the production and supply of recreationally and medically used drugs. These models have evolved over more than 150 years to regulate the use of drugs with a wide range of harm potential, and within various different social environments. Whilst imperfect, they provide clear templates for how currently prohibited drugs will be legally regulated in the future.

Medicines Act 1968, the Misuse of Drugs Act 1971, and the UN drug conventions. There are a range of regulatory and licensing bodies overseeing different aspects of legal heroin production including the Medicines and Healthcare products Regulatory Agency (MHRA) and the UK Licensing Authority.

ii) Non- pharmaceutical drugs

Alcohol

Produced or imported under UK and international licensing agreements, policed and taxed by Customs and Excise and covered by various trading standards legislation as alcohol is a food/beverage as well as a drug. Personal domestic production (home brewing/distilling) is not licensed.

Tobacco

Produced and imported under licence, although the regulatory system differs from alcohol or caffeine products in that it is not a food/beverage. Customs and Excise police and tax international movements. Personal production, home growing, is theoretically licensed and taxed but rare in the UK and unlicensed in practice.

1. Drug production

Transform has divided existing models of drug production into pharmaceutical and non-pharmaceutical drugs, presented here with some familiar examples:

i) Pharmaceutical drugs

Diamorphine (heroin)

The raw material, opium poppies, is grown in Tasmania, imported into the UK and refined into medical-grade opiates. A similar model exists for medical cocaine. It is interesting to note that more than half of global opium production is for the legal medical market. Key legislation includes the

Caffeine

Not subject to any drug legislation and sold without licence in shops (in coffee, energy drinks, confectionery, and in pharmaceutical form as 'Pro Plus'). It is subject only to food and drink legislation. Health warnings are voluntary.

Unlicensed production

A number of substances in the UK have no regulation and control over their production, beyond, in some cases, taxation on imports. They include fresh magic mushrooms, khat (imported from Yemen), Salvia Divinorum (grown in the UK), as well as some psychoactive 'herbal remedies' and 'food supplements' (there is national and European legislation in the pipeline for some of these).

Drug supply

Transform has identified five existing models for the supply of drugs. Each involves different levels of regulation and control which are applied as appropriate to different drugs in different localities according to the associated risks. Appended to these are two suggestions for new supply models.

i) Prescription

Under the prescription model (for example tranquilisers), drugs are prescribed by a licensed doctor and dispensed by licensed pharmacist from licensed pharmacies. Key legislation includes the Misuse of Drugs Act 1971 and the Medicines Act 1968, and key regulatory bodies are the Home Office and the General Medical Council who oversee prescribing doctors. Further tiers of regulation can be added:

- Injectable diamorphine (heroin) can only be prescribed by a specialist doctor requiring a Home Office license.
- The heroin substitute methadone is sometimes required to be consumed in the pharmacy.
- In Switzerland dispensing and injecting of diamorphine take place under medical supervision in a single specialised venue.

ii) Pharmacy sales

Sales from behind the counter - made by qualified pharmacist who is responsible for restricting sales on the basis of age, quantity purchased and any concerns regarding misuse. The pharmacist is also qualified to offer advice and health and safety information. Examples include stronger codeine preparations and kaolin and morphine, although not specifically recreational drugs.

iii) Licensed sales

Off-licenses (alcohol) and tobacconists have legal controls over the named licensee who is responsible for restricting sales on the basis of age (16 for tobacco, 18 for alcohol) and specified opening hours (alcohol). A raft of regulatory legislation is overseen by local councils who act as the licensing authority. Alcohol products have (inexplicable) exemptions from requirements to list ingredients or carry health warnings, and tobacco products similarly do not have to list ingredients or additives.

iv) Licensed premises for sale and consumption

For public houses controls exist over the licensee, who is responsible for restricting sales on the basis of age, intoxication of purchaser and hours of opening. There is a confusing array of over 23 statutes relating to the supply and sale of alcohol dating back to the Disorderly House Act, 1751, many now being replaced by the Alcohol and Licensing Act 2003 (rolled out over the next three years) that also covers licensed clubs and entertainment venues. Local councils act as the licensing authority.

v) Unlicensed sales

For certain psychoactive substances, such as fresh magic mushrooms, coffee, nitrous oxide, nutmeg, khat and salvia divinorum, there are no significant controls at point of purchase. Food and drink products are covered by legislation including the Trades Description Act and Shops Act.

Some fresh mushroom vendors are currently operating a voluntary code of practice, for example prohibiting sales to minors, but it is patchy and non-enforceable. Interestingly, Customs and Excise are now attempting to collect VAT on magic mushroom sales whilst the police are simultaneously attempting to shut down the mushroom vendors – suggesting that the regulation/prohibition debate remains active within the Home Office.

Sales of certain solvents and inhalants are prohibited to children. The Cigarette Lighter Refill (Safety) Regulations 1999 makes it an offence to supply any cigarette lighter refill canister containing butane to under-18s and the Intoxicating Substances (Supply) Act 1985 makes it illegal to supply a substance to anyone believed to be under the age of 18 or acting on behalf of someone under that age, if he or she has reasonable cause to believe that the substance may be inhaled for the purpose of intoxication. There have been few prosecutions under these laws and they do not make it an offence to purchase and subsequently

abuse solvents and other volatile substances.

Other possible regulatory models for drug supply

In addition to these frameworks, new regulatory models that do not exist at present, could potentially be established. The two suggested below build on existing models:

i) Druggist or specialist pharmacist

This would be a new profession, in effect a combination of specialist pharmacist and drugs worker (In some respects a return to Victorian pharmacists who sold heroin, cocaine and cannabis in a variety of preparations). They would be trained, qualified and licensed to vend certain drugs for recreational users, adhering to legal regulations, such as age restrictions. They would also be trained to recognise problematic use, give safety information and health advice on drug use and refer to other drug services. Vending could take place from existing pharmacy outlets or new, dedicated outlets.

ii) Licensed users / membership based licensed premises

This would be a similar model to licensed premises but with an extra tier of regulation in that entry, drug purchase and drug consumption would require membership, with various conditions and restrictions attached.

Further Reading

Ethan Nadelmann, 'Thinking Seriously About Alternatives to Drug Prohibition' Daedalus. 1992 (http://www.drugpolicy.org/library/thinking_seriously_p1.cfm)

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5. Creating an effective drug policy

Summary

A paradigm transfer is required – extending the regulatory pragmatism governing alcohol, tobacco and prescription drugs to currently illegal drugs.

The morally led prohibitionist paradigm determines that drugs are evil, drug use is morally unacceptable and that drug users and dealers are criminals. To this end, prohibition aims to eliminate illegal drug markets and achieve a ‘drug free’ society.

By contrast, the regulatory paradigm is evidence rather than value led, accepts the reality of drug use and seeks pragmatic responses that minimise drug related harms to users and wider society.

The aims of drug law reform (to remove harms created by prohibition) are largely distinct from the aims of an effective drug policy (to minimise the health and social harms associated with drug use and misuse).

Drug policy has historically been poorly evaluated, perpetuating failure and holding back reform. The wider impacts of drug policy must be regularly evaluated against key indicators to enable it to evolve and respond to changing circumstances. An independent audit of the effectiveness of current drug enforcement spending is key to the reform process.

A new policy paradigm?

Domestic and international drug policy features two policy paradigms that operate in parallel, but differ dramatically in their core values, principles, aims and outcomes.

The aim of prohibitionist policy is, unambiguously, to create a drug free society. The thinking underlying this aim is beguilingly simple: drugs are bad and cause problems; prohibit them, people will stop using them and the problems will go away. Naïve as this analysis now seems, it remains, at least rhetorically, the foundation of global drug control: The UN’s slogan at the 1998 global drug policy review was, ‘A drug free world, we can do it!’ These values similarly underlie the UK’s own ten year drug strategy, a policy preoccupied with reducing the prevalence of use over and above all other aims.

This is in stark contrast to the regulatory pragmatism informing policy regarding prescription tranquillisers, alcohol or tobacco. Consider, for example, the rational thinking that informs Tony Blair’s foreword to the 2004 Alcohol Harm Reduction Strategy (*below*). Imagine for a moment how it would read if it were in reference to not just alcohol, but drugs more generally, including illegal drugs:

"The aim has been to target alcohol-related harm

and its causes without interfering with the pleasure enjoyed by the millions of people who drink responsibly."

"For government, the priority is to work with the police and local authorities so that existing laws to reduce alcohol-related crime and disorder are properly enforced, including powers to shut down any premises where there is a serious problem of disorder arising from it. Treatment services need to be able to meet demand. And the public needs access to clear information setting out the full and serious effects of heavy drinking."

"For the drinks industry, the priority is to end irresponsible promotions and advertising; to better ensure the safety of their staff and customers; and to limit the nuisance caused to local communities."

"Ultimately, however, it is vital that individuals can make informed and responsible decisions about their own levels of alcohol consumption. Everyone needs to be able to balance their right to enjoy a drink with the potential risks to their own – and others’ – health and wellbeing. Young people in particular need to better understand the risks involved in harmful patterns of drinking."

"I strongly welcome this report and the Government has accepted all its conclusions. These will now be implemented as government

policy and will, in time, bring benefits to us all in the form of a healthier and happier relationship with alcohol."

Tony Blair (1)

What is needed therefore is not an entirely new policy paradigm. The regulatory pragmatism that already informs policy and legislation for currently legal drugs needs to be extended to all drugs, including those that are currently illegal.

An effective drug policy built upon the concept of regulation comes from a quite different set of values and principles to prohibition. A regulatory paradigm, as Tony Blair highlights above, accepts the reality of drug use amongst consenting adults and emphasises individual rights and responsibilities and pragmatic harm minimisation. The prohibitionist paradigm, simultaneously espoused by the Government, is based upon criminal justice measures that enforce the judgement that all illegal drug use is morally unacceptable. The dissonance between these parallel approaches is illogical and untenable.

Principles underlying effective drug policy

The fact that prohibition is morally led rather than based on evidence of effectiveness has created a very unusual set of principles to govern its operation. These dictate that the law be used to 'send out messages' about the moral unacceptability of illegal drug use, and to emphasise the primacy of this moral message over evidence of effectiveness. These principles set the drug laws apart from the usual tenets of social policy, and limit their ability to act effectively by *preventing* government from:

- Intervening in and regulating drug markets
- Ensuring fair trade and environmental sustainability in drug production and supply
- Assessing results against an evidence base
- Evaluating policy against aims and indicators
- Setting out the rights and responsibilities of drug users
- Encouraging joined-up policy making (multi-disciplinary, multi agency, interdepartmental, international)
- Adhering to human rights instruments
- Being supported by a bottom-up approach determined by local needs

Aims of 'drug policy reform' and aims of 'an effective drug policy'

Transform believes that the overarching aim of drug policy should be to minimise harm and maximise well-being. Within this overarching objective we can identify a number of specific aims to reduce harms related to drug production, supply and use, with success measured against relevant indicators.

Some 'drug related harms' are associated with drug use and misuse and some are created or exacerbated by policy (e.g. crime to support a habit), specifically as a result of enforcement of prohibitionist laws (see chapter 2). Consequently,

Aims of drug policy reform:

- To end prohibition related crime
- To relieve the criminal justice system of the burden of prohibition related crime
- To end prohibition-related harms to public health
- To end human and civil rights abuses committed under prohibition
- To remove the destabilising effects of the illegal drugs trade from developing countries involved in the production and transit of currently illegal drugs
- To end counterproductive expenditure on enforcing prohibition and to create opportunities for taxation
- To create an environment in which drug use can be managed effectively and drug misuse addressed

Aims of effective drug policy:

- To minimise harm to physical and mental health related to drug use, including drug-related deaths
- To minimise prevalence of problematic use
- To minimise disorder, violence and social nuisance related to drug use.
- To minimise negative impacts of drug use in the workplace
- To minimise harm to vulnerable groups, young people and families
- To ensure adequate provision of support and treatment for people seeking help
- To minimise criminal involvement in the production and supply of drugs

aims to reduce specific prohibition-related harms feature within the aims of drug policy reform, but become largely irrelevant under a legally regulated regime. As an analogy, reducing car exhaust emissions would no longer be an aim of transport policy if everyone was driving electric cars.

A distinction, therefore, needs to be made between the aims of drug policy reform, (essentially to remove the harms created by prohibition), and the aims of drug policy (to minimise health and social harms related to drug use and misuse.)

Policy evaluation and review

Prohibition has never been exposed to meaningful scrutiny against key indicators. As detailed in Chapter 2, prohibition has failed on its own - extremely limited - terms, with trends in drug use and availability rising progressively, particularly for the drugs with the greatest harm potential. It is a basic principle that all government policy needs to be continually evaluated so that it can respond to and evolve in light of new knowledge or changing circumstances:

"...they [government departments] need to review policies, for example to determine when the time is right to modify a policy in response to changing circumstances so that it remains relevant and cost effective; and departments may need to terminate policies if they are no longer cost effective or they are not delivering the policy outcomes intended." (2)

The National Audit Office, 2001 'Modern policy making: Ensuring policies deliver value for money'

Drug policy is no exception. Patterns of drug use have changed dramatically since 1971 - in particular the rise in problematic drug use has been exponential - and have changed almost beyond recognition since the emergence of prohibition earlier in the last century. Prohibition, however, has remained rigid, its moral imperatives negating the need for evaluation or evidence of effectiveness. The indicators used to evaluate the impacts of both domestic and international drug policy are deliberately limited, sometimes to the point of being confusing or misleading:

- They are narrowly defined - ignoring the wider impacts of drug policy on areas such as crime creation, human rights, the prison population, and development in producer countries

- They focus on measures such as seizures that describe "activity of the authorities rather than actual drug markets" (3)
- They focus on government or criminal justice process indicators such as the implementation of new policing methods

It is clear that the institutional failure effectively to evaluate the wider impacts of prohibition has played a key role in shielding the policy from criticism (see *Drug Availability* box p.24). In 2001 the US National Academy of Sciences produced a 200-page report for the White House Office of Drug Control Policy titled 'Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us' (4). The report makes a similar point to the NAO report (see above), but in this case focuses specifically on drug policy. It suggests that the US faces similar problems to the UK in evaluating drug policy effectiveness:

"The committee finds that existing drug use monitoring systems are useful for some important purposes, yet they are strikingly inadequate to support the full range of policy decisions the nation must make."

"The central problem is a woeful lack of investment in programs of data collection and empirical research that would enable evaluation of the nation's investment in enforcement."

"It is unconscionable for this country to continue to carry out a policy of this magnitude and cost without any way of knowing whether or to what extent it is having the desired effect."

Transform's ongoing call for an independent audit of drug law enforcement spending follows in part from a wish to expose current policy to scrutiny, but also to provide the empirical foundations on which reformed policy and legislation can be built (6).

When Bob Ainsworth MP (then minister and Government drugs spokesperson) was asked in 2002 whether he supported Transform's call for an independent audit of the effectiveness of drug law enforcement spending, he answered 'why would we want to do that unless we were going to legalise drugs?' The assumption has to be made that he meant an audit would expose the failures of current policy, leading to a logical endpoint of legalisation and regulation. Whilst the Government remains opposed to legalisation in principle there will be no effort to evaluate whether prohibition is working in practice (5).

Similar audits have been undertaken to establish the effectiveness of Customs and Excise prevention of drug smuggling (1998), of drug treatment spending (2002), and of Drug Treatment and Testing Orders (2004). All have proved very instructive in revealing what works and does not work, and pointing to ways forward in policy development.

Support for an audit has come from a range of political and NGO sources including Drugscope (the umbrella organisation for over 900 member bodies including health, criminal justice, research, academic and voluntary organisations), the Liberal Democrat Party, and the National Association of Probation Officers (6).

Drug Availability – an example of poor evaluation

In 1998 a target was established in the new UK ten-year drug strategy to *‘reduce the availability of Class A drugs by 25% by 2005 (and by 50% by 2008)’*.

Despite its high profile launch there was no base line data on which to assess future findings (and therefore make comparisons) – nor was there even a methodology in place for establishing what research should be undertaken or how it should be interpreted.

During the period after 1998 when the methodology was being developed, Transform was consulted on what we thought would be the best way of measuring availability. Transform suggested that the best indicators were street drug prices, street drug purity (cocaine and heroin) and drug user questionnaires. Data was already being collected on price and purity and established methodologies exist for drug users questionnaires.

Four years later, in 2002...

...There was still no data on availability to assess the strategy targets. Perhaps unsurprisingly, the updated 2002 strategy did away with the 1998 targets to reduce availability by a fixed percentage (25% and 50%) altogether, replacing them with a new, more general target to *‘reduce the availability of illegal drugs’* by an unspecified amount. This was now to be achieved by:

‘increasing the proportion of heroin and cocaine targeted on the UK which is taken out; the disruption/dismantling of those criminal groups responsible for supplying substantial quantities of Class A drugs to the UK market; and the recovery of drug-related criminal assets.’

Whilst data can now be collected on the new 2002 ‘availability indicators’, the problem is what exactly they indicate. They have little or no actual bearing on drug availability. These are measures that, to quote the home office, reflect *“activity of the authorities rather than actual drug markets”* (1)

- The target of *‘increasing the proportion of heroin and cocaine targeted on the UK which is taken out’* is based on, at best, informed guesswork as to the total amount of drugs targeted on the UK. Rising seizures are not a measure of availability as they can indicate increasing police activity or increasing amounts of drugs entering the country.
- The *‘disruption/dismantling’* of criminal groups is difficult to measure in a consistent way that will allow meaningful year on year comparisons, and again, no clear correlation can be established with changes in drug prices or availability.
- Recovery of drug related criminal assets has no correlation with the availability of drugs.

This leaves us in the unfortunate position of having no systematic data collection (related to the strategy targets) that shines any light on actual trends in drug availability – the reduction of which is the central goal of supply side drug enforcement interventions in the UK and across the world. Worse still, the availability measures that have been identified in the 2002 strategy will probably suggest reduced availability, when in reality the exact opposite is the case.

References chapter 5

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6. Responding to concerns about legalisation and regulation

Summary

- **Rising prevalence of use**
Prohibition's moral objection to illegal drug use has led to prevalence of use being overemphasised as an indicator of success. The impact of drug law enforcement on prevalence of use is unclear and under researched (particularly for drugs with the highest harm potential). Legalisation will have positive and negative impacts on prevalence of use, differing between drugs and user groups. The nature of drug use will change under legal regulation. Prevalence of drug misuse is a more useful measure.
- **Vulnerable groups**
Vulnerable groups are best served by having drug markets regulated and controlled by the Government (offering opportunities to intervene on price and availability) rather than potentially violent organised criminals and street dealers. Vulnerable groups experience disproportionately more of the harms stemming from prohibition (health harms and prohibition related crime) than the rest of the population.
- **Commercialisation**
Concern around commercial profit-seeking companies entering newly legalised drug markets and aggressively marketing drugs and drug use are misplaced. Unlike illegal production government can intervene to regulate as appropriate. Legal companies pay tax, are subject to external scrutiny and are answerable to the law.
- **Morals and messages**
Prohibition uses the law to enforce a moral message that illegal drug use is unacceptable. This is unique in law and social policy regarding an individual consenting adult behaviour, violating basic civil rights and individual freedoms. Transform believe a truly moral policy option is one that minimises harm to users and wider society.
- **Lack of an evidence base**
There is a substantial body of evidence to demonstrate the benefits of legal regulation. This evidence comes from past failed attempts to prohibit certain goods and activities which have subsequently been legalised and regulated. There is overwhelming evidence of the failure of prohibition.

Rising prevalence of use

Prohibitionists maintain at least a rhetorical commitment to the elimination of drugs and drug use from society and it is in this context that measurements of prevalence of use have assumed huge importance in the policy reform debate.

For opponents of legalisation and regulation, the spectre of rising use is a sufficient argument. The UK national drugs strategy states that "...we will prevent young people from using drugs by maintaining prohibition which deters use...". Similarly The Home Office states that "Drugs are controlled because of their harm potential and the law and its sanctions help to limit experimentation" (1). This understanding is reflected in much of the popular political and media opposition to reforms with frequent references, most recently witnessed during the cannabis reclassification debate, to 'giving the

green light to drug use' or 'sending out the wrong message'.

As so often in the drugs debate, these simple arguments conceal more complex and important ones:

- Research into drug taking motivations, specifically why people choose *not* to take drugs, and the extent of any deterrent effect from law enforcement is extremely scant. The Home Office has not undertaken or presented any substantial evidence in support of the deterrent effect that is at the heart of UK drug policy. From the little we do know, the extent and impact of enforcement-related deterrence is at best marginal, and will vary greatly between different drugs and drug using groups.
- Little or no research has been undertaken to

demonstrate a deterrent effect amongst problematic or dependent users of heroin and cocaine, the Government's stated primary focus of its drug policy efforts.

- There are a large number of variables that affect drug-taking decisions other than enforcement-related deterrence. These include socio-economic variables, fashion, culture and music, advertising, availability, price and perception of risk. Post-legalisation there will be effects that may increase use (removal of deterrence, lower price, easier availability, better quality), as well effects that may lower use (removal of 'under-ground glamour', more medicalisation of addicts, removal of dealers targeting new users, increased investment in treatment, education and social regeneration). The net effect of these conflicting pressures is unclear.
- Headline figures of reported use give no indication of the intensity or frequency of use, and specifically do not measure problematic use or levels of harm associated with use. A rise in prevalence does not necessarily equate to a rise in overall harm, and could in theory coincide with a fall in the prevalence of problematic use and overall harm.

It is also important to acknowledge how the nature of drug use would change under a legally regulated system:

- Drugs would be safer, being of known and guaranteed strength and purity and having health and safety information, warnings and guidance on packaging or available at point of sale.
- Prohibition has pushed users towards ever more concentrated forms of certain drugs (from opium to heroin, and from coca drinks to cocaine to crack). A post legalisation era is likely to witness a shift back towards safer, less concentrated options. Following the end of alcohol prohibition in the US consumption patterns moved away from spirits back to beers and wines.
- The suggestion that legalised drugs might become as prevalent as alcohol and tobacco is based on the assumption that newly legalised drugs would be subject to the decades of aggressive marketing that alcohol and tobacco have experienced. In practice there would be restrictions on advertising and promotion just as there are on prescription drugs in the UK and, for example, cannabis cafes in The Netherlands. Transform supports a ban on advertising of all

drugs including alcohol and tobacco.

Transform believes that the goal of drug policy should not be the unrealistic aim of a drug free society. Policy should rather seek to manage drug use so as to minimise the harm drugs cause, both to drug users and the wider community. This requires that we redefine 'the drug problem' as more than just 'people use drugs'. Measuring the effectiveness of drug policy requires a far broader range of indicators that include public health, crime, civil rights, community safety and international development and conflict. Prevalence of use is only one of a number of health indicators, and health is only one of a number of policy areas that need to be evaluated.

Vulnerable groups

It is both understandable and appropriate that social concerns around drug misuse are particularly acute for vulnerable groups: primarily children and young people, but also people with mental health problems, the homeless and other socially excluded groups.

Transform believe that legally regulated markets will offer a far greater level of protection to vulnerable groups than the chaotic and unregulated illegal markets we have today. One of the key benefits of legal regulation, as outlined in Chapter 3, is that it allows appropriate controls to be put in place over price and availability (location, times of opening and age restrictions) as well as controls over advertising and promotion. It is precisely because drugs pose risks that they need to be appropriately regulated, especially for non-adults.

The reality is that under the current regime illegal drugs remain easily available to most young people and a significant minority have used one or more. Regulation cannot eliminate such use, any more than it can with tobacco and alcohol, but controlled availability will create a significantly improved environment for reducing harm, and longer term reductions in demand.

- The greatest threat from drugs to the health of the young still comes, by a substantial margin, from tobacco and alcohol. Legal regulation will facilitate a more balanced, consistent and believable health message on all drugs.
- A criminal record (even for a minor drug offence) can have a devastating effect on already

vulnerable individuals, fostering social exclusion. A criminal record puts significant restrictions on employment, travel, personal finance, and housing. For many it is a greater threat to their health and well-being than occasional drug use, particularly if it involves the trauma of imprisonment.

- Prohibition directly endangers and harms young people; they are the most frequent victims of drug motivated street crime and violence and they carry the increased burden of risk from using illegal drugs of unknown strength and purity.

If we want to reach out to young people and other vulnerable or socially excluded groups, offer help and encourage responsible lifestyle choices, then declaring a war against them is not the way to do it. Removing the spectre of criminality would make drug services and information far more attractive and accessible for those most in need but hardest to reach.

Commercialisation

There is a legitimate concern that legal drug markets could eventually be controlled by profit-motivated corporations interested in aggressively marketing and promoting drugs and drug use. The pharmaceutical industry is already the focus of considerable criticism for some of its ethical, business and marketing practices. Similarly sections of the alcohol and (particularly) tobacco industries have been guilty of unethical conduct, putting profits before concerns for public health, with aggressive youth-oriented marketing through, for example, sport and music sponsorship. However, for all the criticisms of commercial companies, they are infinitely preferable to the alternative of international organised criminal networks. To illustrate this point it should be noted that commercial companies:

- Pay tax
- Are subject to external scrutiny in the form of independent auditors, trade and financial regulatory bodies, unions and consumer groups
- Are answerable to the law and are legally liable for their actions
- Are not armed and do not use violence in their daily business dealings
- Can be controlled and regulated as deemed appropriate by government

Emerging legal drug markets offer a blank slate, a rare opportunity for us to establish the optimum legal regulatory framework that functions in the public's best interests. If, for example, commercial companies are deemed unsuitable, then production or supply of certain more dangerous drugs could become an entirely state run enterprise. When bookies were legalised the Tote was (and remains) a state-run business, with private companies entering the market at a later stage.

As this report illustrates, existing production and supply models for currently legal drugs, with some modification, will be appropriate for most drugs. Lessons learnt from problems with existing legislation for legal drugs are already informing sweeping reforms such as bans on tobacco advertising and smoking in public buildings. These lessons will also help us develop more effective regulation for legalised drugs, avoiding the mistakes of the past. We should not have to suffer the arrival of *'Ecstasy World Snooker'*, or *'the Cocaine Premiership'*.

Morals and messages

Although the right for consenting adults to a legal supply of drugs has limited populist appeal, it is none the less an important basic principle. The right over one's own body, the right to privacy in the home, the right to freedom of thought, belief and practice, and the right to make informed choices over ones own risk taking behaviour are all long-established human rights. Drug use may, at worst, be reckless and irresponsible, but if it does not harm others it should not be deemed criminal.

Risk taking and self harm, whilst obviously not condoned by the state, are not illegal (this includes suicide, legalised in the 1960s). Many consenting adult behaviours, formerly considered immoral 'vices' and prohibited accordingly, have subsequently been legalised without any suggestion that this were a form of encouragement. Such legal reforms have encompassed sexual activities including homosexuality, as well as the legalisation of bookies and casinos. A similar, and welcome, Whitehall review of the prostitution laws is well underway.

The Home Office argues that *'Drugs are controlled because of their harm potential and the law and its sanctions help to limit experimentation'*(1). Yet we do not prohibit high-powered motorcycles or rock

climbing, casual sex without condoms, high fat junk foods, alcohol, tobacco, or any number of other activities and consumables that involve risk to the user, with equivalent or higher 'harm potential' than illegal drug use. When the Government wishes to send messages encouraging sensible, healthy or safer lifestyle choices - for everything other than illegal drugs – it uses public education via a range of institutions and media.

At the Liberty AGM (2000) the following motion was passed:

"This AGM upholds the right of access of every adult to the lawful supply of psychoactive substances for personal consumption save where expressly constrained by or under the law for the purpose of protecting minors, countering crime, treating addiction, or some other legitimate public purpose and calls on the government to reform the laws accordingly" (25.6.00)

www.liberty-human-rights.org.uk

Drug policy is unique in using the criminal justice system – and the threat of arrest, criminality and imprisonment – as a primary educational tool. The criminal justice system is not tasked to send messages on public health or private morality, and when it has attempted to do so it has been singularly ineffective.

There is nothing moral in pursuing a policy that has created so much crime, violence and conflict, that criminalises and marginalises the most needy and vulnerable members of our society, and that maximises the risks associated with drug use. Transform believe that policy should seek to minimise the harm drugs cause to users and the wider community, rather than seek to enforce a moral position by increasing these harms.

A leap in the dark?

It has been suggested that legalisation would be a dangerous gamble with the health and well-being of the public, and that there is no evidence to support such a radical move. Whilst it is true that no country has yet legalised and regulated any of the drugs covered under the UN conventions, it is wrong to

suggest that there is no evidence to support reform arguments:

A significant body of evidence in support of drug policy and law reform can be assembled from a range of sources:

- **Currently legal drugs.** Most obviously there is evidence from the effective, if imperfect, functioning of regulatory models for currently legal drugs, primarily alcohol and tobacco. These are toxic and highly addictive drugs that are associated with significant health and social harms. However, their legal regulation means the government can intervene in areas such as price and availability and they are not associated with most of the social harms created by prohibition (outlined in Chapter 2).
- **The end of alcohol prohibition.** The problems created by alcohol prohibition closely echo those of modern drug prohibition, and the benefits of its repeal are well documented.
- **Heroin prescribing.** The prescription model for drug supply has a significant body of evidence in its support. Large scale heroin prescription projects have been adopted in countries across Western Europe including Holland, Germany, and Switzerland with impressive results on indicators of crime, health and social nuisance (2). Evidence also comes from the UK which pioneered heroin prescribing from the 1920's, only to see it heavily restricted from the 70's onwards. It should be noted that the prescribing model still functions in the UK with certain individuals prescribed maintenance heroin in injectable form. The numbers receiving prescriptions is small, around 200, but plans have been announced by the home secretary to expand this number to around 2000.
- **The decriminalisation of personal possession of drugs -** has taken place in numerous countries, most commonly for cannabis, but in some, including Portugal, Spain, Italy, Western Australia and Russia, the change encompasses all drugs (see *drug reform around the world p.41*).
- **The Dutch cannabis experiment.** In Holland, not only has possession of cannabis been decriminalised, but sales from shops have been tolerated and licensed since 1976. Whilst it technically remains illegal, the pragmatic Dutch have come the closest to showing how a legal cannabis market can operate effectively. Holland has historically had lower levels of cannabis use than either the US or UK (3).

- **Legalisation and regulation of gambling and prostitution.** Although these are activities rather than products they illustrate how problems associated with high demand for illegal activities can be minimised through legal regulation.

Where the evidence is both extensive and conclusive is in demonstrating the failure of prohibition, both in the UK and internationally. Prohibition itself had no evidence base when it was devised and implemented. It could easily be described as a huge leap in the dark, gambling with the health and well-being of the public, and failing on its own terms. By contrast, the moves to regulated markets have a wealth of evidence to show how they would work and the benefits they would bring. There is clearly more work to be done: needs assessments, pilot studies and other research associated with developing and implementing new policy. However, from what we already know it is clear that moves towards legal regulation are far from a leap in the dark.

References chapter 6

1. *Home Office submission to the Home Affairs Select Committee report on UK Drug Policy 2001. Memorandum 73 paragraph 2.2.* (www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmhaff/318/318m92)
2. *For more information see 'Prescribing heroin: what is the evidence?' Joseph Rowntree Foundation, 2004* (www.jrf.org.uk/knowledge/findings/socialpolicy/943.asp)
3. *See www.cedro-uva.org for more information on Dutch drug policy including international comparisons.*

Further reading

- For discussion of the aims of drug policy see the report 'Towards a review of global drug policy' produced by the Beckley Foundation and Drugscope. The full report can be read here: www.internationaldrugpolicy.org/reports
- The most thorough attempt to compile and analyse evidence of the impact of policy on patterns of drug use is the book 'Drug war Heresies' by Reuter and McCoun. It has a US focus.

7. Obstacles to reform

Summary

Drug policy has evolved in a highly emotive and politicised environment, distorted by association with moral, religious and political movements. Views on drugs and drug users have assumed a moral absolutism akin to religious dogma: Drugs are evil, those who support their prohibition are righteous and those who oppose it are weak.

Drug policy has been hijacked to promote other political causes, including anti-immigration, anti terrorism, foreign military interventions, and in the UK, a variety of law and order crusades under Conservative and Labour Governments.

The high profile of the drugs and crime issue has led both major parties to steer clear of reforms that could be seen as 'soft' on crime or drugs, instead opting for populist 'tough' options emphasising punishment rather than public health. The Lib Dems have broken the mould with their new drug policy document in challenging the failings of prohibition, but have been fearful of campaigning on such a contentious issue.

The consensus behind prohibition is collapsing at European level with increasing divergence between traditional and progressive states, many already reforming law and policy in a positive direction.

The US is the spiritual home of prohibition and remains central to maintaining it as an international institution, chiefly through its political hegemony and domination of the UN drug control agencies. The international consensus behind prohibition is crumbling as progressive states challenge, in word and action, the basic tenets of the UN drug conventions.

Key stakeholders in the drug debate, both individuals and non government organisations, have been reluctant to speak out against prohibition and in favour of reform, due to fear of negative consequences concerning political alliances, public and media scorn, or precarious funding.

The 'church of prohibition'

Drug policy and legislative developments during the past century have been shaped by a variety of religious, moral and political movements, resulting in policy informed by moral imperatives and characterised by moral absolutes: drugs becoming an 'evil' or 'scourge' against which a 'crusade' or 'war' must be waged. In the context of a 'war on drugs' almost any policy, however punitive or extreme, is politically justifiable. Conversely all illegal drug use has been characterised as 'addiction', 'deviant behaviour' or the result of 'peer pressure' and movement away from the basic tenets of prohibition has been associated with immorality, weakness, or surrender (1).

Peter Cohen has written about the 'drug prohibition church' describing how prohibition has co-opted the tone and language of religious discourse, its basic tenets becoming articles of faith, beyond questioning (see box opposite).

"Whatever the origin of the UN Drug Treaties, and whatever the official rhetoric about their functions, the best way to look at them now is as religious texts. They have acquired a patina of intrinsic and unquestioned value and they have attracted a clique of true believers and proselytes to promote them. They pursue a version of Humankind for whom abstinence from certain drugs is dogma in the same way as other religious texts might prohibit certain foods or activities. The UN drug treaties thus form the basis of the international Drug Prohibition Church. Belonging to that Church has become an independent source of security, and fighting the Church's enemies has become an automatic source of virtue."

Peter Cohen (2003), 'The drug prohibition church and the adventure of reformation.' (2)

In this highly charged and emotive context the drugs issue has long been subject to political exploitation. Successive generations of politicians have hijacked what is essentially a public health issue to further a variety of populist causes;

- In the early 20th century the prohibition of cannabis, cocaine and opium was closely related to exploitation of fears about race and immigration
- For the US, the drug war has provided a banner under which numerous foreign military interventions have been justified that would otherwise have struggled for popular and political support
- Recent years have seen attempts to link the 'war on drugs' with the new 'war on terror', with an unprecedented campaign of US TV ads equating illegal drug use with support for terrorism, sentiments echoed in recent speeches by Tony Blair (3)

Political investment in prohibition

UK party politics

In the UK it has been the populist law and order crusades of recent decades that have had the most distorting influence on the development of drug policy and legislation. New Labour came to power partly through reclaiming 'the law and order agenda' from the Conservatives. Under the election banner of *'tough on crime, tough on the causes of crime'* the Government has been seemingly obsessed with not appearing 'soft' on crime and especially on drugs. The result has been a Dutch-auction style interplay with the Conservatives, each announcing ever more tough sounding initiatives and crackdowns, waiting to see who blinks first. Today you can barely squeeze a rizla paper between Labour and the Conservatives on the drugs issue.

Labour

Labour in government have consistently talked tough on crime and characterised drugs as a 'scourge' and 'evil' that must be 'stamped out'. Like the Conservatives, they have identified the potential value of investing in better drug treatment, but new resources have been heavily skewed towards using the criminal justice system to coerce problematic

users into treatment.

A recent 2004 report by John Birt on drug enforcement produced by Tony Blair's own Number 10 Strategy Unit concluded that *"The analysis shows that market intervention doesn't work"* (4). Despite this dramatic conclusion (which may have contributed to the report not being published) the authors failed to consider any solutions involving legally regulating supply, opting instead to recommend 'a tough option'. This option involved criminalising heroin use (currently only possession

Labour's drug war populism

Labour's triumph of populism over pragmatism on the drugs and crime issue was laid bare in the now infamous leaked memo from Tony Blair to his advisor Philip Gould. All three of the initiatives mentioned below are related directly to drugs and drug related crime:

"..we need to highlight the tough measures: compulsory tests for drugs before bail; the PIU (Performance Innovation Unit) report on the confiscation of assets; the extra number of burglars jailed under the "three strikes and you're out"... this should be done soon and I personally should be associated with it."

Tony Blair, April 2000, written memo to Philip Gould

The Home Secretary and his ministers are also keen to play 'the tough card' as often as possible, deploying the familiar drug war rhetoric:

"We are investing record amounts - £1.3 billion this year alone - to tackle the scourge of class A drugs - and there will be no let up in this fight."

Caroline Flint, Home Office Minister, July 2004

"It is a worm that is eroding family and community life and creating criminality to feed the drugs. We have to be honest about this if we are going to mobilise the community to eliminate it (the scourge of drugs). We have to get more sophisticated. It is only the beginning of a bigger challenge. It is our domestic war."

David Blunkett, Home Secretary, 'Blunkett's war on guns and drugs', The Daily Mirror, July 2004

is illegal, a positive urine or blood test is not an offence) as a way of sweeping problematic users into coerced treatment. For an unpublished report examining 'blue skies' future policy options it displayed a depressing lack of vision and creativity. Although a number of Labour backbenchers have long been outspoken about the failure of the war on drugs their strategy in Government has been to play the drugs issue as a moral crusade.

Conservatives

For the Conservatives the need to appear 'tough on crime' also remains paramount, their 2001 manifesto giving a clear picture of their populist law and order thinking. They have realised the necessity for expanding treatment, but this is conceived first and foremost as a crime reduction measure. They have taken their lead from Sweden, which has a low prevalence of drug use relative to the UK, linking this achievement with Sweden's harsh enforcement regime rather than their cohesive society, highly developed welfare system, and lack of poverty and urban deprivation. Under Michael Howard's new leadership the slogan '*prison works*' has once more been revived.

Despite some clear headed thinking on legalisation and regulation by previous senior figures such as Peter Lilley (5), the Conservatives have shown themselves unwilling to extend their rhetoric of freedom and personal choice into the drug debate and to attack the government on its conspicuous policy failure.

Liberal Democrats

The Liberal Democrats broke the mould with their new drug policy document adopted as official policy in 2002 (6). They have, uniquely amongst the major parties, been willing to look beyond the limitations of current prohibitionist thinking, and whilst they stop short of calling for legalisation (except for cannabis), they have recognised not only the limitations of prohibition, but also its damaging effects. To their credit the new policy document engages the wider debate including the political minefield of law reform and does not pander to the populist law and order agenda of the tabloids. Unfortunately the Lib Dems have been less courageous and progressive when it comes to promoting this new policy. They have failed to campaign actively around their new platform, presumably due to uncertainties about the public and media reaction. The Tories were quick to attack the Lib Dems' '*loony*' law and order policy to

'*weaken the laws on drugs*' (7), and it is clear that the Lib Dems are concerned about endangering their current popularity. Charles Kennedy denied legalisation of cannabis was party policy on Newsnight even whilst Jeremy Paxman was waving the policy document at him.

Green Party

The Green Party have the most forward thinking drug policy of all UK parties, having proposed a plan for moves towards the legal regulation of all currently illegal drugs. (<http://drugs.greenparty.org.uk/aboutus>)

European politics

There is no longer a European consensus behind prohibition or even agreement about what 'the drug problem' is. There is increasing tension between reformist states and those who remain committed to a US-style drug war, with policies between European neighbours increasingly divergent.

Positive signs...

- The European Parliament has been far more outspoken than its UK counterpart in its criticisms of prohibition and calls for reform. In 2002, 108 MEPs (Including ten UK MEPs and a further five UK MPs) signed a petition stating that "*the drug prohibition policy stemming from the UN Conventions of 1961, 1971 and 1988 is the actual cause of the increasing damage which the production, trafficking, sale and consumption of illegal substances inflict on entire sections of society, the economy as well as public institutions, thus undermining health, freedom and individuals' lives*" and calling for "*a system for the legal control and regulation of the production, sale and consumption of substances which are currently illegal.*" (8)
- Many European states are already reforming policy and law (mostly decriminalising personal possession of drugs) in defiance of the UN drug control agencies and the US (*see drug policy reform around the world p.40*). It seems likely that a coalition of these states (in partnership with other reform-minded countries including Australia, New Zealand, Canada and a number of Latin American countries) will lead reforms to the UN conventions to allow greater domestic freedom to determine drug policy, including options beyond prohibition.

US Politics

The US is the spiritual home of prohibition and remains its primary international driver. The role of the world's last remaining superpower in maintaining prohibition cannot be overstated. The US operates a certification system which rewards countries who support the US drug war with trade and aid benefits, and countries expressing concerns about it can expect serious diplomatic and political consequences.

Ever since Nixon launched his federal war on drugs, US policy has become progressively more extreme and its rhetoric progressively more strident. Pressure from the Christian/Conservative Right of US politics has ratcheted up the drug war to an unprecedented intensity. The US today spends more than 40 billion dollars a year on the drug war and imprisons over 700 000 non-violent drug offenders (9), more than the entire prison population of Europe and a per capita rate 6 times higher than the UK. Drug offenders (but not other offenders) are denied federal college loans, three strikes legislation has seen life sentences for trivial possession offences, and the death penalty is available for some trafficking offences. Despite all this they have the worst drug problem in the western world, and drugs are cheaper and more available than ever before.

Positive signs...

- There are an increasing number of voices, both individual, organisational, and international speaking out and campaigning for an end to the US drug war. For more information visit the web site of the Drug Policy Alliance, the leading US drug policy reform organisation (www.drugpolicy.org)

UN Politics

The UN drug agencies are dominated by the influence of the US and its entrenched prohibitionist thinking, with unsurprising outcomes. They are widely seen as trenchant, dogmatic and out of touch with reality, not least by other, more pragmatic harm-reduction-oriented UN agencies including UNAIDS and the WHO. None the less, the three UN drug treaties have a powerful hold over domestic drug legislation, limiting the room for manoeuvre for reform minded states.

Positive signs...

- Cracks are appearing in the UN consensus as

pragmatic reforming countries are challenging the rigid prohibitions decreed by the UN treaties (*see drug policy reform around the world p.41*)

- Following the 2004 announcement in Russia that personal possession of all drugs would no longer be criminalised (but dealt with using administrative sanctions) the new head of the UN Drug Control Programme praised the move saying the revised law *"appreciated the drug problem not as a law enforcement only but also as a health problem, and therefore [is] a very major commitment to working toward the problem from the demand side and not only from the supply side."* (10)

Lack of critique from key voices in the drugs field

There has been a general reluctance to engage the legalisation debate amongst key voices in the drugs field. The reasons for this failure to engage are, in the main, fear of the high profile, emotive and highly politicised nature of the issue. Some specific reasons are outlined below for particular groups, and in the following chapter (p.37) there is a list of those who have challenged the consensus and spoken out in favour of reform.

Academics

- See legalisation as too far away
- Are too dependent on Government funding
- Are concerned that taking a clear reform position is *'political'* and may undermine their academic independence

Non Government Organisations

Penal reform and criminal justice groups:

- Lack the detailed knowledge to take a strong critical position and campaign behind it
- Are unwilling to expose themselves to criticism, as *'soft on crime'*

Treatment organisations:

- Do not want to be accused of being *'pro-drug'*
- Have a vested interest in not biting the hand that feeds them – under current policy massive new resources are flowing into a historically cash-starved sector

Police

- Feel it is inappropriate to criticise the law itself – their job is only to enforce it
- Are reluctant to give up the power of arrest for drug possession.

Parliamentarians

- Afraid of press and constituent reactions.
Although evidence shows a well argued position need not be a problem. Paul Flynn MP (Newport) has been the House of Commons' most vocal supporter of drug law reform and has seen his majority increase with every election.

Advisory Council on the Misuse of Drugs

(ACMD is the lead advisory to ministers on changes to drug legislation)

- Is too close to government to offer critical advice
- lack of transparency in its deliberation

Media

- Sensitive to readers' and advertisers' prejudices.
- Have long established editorial lines that change very slowly. Although they can be a lot more open to the debate than one might think; including some of the least likely:

The Daily Telegraph

"When The Daily Telegraph in March last year called on the Government to experiment with the legalisation of cannabis as a means of challenging the rhetorical fatuities of the "War on Drugs", we knew we were moving against the controlling instincts of New Labour. We had to accept, too, that some conservatives would oppose our position, believing - quite wrongly, as it happens - that we somehow thought rolling a joint was a good idea."

"Underpinning our Free Country campaign has been the presumption that individuals should be allowed to do what they want unless Parliament can show an overwhelming need to impose laws to control us. Mr Blunkett is to be congratulated on venturing into this debate on drugs and the law, territory many of his colleagues have found too inhospitable to enter. But now he should show he has confidence in his assessment that cannabis is not an unacceptably dangerous substance, and have the courage to take the next logical step forward by legalising the drug for an experimental period."

The Daily Telegraph, editorial 24.10.01

The Daily Mirror

"Never have so many dangerous drugs been seized by police and Customs. But never have so many drugs been taken nor has so much crime been caused by them. However much is done to stop the threat, the drugs industry – and it is an industry – is several jumps ahead. It is obvious that something new needs to be tried."

The Daily Mirror, editorial 25.06.03

The Daily Mail

"Some argue that, with the battle against drug-linked gun crime cost millions of pounds and many lives...the only solution is to legalise all drugs.

That argument is yet to be resolved. Indeed as Bruce Anderson argues in a highly provocative and personal opinion piece on this page, we are long way from even having an informed debate on this most explosive of issues."

The Daily Mail, editorial 30.12.03.

(Appeared alongside an opinion piece by Bruce Anderson calling for legalisation of all drugs)

The Economist

"The role of government should be to prevent the most chaotic drug users from harming others – by robbing or by driving while drugged, for instance – and to regulate drug markets to ensure minimum quality and safe distribution. The first task is hard if law enforcers are preoccupied with stopping all drug use; the second, impossible as long as drugs are illegal."

The Economist, editorial 28.06.01

From Issue entitled: 'Time to legalise all drugs'

References chapter 7

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3. Transnational Institute publication: 'Merging Wars; Afghanistan, Drugs and Terrorism'
(www.tni.org/drugs/)
4. A Government source quoted by Marie Woolf in the *Independent* 31.12.03 'PM's drug report shifts focus to 'high harm' users'
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(www.libdems.org.uk/documents/policies/Policy_Briefings/16_Feb2004_Honesty-Realism-Responsibility.pdf)
7. Conservative press release (www.conservatives.com/news/article.cfm?obj_id=73117)
8. www.radicalparty.org/lia_paa_appeal_new/form.php?lang=en
9. Drug War Clock (www.drugsense.org/wodclock)
10. Transform news release: www.tdpf.org.uk/MediaNews_LatestNews_17_05_04.htm

Further reading

For more information about UK party policy on drugs visit:
www.tdpf.org.uk/Parliament_PartyPolicies

For more information on UN drug control policy visit:
www.tdpf.org.uk/Policy_International_UnitedNationsCommisionOnNarcoticDrugsInViennaApril2002

8. Roadmap for reform

Summary

Responses to policy failings fall into two broad camps: those who seek incremental change (e.g. reclassification, harm reduction) to improve outcomes within a prohibitionist framework, and those who support the repeal of prohibition and its replacement with a legal framework to regulate drug production and supply.

Supporting incremental change within prohibition avoids taking a position on the respective merits of government and criminal controlled drug markets, but gives tacit support to the latter.

A combination of factors has made prohibition more vulnerable to critique and reform than ever before. These include:

- *Exposure to in-depth academic, NGO and parliamentary scrutiny for the first time*
- *A growing cross-party consensus that current policy is failing and new options need to be explored*
- *Prohibition's failings becoming increasingly visible, domestically and on the world stage*
- *The rising tide of critical media and public opinion*
- *The growing international consensus against prohibition and an expanding evidence base in support of reforms from progressive countries*

A number of countries have already effectively decriminalised the personal possession of some or all drugs. These include Portugal, Italy, Spain, Russia, Australia and Canada. It seems likely that a coalition of these progressive countries will challenge the UN conventions within the next decade, to allow individual states to determine how their drug markets are regulated.

Ending prohibition or incremental change within a prohibitionist framework?

There is a growing consensus that current drug policy is failing to achieve its stated goals, but less agreement on how to address these failings and move forward. There are two broad schools of thought:

1. Incremental change within the prohibitionist legal framework

This position, in general terms, calls for a less punitive approach to drug law enforcement and a greater focus on public health and harm reduction - including non-arrest or prosecution for personal possession, consumption rooms and an expansion of heroin prescribing. Advocates of incremental change within prohibition have achieved some positive change: new resources for drug treatment, the concept of harm reduction gaining ground and some changes to legislation, including the recent reclassification of cannabis. It does not fundamentally challenge prohibition, but seeks to achieve better outcomes within it.

The benefit of the incremental position(s) is that it challenges policy makers to improve a bad situation, without having to take a position on the

question of criminal vs. government control of drug markets. The problem is that the solutions being advocated, however well intentioned, do not impact on the significant harms relating to illegal drug production and supply, and by not taking a critical position on prohibition, give it tacit support.

2. Replacing prohibition with legally regulated drug production and supply

This position (Transform's) maintains that reforms within prohibition are largely mitigating against harms created by prohibition and do not offer a viable long term solution. Running harm reduction policies within a harm-maximising prohibitionist framework is illogical and unsustainable. Only the repeal of drug prohibition and subsequent regulation of drug production, supply and use will eliminate the problems of illegal markets and create an environment in which drug use and misuse can be effectively managed and the harm caused to individuals and communities minimised.

Transform hope that, by addressing some of the ignorance and misunderstandings around the legalisation debate, this report will encourage individuals and organisations to adopt a more critical public position on the failings of prohibition and inform the debate on policy alternatives.

Ratcheting up the war on drugs – a third option?

This position is largely limited to the US experience since the Nixon era. It has been characterised by the introduction of increasingly harsh enforcement measures including longer prison sentences and mandatory minimums, death penalty for some trafficking offences, massive rises in the non-violent prison population, militarisation of international drug control efforts and chemical and biological crop eradication. It is a position that has no significant political or popular support in the UK.

Why now is the time for reform

The policy of prohibition is looking more vulnerable to reform today than at any point in its history. A combination of factors has created an environment in which reform is both practical and inevitable.

- **Prohibitionist policy is being exposed to external critique for the first time.**

The past five years have witnessed the first real parliamentary scrutiny of current drug control policy, in debate and in 2001 from the Home Affairs Select Committee (1). Similarly the media, major NGO reports, think tanks, and academics have engaged the issue as never before (*see below*). The lack of meaningful evaluation of policy outcomes is being challenged and the Government is struggling for answers.

- **The failings of prohibition are becoming increasingly visible.**

As problematic illegal drug use and related crime has grown exponentially over the past two decades the failure of prohibition is increasingly hard to ignore, and drug war rhetoric rings increasingly hollow.

- **There is a non partisan and growing consensus in the UK that current policy is failing and that there is a need to consider other regulatory options.**

This consensus spans all political parties, academia, the police, drug treatment agencies and political commentators. Whilst differences of opinion remain, the debate is burning more

fiercely than ever. Support is now mainstream and credible in the public eye. The emergence of Transform over the past seven years means that for the first time there is a dedicated pro-reform organisation informing this debate in the UK.

- **There is a growing international consensus for reform.**

This international reform movement is more than just theoretical, with substantial reforms taking place across Europe, North and South America, and Australia providing political precedents and a growing body of evidence in support of UK reforms (*see p.41*).

- **A rising tide of public and media opinion**

Politicians can no longer rely on unquestioning public and media support for harsh enforcement of prohibition. The growing public support for law reform regarding cannabis, from around 15% in the mid 1980's to over 50% today (2), illustrates how public opinion shifts when exposed to significant informed debate. Editorial lines on drug law reform are similarly shifting (*see p.35*).

Growing body of support for drug law reform in the UK.

Think Tanks

- In 1997 the think tank **Demos** published a manifesto for change calling for the legalisation of all drugs.
- **The Foreign Policy Centre, The Centre for Reform, the Social Market Foundation, and The Bow Group** have all produced publications calling for reform of drug policy and legislation.
- **The Police Foundation Inquiry** (2000) thrust drug law reform into the spotlight when it critiqued the failings of the drug war and called for the reclassification of cannabis and ecstasy.

Parliament and Whitehall

- The recently redrafted **Lib-Dem** drug policy contains a fierce critique of prohibition.
- **The Home Affairs Select Committee** inquiry of 2002 called on the UK Government to initiate a discussion, at UN level, into the possibility of legalising drugs.

Non Government Organisations

- **Turning Point, Drugscope**, and several regional Drug Action Teams support decriminalisation of possession for personal use of all drugs.
- **Camden Drug Action Team, Release**, the

National Association for Probation Officers and **Liberty** are amongst the growing list of organisations to have official positions supportive of legalisation of all drugs.

- **The Scottish Police Federation** voted unanimously for a Royal Commission to overhaul the drug laws, referring to prohibition's "dusty, cobwebbed legacy of failure". Cleveland Police Authority backed a report from then Chief Constable Barry Shaw stating that the most obvious alternative to prohibition was the legalisation and regulation of all drugs.

Public figures

Public figures who have called for legalisation include;

- former drugs minister **Mo Mowlam**,
- former Chief Inspector of Prisons **Sir David Ramsbotham**,
- former UK ambassador to Colombia **Sir Keith Morris**
- serving **Chief Constable Richard Brunstrom**.
- former head of the CBI **Adair Turner**

Visit the Transform website (www.tdpf.org.uk) for a complete list of individuals and organisations that have publicly supported drug law reform.

Drug Policy Reform; A Global Movement

Prohibition is a global phenomenon, operating under the three UN drug conventions (1961, 1971, and 1988) that enshrine criminal sanctions for the production, supply and use of certain drugs into the domestic law of 190 countries and territories. As this section illustrates, the drug policy reform movement is also a global phenomenon, with countries increasingly adopting the more pragmatic harm reduction paradigm and adapting policy and legislation accordingly. It is a welcome sign that global prohibition has passed its high tide mark and is now on the retreat, and provides a growing body of evidence to inform the reform process in the UK and beyond.

No countries have yet legalised any drug covered under the UN conventions. Such unilateral moves are still likely to incur the wrath of the prohibitionist establishment, not least the powerful political forces of the US and UN drug agencies. However, there have been significant moves across the world

toward the de-facto decriminalisation of personal possession and use of drugs, bending (sometimes to near breaking point) the nominally rigid prohibitions of the conventions. This decriminalisation trend has most commonly been associated with cannabis but in a number of countries it includes all drugs. It is a challenge to both the letter and spirit of prohibitionist legislation and will inevitably lead to more reasoned consideration of supply-side reforms. Whilst wider moves towards legalisation are still some time away, the decriminalisation trend appears to point the way to a challenge from a coalition of progressive states to reformulate or withdraw from the UN conventions. The aim will be to allow locally determined regulatory systems and bilateral trade agreements to be established.



*Illegal opium production.
Photo: Martin Jelsma*

Time line for reform

	1998 – 2002	2003 – 2006	2007 – 2012	2013 - 2018
Global Policy	<ul style="list-style-type: none"> UN sets ambitious drug prohibition targets under a 10 year plan with the slogan “<i>A Drug Free World – We Can Do It!</i>” 	<ul style="list-style-type: none"> As failure becomes increasingly visible divisions grow between prohibitionist and reformist countries Growing formal alliance between Euro member states on treaty reform, wider global informal alliance, including Canada, Australia, and South American states Moratorium on aerial fumigation of drug crops 	<ul style="list-style-type: none"> UN 10 year plan expires in failure Progressive countries publicly challenge the UN drug control system UN treaties become increasingly redundant as states sideline UN drug agencies 	<ul style="list-style-type: none"> Coalition states opt out of treaties Widespread international legalisation and regulation of most drugs Bilateral drug trading agreements established between reform states
UK Policy	<ul style="list-style-type: none"> UK initially supportive of UN goals, but losing confidence by end of period Successive Home Affairs Select Committees criticise policy and recommend increased regulation 	<ul style="list-style-type: none"> De-facto drug decriminalisation extended from cannabis to all drugs, initially through tolerant policing Increasing resource reallocation from enforcement to treatment/education/prevention Expansion in heroin prescribing and establishment of pilot safe injection centres Growing criticism of status quo by national treatment and enforcement agencies Cross-party back bench support for reform grows 	<ul style="list-style-type: none"> Government audit of the effectiveness of drug law enforcement spending highlights policy failings Department of Health takes over drug brief from Home Office Cannabis production and supply legalised and regulated Administrative fines replace arrest and criminal sanctions for personal adult drug possession and use; following a legal challenge under the European Charter of Human Rights 	<ul style="list-style-type: none"> Misuse of Drugs Act 1971 repealed Replacement legislation establishes a new regulatory and licensing body Pilot licensing arrangements for different drugs tested and progressively rolled out as evaluation shows which models are most effective

Drug policy reform around the world

Luxembourg

In April 2001 Luxembourg decriminalised cannabis possession (along with transportation and acquisition for personal use) - now dealt with using administrative rather than criminal sanctions.

Portugal

In July 2001 Portugal decriminalised the use and possession of all drugs. Anyone caught with less than 10 daily doses (and provided police have no further suspicion or evidence of more serious offences such as sale or trafficking) is brought before a local commission who will evaluate the individual's situation and provide treatment and rehabilitation services where appropriate.

Belgium

Since 2002 possession of cannabis has been decriminalised - now only prosecuted in cases of social nuisance (similar to the new UK approach).

Germany

Possession of small amounts of any drug (weights determined by local government) is not prosecuted. Since 1994 more than 50 safe heroin injecting rooms with medical supervision have opened, legalised and regulated since 1999. Since 2002 a sophisticated heroin-dispensing programme has been functioning in seven major cities. NGO drug testing projects (mostly for ecstasy and other 'party' drugs) are tolerated.

Denmark

Possession of small amounts of cannabis is dealt with by police caution and small amounts of heroin by caution and confiscation. Fines are imposed for repeat offenders. Those in possession of a single dose for their own use will in some cases be allowed to retain it, the police motive being that the effect of confiscation would be minimal as the person in question would probably have to commit a crime to obtain money for another dose.

Switzerland

Possession of any drug for personal use is dealt with as a misdemeanour (administrative sanctions). In 2001 the Swiss Senate approved a law to legalise the possession, cultivation and use of cannabis (for over 18s), supported by a majority of the population, but was narrowly defeated by a 2004 vote in the House of Representatives. Cannabis is tolerated by police and is widely available in 'hemp shops'. Switzerland has a pioneering large scale heroin prescribing programme (approved by

national referendum) and in 1998 held the worlds first national referendum on drug legalisation (28% in favour).

France

Prosecutors decide on a case-by-case basis whether to give a warning for a first offence, to apply criminal penalties or to refer to treatment. A 1999 Ministry of Justice directive recommends not prosecuting cases of simple consumption of illegal drugs when other more serious offences are not involved, and that prison should be used only as a 'last resort'.

Italy

Since 1990 possession of drugs for personal use has been decriminalised and subject only to administrative sanctions, such as fines (which in some cases can be waived if the subject is willing to enter treatment).

Netherlands

Possession of small quantities of any drug is not prosecuted. Theoretically this means under 0.5g of heroin or cocaine or 5g of cannabis, but in practice possession offences are rarely prosecuted for any drug. Cannabis coffee shops for consumption and sale of cannabis have been tolerated under licensing conditions since 1976. Heroin is available on prescription and safe injecting rooms are provided. Injecting rooms with a resident dealer, so called 'basement projects', are also tolerated.

Russia

In May 2004 Russia introduced a new law replacing imprisonment with administrative fines for possession of 'up to ten doses' any drugs for personal use. Foreigners can still be expelled and denied re-entry for possession offences.

USA

In October 1973, Oregon State reduced the offence of possession of less than 1 oz. of cannabis to a civil violation, with a maximum penalty of a \$100 fine. From 1973 to 1978, ten other states enacted legislation which reduced the maximum penalties for cannabis possession to a fine.

Australia

South Australia decriminalized cannabis possession for personal use in 1986 with The Australian Capital Territory following suit in 1992, Northern Territory in 1996 and Victoria in 1998. Most recently Western Australia extended the policy to include all drugs. Sydney is now home to Australia's first safe heroin injecting rooms.

South America

A number of South American countries are considering or have already implemented policies to decriminalize personal possession of all drugs, including Venezuela, Colombia and Brazil.

Note on decriminalisation.

Despite being widely used in political and media discourse, the term decriminalisation has caused confusion, being technically incorrect since drug possession remains illegal in all countries. In reality however, de facto decriminalisation has been achieved either through tolerant policing and non-enforcement, or more commonly by replacing criminal sanctions (arrest, conviction, imprisonment) with civil or administrative sanctions (most commonly fines or treatment referrals). This form of decriminalisation might more accurately be called 'prohibition with civil or administrative penalties' and has often been introduced simultaneously with a hardening of penalties for supply and trafficking offences.

References chapter 8

1. Russell Newcombe, (1999) 'The people on drugs', *Druglink*, (14) Issue 4, 12-15
2. See Parliament and Whitehall section at the Transform website www.tdpf.org.uk
3. The Police Foundation Inquiry Report can be read online at www.druglibrary.org/schaffer/Library/studies/runciman/default.

Drug policy around the world sources:

- Drug Policy Alliance:
www.drugpolicy.org/global/drugpolicyby/
- EU European Database on Drugs:
http://eldd.emcdda.eu.int/trends/trends_possession_EU
- Senlis Council Drug Policy Advisory Forum
www.senliscouncil.net/modules/document_centre/drug_policy_in_europe/
- www.Narconews.com (South America)

9.What you can do

1. Get informed

Transform produces a range of briefings, factual guides and information resources on key issues in the drugs debate. These are available on line at www.tdpf.org.uk. There are many other organisations across the social and political spectrum calling for reforms (*see below*).

2. Raise your voice

Failing to speak out against the injustices of prohibition gives it tacit support. Raise the debate in your field of expertise or professional policy forum, and push for organisations you are involved with to adopt a reform position and proactively promote it in the political arena. Transform can help – please contact us for advice and support. You can also offer public support by affiliating your organisation to Transform. For details please see www.tdpf.org.uk/AboutUs_Affiliation

3. Support Transform

Transform is the only organisation in the UK dedicated to critiquing the failings of current drug policy and developing and promoting just and effective alternatives. Transform receives no government funding and is independently funded by charitable trusts and individual donations. Financial support is a continuing and urgent requirement for the organisation to survive and grow into an increasingly effective force for change – please help if you can. For information on donating contact the Transform office on 0117 941 5810, email info@tdpf.org.uk, or visit:

Links to further information

- **Forward thinking on drugs**
www.forward-thinking-on-drugs.org
- **Drugscope**
www.drugscope.org.uk
- **Beckley Foundation**
www.internationaldrugpolicy.org
- **Transnational Institute - drugs and democracy project**
www.tni.org/drugs
- **European Coalition for Just and Effective Drug Policies**
www.encod.org
- **Senlis Council**
www.senliscouncil.net
- **Drug Policy Alliance**
www.drugpolicy.org
- **Religious leaders for a more just and compassionate drug policy**
www.religiousleadersdrugpolicy.org
- **Law Enforcement Against Prohibition**
www.leap.cc

For a more extensive categorised list of links visit the Transform website at www.tdpf.org.uk.

Note: Transform is not responsible for the contents of these websites, which may contain views not necessarily shared by Transform.

www.tdpf.org.uk

Poster from the Democrat campaign to end alcohol prohibition in the US, 1930s

