CHAPTER

15

LEGALIZATION, DECRIMINALIZATION, AND HARM REDUCTION

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As we've seen throughout this book, the dominant approach in the United States to the control of recreational psychoactive drug use is *prohibition*. In

other words, it is against the law to possess and distribute nearly all substances for the purpose of getting high. Two drugs, alcohol and tobacco, are exceptions to this rule, and tobacco's effects, while recreational, may be described as an extremely "low-key" high (Goldstein, 2001, p. 121). Though the distribution of these two legal drugs is controlled by state law, they may be legally purchased for any purpose. In addition, thousands of drugs—roughly a fifth of which are psychoactive—are available by a prescription from a physician specifically for medical and psychiatric purposes. However, if these drugs are taken without a prescription for recreational purposes, their distribution and possession are illegal. Inasmuch as prescription use is not recreational use, these drugs don't count in our equation.

All other psychoactive drugs aside from alcohol and tobacco are prohibited by state and federal law. Marijuana is a partial exception, as we've seen, since small-quantity possession has been decriminalized in a dozen states. (It is also approved for medical purposes—again, by state, not federal, law—in eight states, but this does not count as "recreational.") Still, *partial* decriminalization does not mean the substance is legal, since the police can confiscate the drug and the possessor may be fined. And drug courts and drug treatment, likewise, are cracks in the armor of the strict law enforcement model. Peyote is permitted in some states to Indians for religious ceremonies, another exception to this rule. But the generalization that covers the control of psychoactive substances in the United States is this: The possession and sale of psychoactive substances for the purpose of recreational use is a crime unless otherwise stipulated.

Critics by the thousands have attacked the current system of prohibition. They believe that criminalizing nearly all drug taking for pleasure has serious negative consequences for users and for the society as a whole. In this chapter, we discuss the proposals for drug legalization, decriminalization, and harm reduction. We will consider such questions as, would a legal change away from our current system of "lock 'em up and throw away the key" be more effective? Is an emphasis on the punitive approach doing more harm than good? Many critics think so. The following sections summarize their reasoning.

Legalization: An Introduction

Beginning in the late 1980s (Kerr, 1988), an almost unthinkable proposal—the decriminalization or legalization of the currently illegal drugs—began to be advanced with remarkable frequency and urgency. Dozens of books, hundreds of magazine and newspaper articles, uncountable editorials and op-ed pieces, and scores of prominent spokespersons urged the repeal of the drug laws. For a time, drug legalization became a major focus of debate, joining such controversial subjects as abortion, the environment, the economy, gun control, and homosexual rights, women's rights, minority rights, and affirmative action. In the past half-dozen years or so, the legalization debate has died down, but the policy's advocates remain. Drug legalization—or some form of it—is a program worth discussing (see the accompanying box).

It must be emphasized that legalization is not a single proposal. Instead, it is a cluster of proposals that stands toward one end of a spectrum of degrees of regulation and availability. Very few, if any, legalization advocates argue that there should be absolutely *no* controls on drugs whatsoever, for instance, that minors be allowed to purchase heroin and cocaine to whoever is willing to sell to them. Instead, all agree that *some* sorts of controls

"In public opinion polls, most Americans *oppose* the legalization of marijuana for recreational purposes." This is a true statement; roughly 75 percent of all Americans nationwide are opposed to marijuana legalization. (Marijuana as medicine is a different matter.) Opposition to the legalization of the hard drugs is even stronger—in the 90 to 95 percent range. Many opponents of drug legalization (James Inciardi, for example) raise this point in support of their argument; if most Americans oppose drug legalization, legislatively, how can it possibly come about? Any politician who supports the proposal would be committing political suicide. Most of my students (58%) recognized that this statement is true. In 2002, two state initiatives on marijuana decriminalization, one in Arizona and the other in Nevada, were vetoed by voters. (The votes were surprisingly strong, however, 43 percent and 39 percent, respectively.) Clearly, that fact poses serious problems for legalizers.

will be necessary. Hence, the relevant question is, At what point along the spectrum ranging from just shy of complete control to just shy of a complete lack of control does the observer believe makes sense? In fact, the spectrum is so broad and the details so crucial that in many ways, the "great divide" between legalization and prohibition is artificial, almost irrelevant. Consequently, both the similarities and the differences between and among the various legalization programs, and those between and among legalization and prohibitionist programs, have to be considered.

To appreciate the import of proposals to legalize the possession and sale of currently illicit drugs, it is crucial to spell out the reasons why legalizers think the current system of prohibition is inevitably and fatally flawed and must be changed. According to the legalizers, what's wrong with our current system?

Why Do Legalizers Believe Criminalization Can't Work?

Proposing that the drug laws and their enforcement be changed implies that the current system of prohibition is ineffective and/or harmful. In fact, the bulk of the legalizers' writings are devoted to criticizing the current punitive policy; only a very small proportion deal specifically with the particulars of a viable legalization program. Consequently, to fully understand the justifications for drug legalization, it is necessary to explain, in the view of the legalizers, *how* and *why* the current prohibitionist program to deal with the drug problem is a failure. Behind the punitive reasoning of criminalization is the assumption that a drug war can and should be fought, can be won, and that the principal weapons that must be used in this war are the law, arrest, and imprisonment. In other words, the drug warriors believe that drug abuse is primarily a police matter. In stark contrast, all, or nearly all, legalizers, agree on one point: They oppose the current punitive system. They insist that drug abuse is not primarily a police matter. They believe that relying on the law, its enforcement, and the

incarceration that it demands is ineffective, counterproductive, and unjust. In fact, legalizers oppose the very basis of drug prohibition by means of the law and law enforcement.

Why do the legalizers and decriminalizers believe that our current, mainly punitive approach to drug control doesn't work? In their view, what are some major flaws in attempting to solve the drug problem by criminalizing the sale and possession of drugs? Why don't drug prohibitions work, according to the legalizers? Occasionally, a journalist will argue that the legal ban on drugs actually *stimulates* the desire for the consumption of psychoactive substances (Raver-Lampman, 2003), but no one who has detailed, systematic knowledge of the impact of legal controls will make such a foolish argument.

Before these questions can be answered, we have to lay down specific criteria as to what constitutes "working" in the first place. No specific drug policy is likely to work best in all important ways. It is entirely possible that a given program may work well in one way but badly in another. What do the legalizers mean when they say the punitive policy toward drug abuse doesn't—and can't—work? In criticizing the current policies and urging drug legalization or decriminalization, they make the following ten points.

First, the legalizers say, criminalization makes illegal drugs expensive and hence, profitable to sell. Because of the profit motive, arresting producers and sellers and taking them out of business simply results in other producers and sellers stepping in to supply the shortfall. Therefore, drugs can never be stamped out through the criminal law: The demand for drugs is constant and inelastic; their criminalized status makes them expensive, and thereby highly profitable to sell. Therefore, it is inevitable that suppliers will remain in business. Ironically, it is the criminalization itself that guarantees "business as usual."

Second, they say, the currently illegal drugs are less harmful than the prohibitionists say and, in fact, less harmful than the currently legal drugs. Hence, drug criminalization is both aimed at the wrong target and is discriminatory as well. If anything, stricter controls ought to be applied to cigarettes and alcohol—which kill many more people—and not the far safer currently illegal drugs.

Third, the legalizers insist, prohibition is futile because criminalization does not deter use. Drug abuse is as high now, under a punitive policy, as it would be under a policy of legalization; legalization would not produce an increase in use, or would not produce a significant or sharp increase. Anyone who wants to use drugs is doing so now. Prohibition is a logistical impossibility; there are simply too many holes in the net of social control. Drugs will always leak through the net. Hence, the very foundation of prohibition is invalid, they insist. Moreover, since the demand for drugs is inelastic—users will pay any price, no matter how exorbitant—raising the price through legal harassment cannot work.

Fourth, the legalizers argue, prohibition encourages the distribution and therefore the use of harder, stronger, more dangerous drugs, and discourages the use of softer, weaker, safer drugs. This is the case because criminalization places a premium on selling drugs that are less bulky and easier to conceal, and show a greater profit margin per operation. This has been referred to as the "Iron Law of Prohibition": The more intense the law enforcement, the more potent the prohibited substance becomes (Thornton, 1992, p. 70). In contrast, under legalization, they say, less potent and less harmful drugs, such as cocaine leaves, cocaine gum, opium, and marijuana, will be substituted for the more potent, more harmful illicit drugs now in use: crack, heroin, ice, and heroin (Goldstein, 1986).

Fifth, they say, drug dealers sell in a market in which there are no controls whatsoever on the purity and potency of their product. Hence, users are always consuming contaminated—

and dangerous—substances. In contrast, legalization would enforce strict controls on purity and potency; as a consequence, death by overdose would be virtually eliminated.

Sixth, the legalizers say, by undercutting the profit motive, organized crime would be forced out of the drug trade. As a result, the stranglehold that criminal gangs and mobs have on the throat of the community would be released; residents would be able to reclaim their neighborhoods, and democracy would triumph.

Seventh, legalizers say, the current level of drug-related violence is solely a product of the illegality of the drug trade. Drug-related murders are the result of disputes over dealing territory or "turf," robberies of drug dealers, assaults to collect a supposed drug debt, the punishment of a worker, a drug theft, and a dealer selling bad or bogus drugs (Goldstein et al., 1989). Eliminate criminalization and the profit motive will be eliminated, and so will drug gangs and the violence they inflict. The murder rate will decline, and neighborhoods and communities will be safer.

Eighth, by placing such a huge priority on the drug war and encouraging the arrest of dealers, the government has opened the door to the violation of the civil liberties of citizens on a massive scale. False or mistaken arrests or rousts, the seizure of the property of innocent parties, corruption and brutality—these are the legacies of prohibition. Under legalization, such violations would not occur. The police would not be pressured to make questionable arrests, nor be tempted to take bribes from dealers; consequently, they will be better able to serve the community (Wisotsky, 1990a, 1990b, 1993; Ostrowski, 1990).

Ninth, consider the enormous cost and the staggering tax burden of enforcing prohibition; billions of our tax dollars are being wasted in a futile, harmful endeavor. Under legalization, not only would this waste not occur, but the sale of drugs could be taxed and revenues could be raised to treat drug abusers. In an era of fiscal austerity, surely the budgetary argument should weigh heavily. Legalization would represent using the tax dollar wisely.

And tenth, under legalization, useful therapeutic drugs that are now banned by the government will be reclassified so that they will find their rightful place in medicine. Marijuana, a Schedule I drug, is useful in the treatment of glaucoma and in reducing the nausea associated with chemotherapy; heroin, also completely banned by its Schedule I status, is an effective analgesic or painkiller. In addition, a Schedule I classification is the kiss of death for scientific experimentation. The book has been prematurely closed on drugs such as MDMA (Ecstasy) and LSD—both Schedule I drugs—both of which have enormous potential for unlocking the secrets of drug mechanisms and, possibly, valuable therapeutic application as well. Our society cannot afford to remain ignorant about drugs with such complex and potentially revealing effects as these (Grinspoon and Bakalar, 1993; Beck and Rosenbaum, 1994, pp. 146ff.).

Four Proposals to Reform the Drug Laws

The term drug "legalization" has been used to cover a multitude of proposals. Some do not entail real drug legalization at all but do involve substantial changes in the drug laws. Proponents of some legalization proposals wish to remove criminal penalties from all psychoactive substances. Others are selective and aim to legalize some and retain penalties on others. Moreover, legalization is very different from decriminalization. And requiring the addicted or drug-dependent to obtain their supply via prescription is not the same thing as

permitting drugs to be sold to anyone, without benefit of a prescription. More generally, it must be recognized that legalization and prohibition do not represent an either/or proposition. In reality, they form a continuum or a spectrum, from a completely libertarian or "hands-off" proposal with no laws governing the possession or sale of any drug at one end all the way to the most punitive policy imaginable, support for the death penalty for users and dealers of every stripe, with every conceivable position in between.

In reality, very few commentators advocate a policy of no controls whatsoever on the possession and sale of any and all psychoactive drugs. At the other end of the spectrum, very few commentators call for the death penalty for the simple possession of the currently illegal drugs, including two joints of marijuana. Hence, what we are discussing in the drug legalization debate is degrees of difference along a spectrum somewhere in between these two extremes. In fact, as Ethan Nadelmann (1992, pp. 89–94) has argued persuasively, the "moderate" legalizers and the "progressive" or reform-minded prohibitionists share far more in common than the first group does with the extreme, radical, or "hard-core" legalizers, or the second group does with the harsher, more punitive prohibitionists.

The issue, therefore, is not legalization versus prohibition. Rather, the debate centers around some of the following issues: How much legalization? Which drugs are to be legalized? Under what conditions can drugs be dispensed? Are drugs to be dispensed in approved, licensed clinics? To whom may drugs be dispensed? To addicts and drug abusers only? Or to anyone above a certain age? In what quantity may drugs be dispensed? At what purity? At what price are the legalized drugs to be sold? (For these and other questions that legalizers must answer, see Inciardi and McBride, 1991, pp. 47–49; McBride, Terry, and Inciardi, 1999.)

Each drug policy proposal will answer these questions in a somewhat different way. The fact is, there are many drug reform proposals, not just one. There are even many different drug legalization proposals. It is naive to assume that the broad outlines of drug policy are the only thing that is important, and the details will take care of themselves (Trebach, 1993.) In my view, this assumption is fallacious. Zimring and Hawkins (1992, pp. 109–110) refer to this view as the "trickle-down fallacy." On both sides of the controversy, observers too often "simply ignore the detailed questions . . . of priority and strategy" (p. 109). A specific policy—what should be done about each and every particular—"cannot be deduced" from a general position (p. 110). At the same time, there are some points that are shared in common by all legalizers and some points that are shared in common by all prohibitionists.

Let's distinguish four drug policy reforms: legalization, decriminalization, the medical and prescription models, and harm reduction.

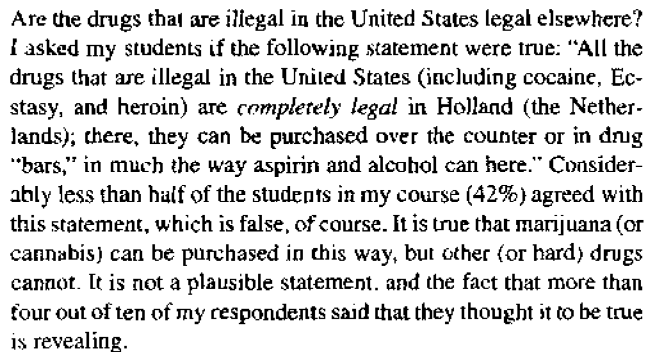
Legalization

One common legalization proposal refers to placing one or more of the currently illegal and/or prescription drugs under the controls that now apply to alcohol and/or tobacco. (But which is it—alcohol or tobacco? Alcohol is considerably more tightly controlled than tobacco, and controls that apply to alcohol do not apply to tobacco.) Under this proposal, psychoactive drugs could be purchased on the open market, off the shelf, by anyone above a certain age. Since the same controls on alcohol and the currently legal drugs will presumably apply to the sale of psychoactive drugs, a proprietor would not be able to sell to a minor or an intoxicated individual, to an inmate of a jail, prison, or a mental institution, nor to

sell within a certain distance from a house of worship, a school, or an active polling place on election day. Controls may also apply to the establishments that sell the drugs in question; with respect to alcohol, certain types of bars, for instance, must also serve food. Package stores must observe a variety of rules and regulations; some, for instance, are run by the government. Even those that are private enterprises are controlled: They cannot be owned and operated by a convicted felon; they cannot be open on Sunday; they cannot sell substances above a certain potency; and so on. Thus, legalization refers to a state licensing system more or less similar to that which prevails for alcohol (again, or tobacco) for the currently illegal drugs.

One qualification: Under our current policy of legalization, manufacturing alcohol (beer and wine, for instance) or growing tobacco for the purpose of *private* consumption—not commercial sale—does not come under state control and is perfectly legal. The state retains the right to step in and play a role only when selling (or the presumed intention to sell) takes place. This qualification does not apply to illicit drugs, of course; private production of Schedule I drugs remains illegal. In addition, under legalization, *use*, at least in public, is controlled under a variety of circumstances, for instance, driving while intoxicated and public intoxication are illegal. And lastly, for both alcohol and cigarettes, there are restrictions on advertising; cigarette ads and ads for hard liquor are (voluntarily) banned from television advertising, current athletes are not depicted endorsing alcoholic beverages, and beer is not drunk on camera. Presumably, the drugs that are to be legalized will be controlled, voluntarily or involuntarily, in more or less the same manner as alcohol and tobacco, that is, they will be *regulated* but not banned.

In the Netherlands, by law, small-quantity marijuana possession is technically illegal. However, in practice, the drug is sold openly in coffee shops (or "hash bars"), and these transactions are completely ignored by the police (see the accompanying box). No advertising of marijuana products is permitted; sale to minors under 18—even minors in such an establishment—and the sale of hard drugs will cause the police to shut a shop down. Thus, small-quantity marijuana possession and sale in the Netherlands have been legalized de facto, although de jure, or according to the law, they are still technically illegal. The "hard" drugs are unaffected by this policy; the sale of heroin and cocaine, especially in high volume, remain very much illegal. In fact, in the Netherlands, the proportion of prisoners who



Are the drugs that are illegal in the United States legal elsewhere? I asked my students if the following statement were true: "All the drugs that are illegal in the United States (including cocaine, Ecstasy, and heroin) are *completely legal* in Holland (the Netherlands); there, they can be purchased over the counter or in drug "bars," in much the way aspirin and alcohol can here." Considerably less than half of the students in my course (42%) agreed with this statement, which is false, of course. It is true that marijuana (or cannabis) can be purchased in this way, but other (or hard) drugs cannot. It is not a plausible statement, and the fact that more than four out of ten of my respondents said that they thought it to be true is revealing.

are convicted drug offenders is the same as it is in the United States, roughly one-thirc (Beers, 1991, p. 40). At the same time, possession by the addict or user of small quantitie: of heroin or cocaine (half a gram or less) tends to be ignored by the police. However, the sale of even small quantities of the hard drugs is not permitted to take place openly in lega commercial establishments, as is done with marijuana (Jansen, 1991; Leuw and Marshall 1994). The Dutch policy toward marijuana represents a variation on legalization.

Decriminalization

Decriminalization refers to the removal of state control over a substance or activity. (Man observers use the term "decriminalization" to refer to what I call "partial decriminalization." Full decriminalization is the removal of all—or nearly all—state controls over a give product or activity.) It is a legal "hands-off" or laissez-faire policy of drug control. Unde decriminalization, the state no longer has a role in setting rules and regulations concernin the sale, purchase, and possession of a given drug. Here, the distribution of marijuana heroin, or cocaine, would no more be the concern of the government than, say, selling tomatoes or undershirts. Of course, no one may sell poisonous tomatoes or dangerously flammable undershirts. But under a policy of full decriminalization, the rules and regulation: that apply to drugs would be even less restrictive than those that now apply to the currentl legal drugs alcohol and tobacco.

Under full decriminalization, anyone can manufacture or grow any quantity of an drug and sell it to anybody without any serious restriction at all. The only factor that shoul determine the sale of drugs, blatant poisons aside, should be the operation of a free and ope economic market (Szasz, 1992). Of course, almost everyone proposing this policy is likel to add one obvious restriction, that sale to a minor be against the law. It must be pointed ou that full decriminalization for every currently illegal drug, with the possible exception o marijuana, is not a feasible or realistic policy, and is of theoretical interest only. To expec that legislatures will permit the possession, sale, and distribution of substances that have powerful effect on the mind and have great potential for harm be subject to government controls no stricter than those which apply to the possession, sale, and distribution of tomatoe simply beggars the imagination. It is a pie-in-the-sky proposal that has no hope whatsoeve of implementation, at least for the foreseeable future.

There is one exception to this rule: Some commentators argue strenuously—and, i some quarters, persuasively—that users be permitted to grow certain natural psychoactiv plants, such as the opium poppy, the coca bush, the peyote cactus, psychedelic mushroom and, of course, the marijuana or cannabis plant, for their own private consumption (Karel 1991). Thus, one aspect of full decriminalization remains a viable subject of debate, whil most of the other particulars do not.

The term decriminalization is often used to refer to what is in fact partial decriminalization. As we know, in 12 U.S. states, someone in possession of a small quantity of marijuana cannot be arrested or imprisoned. Small-quantity marijuana possession is "violation"; the police may confiscate the drug and issue a summons, much like a traffi ticket, which usually entails a small fine. Hence, partial decriminalization does not remov any and all legal restrictions on the possession, sale, and/or distribution of a given substance, but it does remove some of them. This is not what advocates of decriminalizatio mean by the term, although the two terms are often—loosely and inaccurately—equated.

Prescription and Maintenance Models

The *prescription* and the *maintenance models* overlap heavily, although they are conceptually distinct. Both are usually referred to as the *medical approach* to drug abuse, since both see certain conditions as a medical matter and the administration of psychoactive substances as their solution. Currently in the United States, the prescription model prevails for certain pharmaceuticals deemed to have "legitimate" medical utility; hence, certain approved psychoactive substances may be prescribed by physicians for the treatment of their patients' ailments.

Under an expanded prescription or maintenance policy sometimes referred to as a type of legalization plan, anyone dependent on a given drug would be able to go to a physician or a clinic and, after an medical examination, be duly certified or registered. Certification would enable one to obtain prescriptions at regular intervals which, in turn, would make it possible to purchase or obtain the drug in question. Or the drug could be administered directly by a clinic or a physician. Some current prescription models call for an eventual withdrawal of the client or patient from the drug, but they insist that this be done gradually, since it is both humane and effective. Under the current prescription policy, drugs have to be tested by pharmaceutical companies and reports submitted to the Food and Drug Administration (FDA) demonstrating that they are safe and effective for the ailments for which they would be prescribed. A drug demonstrated to be either unsafe or ineffective cannot be approved by the FDA and hence, cannot be prescribed as a medicine. Presumably, if the currently illegal drugs are to be prescribed to addicts, they must pass as safe and effective medicines.

One version of the prescription model is referred to as the *maintenance model* because the addict or drug-dependent person is "maintained" on doses of the drug in question. Currently, in the United States, some form of maintenance is in effect for roughly 150,000 heroin addicts, most of whom are administered methadone. However, methadone maintenance programs are fairly tightly controlled in most jurisdictions, and most addicts nationwide are not enrolled in them, either because they do not wish to be—for instance, because the restrictions are too severe and the quantities administered are too small—or because the clinics do not have room for all who wish to enroll. To set up a full walk-in program for any and all heroin addicts who want to take part in methadone maintenance therapy would require a quadrupling of the current operating budget of this treatment modality. In addition, there is no heroin maintenance program in place in the United States, and none for persons dependent on a drug other than a narcotic. Such a program is in effect in Liverpool, Great Britain, and in Switzerland.

Presumably, a legalization proposal that relies heavily on the medical model would aim to expand the number of addicts currently on methadone, expand the number of possible narcotics used for maintenance programs, presumably including heroin, and possibly even expand maintenance programs to include nonnarcotic drugs, for instance, cocaine. Again, regardless of the particulars, a drug maintenance program sees drug abuse as a medical, not a criminal matter, and aims to legalize the administration of psychoactive substances to addicts or abusers. It is not clear what this program proposes to do when drug abusers refuse to participate in the program, demand to use other drugs in addition to the legal drugs they are being administered, or demand a significant escalation in the dose they are administered. Or what should be done when someone who is not chemically or psychologically

dependent demands quantities of a given drug from the program. This program sees the primary motivation of drug abusers as maintenance, not recreation, an assumption many observers question as naive.

Harm Reduction

Harm reduction represents an eclectic or mixed bag of policy proposals. It is a *specifist* legal policy: different programs for different drugs. Harm reduction is the explicit policy that prevails in the Netherlands, Switzerland, and certain jurisdictions in the United Kingdom, such as Liverpool. Its goal is stated in its title: Rather than attempting to wipe out drug distribution, addiction, and use—an impossibility, in any case—its goal is for drug policy to attempt to *minimize* harm. Legal reform, likewise, is secondary; the emphasis is on *practicality*—what works in concrete practice rather than what seems to look good on paper or in theory. A needle exchange and distribution program stands high on the list of particulars of any harm reduction advocate: Addicts can turn in used needles at distribution centers and receive clean, fresh ones free of charge. This is designed to keep the rate of new AIDS/HIV infections in check. Another particular of the harm reduction advocates relates directly to law enforcement: Make a sharp distinction between "soft" and "hard" drugs, and between users and small-time, low-level sellers on the one hand and high-level, high-volume dealers on the other. In practice, this means de facto decriminalization of small-quantity marijuana possession, attempting to route addicts into treatment programs without arresting them. Big-time heroin and cocaine dealers, however, are arrested and imprisoned.

In short, harm reduction means the following:

- Stress treatment and rehabilitation; underplay the punitive, penal, or police approach; and explore nonpenal alternatives to trivial drug offenses.
- Expand drug maintenance, especially methadone, programs; experiment with or study the feasibility of heroin maintenance programs; expand drug education programs; permit heroin and marijuana to be used by prescription for medical treatment.
- Consider ways of controlling the legal drugs, alcohol and marijuana.
- Be flexible and pragmatic: Think about new programs that might reduce harm from drug abuse, and if one aspect of the program fails, scuttle it and try something else.

Remember: Drugs are not the enemy—harm to the society and its constituent members is the enemy; whatever reduces harm by whatever means necessary is all to the good (Beers, 1991).

No one who supports a harm reduction proposal questions the fact that there are theoretical and practical difficulties and dilemmas in implementing such a policy. Some tough and troubling questions demand an answer. For instance, how do we measure or weigh one harm against another? What if our policy results in fewer deaths and more addicts? Less crime and more drug use? If we are truly worried about harm from drug abuse, why concentrate on legalizing or decriminalizing the illegal drugs? Why not focus on ways of reducing the use, and therefore the harm, that the legal drugs cause? What if our policy improves conditions for one group or category in the population but harms another? And will harm reduction really result in less state control of the drug addict, abuser, and user? Government regulations and programs designed to reduce drug-related harm is likely to result in far more state intervention

into the lives of persons affected by them. (For a cynical, mechanistic, and ill-conceived critique of harm reduction programs from a radical or left-wing perspective, see Mugford, 1993.) None of the program's advocates suggest that it is a problem-free panacea or cure-all, but all believe that these and other criticisms are not fatal, and that its problems can be resolved with the application of reliable information and good common sense.

Will Drug Use/Abuse Rise under Legalization?

In the legalization debate, perhaps no other issue is as fundamental as the question of whether drug use and abuse—and hence, medical complications and death—will rise under legalization. Does the current system of prohibition keep drug abuse down to tolerable levels? Would legalization open the floodgates to immensely greater drug-related social, economic, and health problems?

As we've seen, there is at least one way in which criminalization is a failure. Attacking the supply or manufacture and distribution side of the drug use equation is extremely unlikely to work. Clearly, the lure of the profit motive is too great for at least some of our persons, even with a small measure of risk involved. What about the demand or user side? The motives for selling and use, although intertwined, are at least analytically distinct. Can law enforcement deter use?

More generally, does the law and its enforcement deter any activity? If there were no laws and no enforcement, would currently illegal activities become more common? If a product or service is criminalized, does the demand for it remain constant? Will just as many customers be willing to pay for it regardless of whether it is legal or illegal? Just how inelastic is the demand for certain products and services? The legalizers are insistent that "prohibition doesn't work"—indeed, *can't* work (Morgan, 1991; Hyse, 1994). Is this true for all products and services, under all circumstances? More specifically, is it true for the currently illegal drugs?

As we've already seen, there are two entirely different arguments underpinning prohibiting or outlawing an activity; many observers confuse the two. They are the "hard" or the "strict," and the "soft" or the "moderate" versions. The strict punitive version makes use of the logic of absolute deterrence, while the "moderate" punitive version makes use of the logic of relative deterrence (see the accompanying box). The hard or strict punitive argument says that a given activity can be reduced or eliminated by law enforcement. It argues that crime is deterred or discouraged in some absolute or abstract sense by law enforcement. In contrast, the

In this section, I make a distinction between absolute and relative deterrence. This distinction is captured in my statement; "The fact that law enforcement has not been able to stamp out drug abuse shows us that in *all* ways, the drug laws have been a failure." The relative deterrence argument rejects the validity of this statement, as I do, and as most drug researchers and policy analysts do as well. Not many of my students were taken in by this statement; in fact over three-quarters (77%) said that they thought the statement is false. Clearly, my students have a more sophisticated grasp on the relevant issues than many proponents of drug legalization.

soft or moderate punitive position does not see a defeat of or even a drastic reduction in drug use or abuse as feasible. This argument is quite different from the hard or strict criminalizer's position; in contrast, it says, in the absence of law enforcement, a given activity would be much more common than it is with law enforcement. It relies on a logic of relative deterrence because it says, with law enforcement—as compared with no law enforcement—certain kinds of crime take place more often. If there were no laws or penalties against robbing or inflicting violence upon others, more people would engage in such behavior. (Not most people—*more* people.) Law enforcement does not reduce the incidence of these acts so much as contain them. The same principle applies with drug use: Punishing the drug violator is not, and, under most circumstances, cannot be, a means of drastically reducing or eliminating drug use. But if there were no drug laws, and no penalties for the production, importation, possession, and sale of the presently illegal substances, use would be considerably higher than it is now.

Does Criminalization Ever Lower Demand?

I suspect that criminalization actually does lower the demand—as well as the supply—of certain products and services. To put the matter another way, legalization would result in an increase in the incidence of many activities. As a general rule, the more *elastic, substitutable,* and *sensitive to price* a demand is, the more effective criminalization is in discouraging its satisfaction; the less elastic, substitutable, and insensitive to price a demand is, the less effective criminalization is (Wisotsky, 1990b, p. 8).

Outlawing leaded gasoline, for instance, has not produced a huge illegal market for it—there are no customers who are willing to pay hundreds of times its previous, legal, price and manufacturers who are willing to supply it, thereby risking arrest. For practically all motorists, an adequate substitute exists in unleaded gas; hardly any customers are willing to pay huge price increases for a marginally superior performance. The sale of automobiles in the United States is restricted to those that meet certain standards, for instance, with respect to emission controls. Has that resulted in a huge underground sale of cars that do not meet these standards? No; in this case, the prohibition of nonstandard cars works, more or less.

The number of times customers visit prostitutes, and hence, the number of prostitutes, are almost certainly smaller, all other things being equal, where it is illegal than where it is legal. Can anyone seriously doubt that a substantial proportion of men would visit prostitutes more frequently if the public sale of sex were completely legalized? Prostitution is a major business in Nevada, where it is legal; elsewhere in the country, studies show, sex with prostitutes is only a minor sexual outlet for men (Michael et al., 1994, p. 63). For many men, where it is *illegal,* sex with a prostitute affords a sordid, even risky sexual option, as the "Johns" who have been arrested in street sweeps have discovered. Risks come not only in the form of arrest (extremely low, although, with sporadic police campaigns, they are there) but also in criminal victimization from the prostitute and her colleagues and from denizens of the environs in which prostitution is likely to take place, and, for some, the social stigma in the event of discovery following arrest. Hence, the prohibition of prostitution must be counted as at least a partial success.

National Alcohol Prohibition (1920–1933)

Some legalizers argue that no ban or prohibition on an activity or substance that is desired by a sizable number of citizens will ever be successful. The legalizers may be referred to as *antiprohibitionists.* Most adopt a broad, sweeping view of the failure of prohibitions in gen-

eral. And their guiding model for this position is national alcohol prohibition (1920–1933). The 18th Amendment, also referred to as the Volstead Act, is the only constitutional amendment to have been repealed in U.S. history.

Everyone knows that Prohibition was a clear-cut failure—very possibly the biggest domestic legal mistake in the federal government's entire history. We've all learned about the history of Prohibition—including Al Capone, organized crime, gangland violence, bootleg liquor, bathtub gin, speakeasies, and illegal nightclubs. Since Prohibition was such a disastrous failure, it follows as night follows day that our current policy of drug prohibition will also fail. "Prohibition can't work, won't work, and has never worked" (Carter, 1989). True or false?

Keep in mind that policies may work well in one way but badly in another. Prohibition is an excellent example of this principle. Interestingly, as we've discovered, national alcohol prohibition did work in at least one sense: It reduced the level of alcohol consumption in the American population. Historians, medical authorities, and policy analysts have put together indicators from a variety of sources—arrests, automobile fatalities, hospital admissions, medical examiners' reports, as well as legal sales before and after Prohibition—and concluded that the consumption of alcohol declined significantly between 1920, when the Eighteenth Amendment took effect, and 1933, when it was repealed. The conclusion is inescapable: In the narrow sense of reducing alcohol consumption, Prohibition did work. Far from being a failure, in this one respect, it was a resounding success.

But again, in most other important respects, Prohibition was a disastrous failure; in this sense, the anti-prohibitionists are correct. The policy may have switched millions of drinkers from beer, a less potent beverage, to distilled spirits, a far more potent and more harmful beverage; it encouraged the sale of harmful, poisonous substitutes, such as methyl alcohol; it certainly gave organized crime an immense boost, pouring billions of dollars into the hands of criminal gangs, consolidating their power, and effectively capitalizing their other illegal enterprises; it encouraged corruption and brutality on the part of politicians and the police on a massive scale; and the homicide rate rose during the 1920s and fell after 1933. In these crucial respects, Prohibition did not work; in fact, it was clearly a catastrophic failure. It was also a failure from the point of view of absolute deterrence: Many Americans did get their hands on illegal alcoholic beverages.

The lesson from Prohibition should not be that drug prohibitions cannot work; it should be that, in instituting a drug policy, impacts come in packages. Some of the contents in a given package may be desirable, whereas others may be most distinctly undesirable. Another package will contain a different mix, with entirely different positives and negatives. Which package one selects depends on values, not science—that is, depends on a preference for certain results over others. There is no policy that will yield results that everyone—or anyone—will regard as entirely or uniformly positive. As the saying goes, you pay your money and you take your choice.

Legalization and Use: Two Issues

Regardless of whether or not prohibition generally does or does not reduce the incidence of an activity and regardless of whether or not Prohibition did or did not reduce the consumption of alcohol, the results of legalization have to be considered separately. A policy that looks good on paper may not work in the real world, and one that works in general or in most instances may fail in a specific case. The assumption of the legalizers is that abolishing the criminal penalties for the possession and sale of the currently illegal drugs will not

result in a substantial rise in their use and abuse. (Some of the proposal's most optimistic advocates even argue that use will actually decline; this view is not widely shared, however.) Is this true?

The question of the impact of legalization on the incidence and frequency of use pivots on two separate questions, one *empirical* and the second *moral* and *ideological*. The empirical question is familiar to us all and can be stated simply, although answered with difficulty and only tentatively: What evidence do we have that addresses the issue of the impact of legalization on use? The moral question is a bit harder to spell out but need not detain us here, since it is essentially unanswerable: If legalization does result in an increase in use, how many more users and abusers represent an acceptable increase, given the benefits that this change will bring about? Dennis (1992, pp. 128–129) estimates that legalization will result in a 25 percent increase in the number of abusers and addicts. Even if the figure were to double, he finds this acceptable, considering that legalization will unburden us from criminalization's enormous monetary and human costs. I suspect that even if we were all to agree on Dennis's numerical prediction, not all of us would accept his conclusion. Again, the moral question has to be disentangled from the empirical question. Empirically, what is likely to happen under legalization? Will the use of the presently illegal drugs rise or remain at about the same level?

Worst-Case Scenario

One critic of the drug laws claims that their supporters argue that legalization will mean that "countries will plunge into anarchy, families will disintegrate, and most of us will become drugged zombies" (Mitchell, 1990, p. 2). Some supporters of the drug laws actually do believe that, or very nearly so. Former drug czar William Bennett estimates that under legalization—a plan he vigorously opposes—some 40 to 50 million Americans would become hard-core heroin and cocaine abusers. William Pollin, former director of the National Institute of Drug Abuse (NIDA) argues that because cocaine is the most pleasurable (or reinforcing) drug in current use, it makes sense that if there were no law enforcement, "the number of cocaine users would be right up there with smokers and drinkers. . . . We'd have 60 to 100 million cocaine users instead of the 6 to 10 million current users we now have. . . . Viewed in this light," Pollin adds, our punitive law enforcement policy "is 90 percent effective" (Brinkley, 1984, p. A12). Would we become a nation of "drugged zombies" under legalization?

I do not believe that the use or abuse of cocaine or heroin will increase ten times if any of the currently debated legalization plans were put in place. In other words, I believe that Bennett's estimate of 40 to 50 million heroin and cocaine addicts and Pollin's estimate of 60 to 100 million regular cocaine users are seriously wide of the mark. Regardless of how alluring, seductive, or reinforcing these drugs are, the tens of millions of Americans Bennett and Pollin project who will become involved in the use of these seriously mind-transforming drugs for the pleasure they afford—and risk destroying everything they now value, including job and career, marriage and family, money, possessions, and their freedom—simply do not exist. At the same time, I do believe that if one or another legalization proposal were to be instituted, the number of Americans who will take and become seriously involved with the currently illegal drugs, including heroin and cocaine, would increase more than modestly, possibly even dramatically, possibly along the

lines of two to three times. In other words, there will be a significant increase, but the worst-case scenario will not come to pass. My estimate contradicts both the legalizers, who argue that there will be no, or an extremely modest, increase, and the criminalizers, who argue that the increase will be monstrous, almost uncontrollable. Here, I am a firm believer in relative deterrence: Yes, use is lower than would be the case without law enforcement, but no, law enforcement does not and cannot eliminate or drastically reduce use. Some justification of my estimate is in order.

Three different sets of evidence can be used to address the question of the impact of legalization on frequencies of use. The first is related to what we know about human nature generally. The second is related to the intrinsic nature of each drug, how it is used, and what its effects are. And the third is what is known about actual or concrete frequencies of use under more, and less, restrictive conditions.

Human Nature

All predictions of what is likely to happen under certain conditions are based on assumptions about human nature, or a theory of behavior. Legalizers and prohibitionists hold contrasting assumptions about human nature. Let's look at each one.

Legalizers see human nature as basically rational, sane, temperate, and wise. "Inform a normally intelligent group of people about the tangible hazards of using a particular substance and the vast majority of them will simply stop" (Gazzaniga, 1990, p. 39). That is, the reason why drug abuse will not rise sharply under legalization is that most people are cautious and not willing to take risks; since the use of the currently illegal drugs entails a certain likelihood of harm, it is extremely unlikely to be taken up by many people who are not currently already using them. In contrast, one of the reasons that prohibitionists cite in support of their argument is their assumption—as we saw with Bennett's and Pollin's predictions—that many people are not nearly so rational and moderate in their behavior as the legalizers believe. Many Americans will experiment with and use heroin and cocaine, the prohibitionists believe; of this total, a substantial proportion will become compulsively involved with them to the point of abuse and addiction. The reason this will happen, prohibitionists believe, is that many of us are willing to take dangerous risks; they feel a substantial number of us believe bad things happen to other people but not to us, that we, somehow, are lucky enough to do risky things, yet not get hurt. A lot more people are reckless risk takers than the legalizers think, the prohibitionists argue. In fact, they say, this is precisely the reason we have criminal laws outlawing certain activities: By introducing the risk of arrest, the slightly foolhardy will be dissuaded from engaging in them, while only a fairly small number of very foolhardy souls will be willing to do so.

In my view, the argument between the criminalizers and the legalizers is misplaced. To put it another way, both sides are partly right—and partly wrong. In fact, while most Americans are not risk takers, this is irrelevant. The crucial issue is not the orientation of most Americans, but the orientation of a minority. There are enough hedonistic risk takers in this society who, under the right social and legal conditions, would be inclined to experiment with drugs and seriously disrupt the lives of the rest of us. In spite of the practical, hard-working, sober veneer of most Americans, many of us are a great deal more sober, traditional, and orderly than we are willing to admit. There are many among us who want to drive fast cars, get intoxicated on psychoactive drugs, engage in a variety of sexual adventures,

neglect our workaday and family obligations, eat fattening foods without restraint, dance until dawn, and commit a wide range of criminal acts, but who are afraid of the consequences—social, monetary, and, for some of these actions, legal consequences. The removal of legal penalties outlawing one of them—getting intoxicated on drugs—would make it more attractive to a substantial number of Americans. My contention is that the threat of arrest and imprisonment is one of the mechanisms that keeps the wilder side of the moderate risk takers in check, while the small minority of extreme risk takers remain undeterred by any manner of risk, legal or otherwise.

But here's an extremely important point: The legalizers are correct in assuming that most of us are not true risk takers. Most Americans would not experiment with heroin or cocaine, and of those who do, most would not become unwisely and abusively involved with them. There is almost no chance that, under legalization, heroin or cocaine would ever become as popular as cigarettes or alcohol. The vast majority of Americans would shun the recreational use of the currently illegal drugs, and the vast majority of those who would use them will be temperate and moderate in their use. Comments one critic of the current policy, "[W]hile certain drugs can produce physical dependence, most individuals *will not willingly take* those drugs, even after experiencing their effects" (Gonzales, 1985, p. 105). Still, this is irrelevant. What is important is that more people would use the drugs under legalization than is true today, and more would use compulsively and abusively.

I do believe that most people do not want to harm themselves. I believe that the evidence shows that, however inaccurately, people generally do calculate cost and benefit before engaging in certain actions. (Indeed, this is one of the reasons behind enacting and enforcing criminal laws.) But *risk* is not the same thing as *harm;* risk entails taking chances—it is not a guarantee of being harmed. A certain proportion of motorcyclists refuse to wear helmets, for example. For most who take that risk, not wearing the helmets will make no difference to their life or limb, because most will not get into a serious accident. The same applies to motorists do not want to wear a seat belt; for most of them, not wearing a seat belt is in fact not harmful. Harm enters into the picture not in each and every case but in the overall picture. Injury and fatality statistics are very clear about this: You are more likely to be seriously injured and die if you do not wear a helmet or a seat belt. *Some* (not all, not even most) motorcyclists are harmed because they didn't wear a helmet; *some* motorists are harmed because they didn't wear a seat belt. The law convinces a substantial proportion of motorcyclists and motorists to wear the protective devices; even more persuasive than a law by itself is a law with real penalties and vigorous enforcement.

Again, it is simply irrelevant to argue that most "normally intelligent people" will give up an activity if they are aware of the "tangible hazards" of an activity or substance (Gazzaniga, 1990, p. 39). The fact is, the risk an activity entails is not always clear-cut, obvious, or immediately apparent. Indeed, the danger in question may never manifest itself because, once again, risk is a statistical, not an absolute, affair. Most people are not harmed at all by a great many very risky activities. The two crucial issues are, first, the absolute number who are harmed, not the proportion, and, second, the number who are persuaded not to take a given physical risk because of an entirely separate risk—the likelihood of arrest. In my view, if that second risk were removed, a substantial number of people would engage in harmful, abusive drug taking. (Why do the legalizers emphasize the dissuasive power of physical risk but ignore the power of the threat of arrest and imprisonment?) Not a majority, not even remotely close to Bennett's and Pollin's tens of millions of Americans, but a

substantial number. Seeing the American population as far more risk taking than the legalizers do leads me to conclude that legalization will result in a significant rise in drug use and abuse.

Using Drugs, Drug Effects

A second piece of evidence relevant to the question of the impact of legalization on drug use bears on the effects of the drugs under consideration and the ways they are used. Although all drugs are by definition psychoactive, not all drugs are used in the same way. Although all drugs are used for their pleasurable effects, the way that that pleasure is experienced and integrated into the lives of users is far from identical for all drugs. Although all the psychoactive drugs possess a potential to generate a dependence in users, that potential varies enormously from drug to drug.

The mechanics, logistics, and effects of each drug influence the degree to which it can be woven into everyday activities. The effects of cigarettes, as they are currently used, are mildly stimulating. Most users can continue to puff cigarettes more or less throughout the day without disruption, while working, studying, interacting, talking, driving a car, walking about, and so on (Kaplan, 1988, p. 41). Only (as it turns out, a growing) social disapproval cuts smokers off from nonsmokers; in other words, the intrinsic nature of the use of the drug and its effects do not preclude their integration into routine living. Although alcohol is not quite so readily integrated into everyday life, in moderation, it is compatible with a wide range of pleasurable activities, it tastes good to most of us, it goes well with food, it is typically a lubricator of sociability. Alcohol does not usually isolate drinkers from nondrinkers except at the point of heavy consumption. Unlike many drugs, the effects of alcohol are linear: One does not have to be intoxicated to enjoy its effects. One can enjoy the mild effects of alcohol, whereas for some drugs (heroin, for instance), achieving only subeuphoric effects are more likely to be experienced as frustrating than enjoyable. Most of the currently illegal drugs are taken specifically to get *high;* this is typically an all-or-nothing proposition.

As a hypothesis it may be stated that the more readily a given form of drug use can be adapted to everyday life, other things being equal, the more popular it is likely to be. Contrarily, the more disruptive its use is, the less potential it has for widespread popularity. In contrast to cigarettes and, to a lesser extent, alcohol, heroin, crack cocaine, and especially psychedelics such as LSD, are highly disruptive drugs; their effects jolt the user out of routine activities and away from sociability with others, particularly nonusers. Using these drugs requires a much greater commitment to use and a much greater willingness to suspend whatever else one may wish to do, at least for a time. We can place marijuana and powdered cocaine midway along a continuum between cigarettes at one end and heroin, crack, and LSD at the other. Smoking marijuana and snorting or taking powdered cocaine intranasally are moderately disruptive, are usually confined to periods when the focus is more or less on getting high and enjoying oneself. Again, few users seek a mildly pleasurable sensation; most wish to become high or intoxicated. Hence, the use of these drugs will create an interactional barrier between the user and the nonusers—and often among users themselves. Thus, with respect to the connection between the way these drugs are used and their effects, tobacco is least disruptive to everyday life and requires the least commitment to use, while heroin, crack cocaine, and LSD stand at the opposite end of the continuum; they are

highly disruptive and require a great deal of commitment to use regularly and frequently. Hence, legalizers predict, under legalization, heroin, cocaine, especially crack, and LSD and the other psychedelics could never attain the popularity of the currently legal drugs. Given the disruptive nature of heroin, crack cocaine, and LSD, it is almost inconceivable that they would be taken up on an abusive scale by more than a small fraction of users, even if they were to be legalized. Their use would remain marginalized and indulged in by a very small minority (Nadelmann, 1989, p. 945).

On the other hand, there is the issue of how reinforcing the drugs in question are, a factor which Bennett and Pollin stress in their predictions of use patterns after legalization. We reviewed some of the research on this issue in Chapter 2. With respect to drugs, reinforcement refers, roughly, to how enjoyable a substance is, its capacity to deliver an orgasmlike jolt or "rush" of unmodified, undiluted, unsocialized pleasure. Reinforcement refers to the reward an organism achieves upon taking the drug and the commitment it has to continue taking it. To put the matter in more formal terms, the more reinforcing a drug, the harder an organism will work to continue taking it. The reinforcing potential of drugs can be determined even among nonhuman organisms; rats, mice, and monkeys find cocaine (and, to a lesser degree, heroin and amphetamine) immensely pleasurable; they will press a bar hundreds of times in order to receive a single dose of the drug. In a laboratory situation, they will take it as much as they can and will even risk their lives to do so. They will take cocaine in preference to food and water, and will even kill themselves, self-administering cocaine. Moreover, if they have taken cocaine over a period of time, and the drug is suddenly discontinued, they will continue doing whatever they did previously that rewarded them with doses of cocaine, but now go unrewarded, for a longer period of time than for any other drug, including heroin (Eckholm, 1986; Bozarth and Wise, 1985; Johanson, 1984; Clouet, Asghar, and Brown, 1988). Psychologists regard whatever produces such slow-to-extinguish, previously rewarded behavior as extremely reinforcing. In this respect, then, cocaine stands at the top of all widely used psychoactive drugs. Most pharmacologists and psychologists now argue that psychological reinforcement is the key to dependence, not physical dependence. Drugs that are highly pleasurable in a direct, immediate, sensual way are most likely to produce addict like behavior in users, whether or not these drugs produce a literal, physical addiction, that is, withdrawal symptoms (Ray and Ksir, 2002, chap. 6). In this respect, then, among all widely used psychoactive drugs, cocaine possesses the greatest potential for producing dependence.

At the same time, we must be skeptical of any automatic extrapolations from laboratory experiments, whether its subjects are humans or animals, to real life. Wilbanks (1992) warns us against the "monkey model" of addiction—the fallacy of thinking that what monkeys in cages do with drugs automatically tells us everything we want to know about what humans will do on the street. After all, animals do not like the effects of alcohol or tobacco; it is difficult to induce them to take these drugs, use them, or become dependent on them. Yet we know that they are extremely widely used—and abused—drugs among humans in their natural habitat.

Still, laboratory experiments cannot be dismissed out of hand. They remind us of the *potential* for dependence that specific drugs possess. And cocaine possesses that potential in greatest abundance: It is most reinforcing, immediately pleasurable, appealing, sensual, and seductive. Remember, this is only one factor out of a range of factors that influences use. By itself, it does not dictate the popularity of drugs. But knowing this one fact about cocaine should make Bennett's and Pollin's predictions understandable. I think they are wrong in the

magnitude of their predictions, but it is not difficult to see how they came up with them. Again, regardless of the exact size of the predicted increase, other things being equal, the pharmacological properties of cocaine (and, to a much lesser extent, heroin) should lead anyone to predict an increase in use. There is, in other words, sufficient ground for genuine concern when it comes to sharply reducing the cost and increasing the availability of cocaine, given its intrinsically pleasure-inducing and reinforcing property. A great deal of contrary evidence would have to be marshaled to convince evidence-minded observers that cocaine abuse would not rise sharply under legalization—and, as yet, no such evidence has been forthcoming. In the absence of such evidence, most of us will have to remain convinced that, in the words of John Kaplan (1988, p. 33), any policy of legalization "ignores basic pharmacology."

Frequencies of Use

What direct evidence do we have that bears on the impact of legalization on drug use? Contrarily, what evidence bears on the impact of the criminalization of drugs and enforcement of the drug laws on use? Does drug use/abuse rise when drugs are legalized and fall when they are criminalized? Or, as the legalizers assume, does law enforcement have little or no impact on the incidence and volume of use? What circumstances make drugs more, or less, available? Are there a variety of controls that influence use, and not merely legal ones? What does the use picture under *nonlegal* controls tell us about the impact of *legal* controls?

We already know that national alcohol prohibition in the United States (1920–1933) did discourage use: Fewer Americans drank and fewer contracted cirrhosis of the liver during Prohibition than before and afterward. (Prohibition brought about a number of other changes, as we saw, but they are separate from the issue of volume of alcohol consumption.) We also know that the partial decriminalization of small quantities of marijuana in 12 U.S. states has not resulted in a significant increase in the use of this drug (Cuskey, Berger, and Richardson, 1978; Single, 1981). It is entirely possible that marijuana is a case apart from cocaine and heroin. At any rate, cocaine and heroin are the drugs most Americans fear and worry about the most. A number of observers have endorsed the legalization of marijuana and yet oppose the legalization of hard drugs such as heroin and/or cocaine (Kaplan, 1970, 1983; Kleiman, 1992b). And the Dutch policy (often mistakenly referred to as "legalization") is based on making a sharp distinction between soft drugs such as marijuana and hashish and hard drugs such as cocaine and heroin (Leuw and Marshall, 1994; Jansen, 1991; Beers, 1991). Hence, the case for or against heroin and/or cocaine legalization will have to be made separately from the case for or against the legalization of marijuana.

Several pieces of evidence suggest (but do not definitively demonstrate) that when the *availability* of certain drugs increases, *their* use increases as well. It has been something of a cliché among legalizers that criminalization doesn't work. Look around you, they say. Go to certain neighborhoods and you will see drugs openly sold on the street. Drugs are getting into the hands of addicts and abusers right now. How could the situation be any worse under legalization? Those who want to use are already using; selling drugs to addicts, abusers, and users legally would not change anything, they say.

The fallacy of this line of reasoning is that, currently, under our punitive policy, addicts and abusers are not using as much as they would like. Under almost any proposed legalization plan, the currently illegal drugs would be more available; if that were so, they would use a great deal more cocaine and heroin than they do now. The fact that we can

look around on the streets of the country's largest cities and see drug selling taking place means next to nothing.

The Hassle Factor

The fact is, there is the "hassle factor" to consider. Addicts are pulled into use by the fact that they enjoy getting high, but they are pushed away from use by the fact that they have to commit crime to do so. Street crime is difficult, risky, and dangerous; use is held down by that fact. If drugs were less of a hassle to obtain, the majority of addicts and abusers would use it more. The vast majority of heroin and cocaine abusers want to get high, are forced to commit a great deal of crime to do so, and are not getting high as often as they want because their drugs of choice are too expensive, and the crimes they commit are too much of a hassle for them to use as much as they want. Mark Moore (1973, 1976) refers to this as the "search time" for illegal drugs; says Moore, as search time goes up, demand decreases. Careful ethnographic and interview studies of street addicts and abusers have shown that getting high—not mere maintenance—is their prime motivation. Most are not technically addicted, their day-to-day use varies enormously, and most would use much more frequently if they could (Johnson et al., 1985; McAuliffe and Gordon, 1974).

In this sense, then, the drug laws and their enforcement have cut down on the volume of drug use among a substantial proportion—very possibly a majority—of our heaviest users and abusers. Again, the distinction between relative and absolute deterrence comes into play here: these addicts and abusers use a substantial quantity of illegal drugs, but a great deal less than they would if these drugs were legal or freely available to them.

Rengert (1996) argues that drug use is extremely elastic, depending (among other things) on supply. And if supply is ineffective or inefficient in reaching its ultimate customer, if a given product or service is inconvenient or risky or dangerous to obtain, use will decline. Customers have to be willing to put up with a threshold level of hassle to get what they want; beyond that threshold, they give up. If it is too much trouble to obtain a drug, the number of users taking it will decline. Some drug markets are easier for law enforcement to disrupt. If a chain of drug supply from grower to user is comprised entirely of intimates, under most circumstances, law enforcement cannot (and, under most circumstances, should not) attempt to infiltrate it to crack down on its distribution. On the other hand, most other markets are made up of more public exchanges, and exchanges among nonintimates, and can be disrupted far more easily. When illicit drug exchanges are public, blatant, and located in fixed neighborhoods, they tend to attract customers who are strangers, and a variety of police tactics will be effective in convincing those customers to give up their effort to purchase the product they seek. Some of these tactics including blocking off or rerouting streets, arresting customers, targeting customers who come to a given community from other areas, confiscating their cars, embarrassing customers for whom arrest represents a substantial embarrassment, and so on. Law enforcement controls major aspects of the hassle factor, and drug use is most decidedly elastic with respect to hassle.

Cost

We've already seen in the last chapter, based on the extensive summary of the literature by MacCoun and Reuter (2001) that drug use is at least moderately elastic, that the higher the cost, the lower the use of drugs, both licit and illicit. This equation works better with non-

addicting drugs such as marijuana and less well with addicting drugs such as heroin and tobacco, but the evidence on the strong relationship between cost and use is robust and incontrovertible. And it is prohibition that keeps the cost of illicit drugs high. In the absence of prohibition, heroin and cocaine are as cheap as aspirin to manufacture, and under any conceivable or proposed legalization plan, they would be vastly less expensive than they are now. In fact, it is their very cost under prohibition that the legalizers criticize; in proposing to make them cheaper, without realizing it, they are intimating that their use should correspondingly increase, and significantly.

Goldstein and Kalant (1990) base their opposition to legalization on the observation that use is directly related to availability, and availability can be influenced by a variety of controls, including criminalization and cost. Under any and all legalization plans, the currently illegal drugs would be sold or dispensed at a fraction of their present price. Indeed, that is the advantage of this plan, say its supporters, because the high cost of drugs leads to crime which, in turn, leads to a panoply of social harms, costs, and problems.

But Goldstein and Kalant argue exactly the opposite: The high cost of the illegal drugs is specifically what keeps their use down. If drugs were to be sold or dispensed at low prices, use would almost inevitably rise—in all likelihood, dramatically. This relationship is demonstrated, they say, with a variety of drugs in a variety of settings. For instance, as measured by constant dollars, cost and the per capita consumption of alcohol—and the rate of cirrhosis of the liver—were almost perfectly correlated in a negative fashion in the Canadian province of Ontario between 1928 and 1974: During periods when the price of alcohol was low, the use of alcohol was relatively high; when the price of alcohol was high, use was relatively low. Price and use were mirror reflections of one another.

In addition, observe Goldstein and Kalant, the purchase of cigarettes and therefore smoking varies directly and negatively with the level of taxation on cigarettes: The higher the taxes on cigarettes, the lower their sales. "These data suggest that anything making drugs less expensive, such as legal sale at lower prices, would result in substantial increases in use and in the harmful consequences of heavy use" (p. 1515).

There are two additional pieces of evidence bearing on the relationship between the availability of psychoactive drugs and their use: first, the immense rise in the use of and addiction to narcotics among servicemen stationed in Vietnam, and their sharp decline upon their return to the United States, and second, the higher rates of certain types of psychoactive drug use among physicians and other health workers who have greater access to drugs than is true of the population as a whole.

Robins (1973) reports that almost half of a sample of U.S. military servicemen serving in Vietnam in the 1970s had tried one or more narcotic drugs (opium, heroin, and/or morphine), and 20 percent were addicted to opiates. Prior to their arrival in Vietnam, however, only a small fraction had ever been addicted, and after their return to the United States, use and addiction fell back to their pre-Vietnam levels. (This study cross-checked self-reports on drug use with urine tests; hence, we can have a high degree of confidence in the answers on use and addiction.) This study's findings are significant for at least two reasons.

First, the fact that the vast majority of addicted returning veterans discontinued their dependence on and use of narcotics on their own, without going through a formal therapeutic program, has major implications for the study of drug treatment. Second, and more central for our purposes, the fact that use and addiction increased massively in Vietnam where drugs

were freely available (although technically illegal), and returned to their previous, extremely low levels when these veterans returned to the United States, gives us a glimpse of what may happen under legalization. The fact that 95 percent of those who became addicted in Vietnam had not been addicted in the United States, and a similar 95 percent who became addicted there ceased their addiction when they returned to from Vietnam, tells us that there must have been something about the conditions that prevailed in Vietnam that encouraged use and addiction, as well as something about those that prevailed in the United States that discouraged them. Some observers have attributed the high levels of drug abuse that prevailed in Vietnam to the combat stress that these servicemen experienced (Gazzaniga, 1990), but it is unlikely that this is the whole explanation. It seems almost incontestable that the greater availability of drugs in Vietnam induced an enormous number of servicemen to use and become addicted to narcotics who otherwise would not have become involved. Their low level of narcotic addiction in the United States, both before and after their Vietnam experience, was influenced by the fact that opiates are illegal here.

Three aspects of physician drug use are significantly higher than is true for the population at large. First, as a number of studies have shown, recreational drug use among medical students and younger physicians is strikingly higher than among their age peers in the general population. This suggests that availability is related to the likelihood of use. In one study, 73 percent of medical students had at least one recreational experience with at least one illegal psychoactive drug (McAuliffe et al., 1986). In comparison, for 18- to 25-year-olds in the general population at roughly the same time, the figure was 55 percent, and for 26- to 34-year-olds, it was 62 percent. For cocaine, the comparable figures were 39 percent for medical students and, in the general population, 18 percent for 18- to 25-year-olds and 26 percent for 26- to 34-year-olds (NIDA, 1991, pp. 25, 31).

Second, rates of self-medication among physicians are strikingly higher than is true among the general population. In the study of physician drug use cited above, four out of ten physicians (42%) said that they had treated themselves with one or more psychoactive drugs one or more times, and 7 percent said that they had done so on 60 or more occasions. one-third of medical students had done so once or more, and 5 percent had done so on 60 or more occasions (McAuliffe et al. 1986, p. 807). This represents an extraordinarily high rate of *self-medication* with psychoactive drugs.

And third, the proportion of physicians reporting drug dependence is extraordinarily high: 3 percent of physicians and 5 percent of medical students said that they were currently dependent on a psychoactive drug (McAuliffe et al., 1986, p. 808), far higher than for the population as a whole. Other surveys have produced similar results (McAuliffe et al., 1984 Epstein and Eubanks, 1984; Sethi and Manchanda, 1980). Whereas occupational stress has often been cited as the culprit that causes high levels of physician drug use, abuse, and dependence (Stout-Wiegand and Trent, 1981), as it had been with the Vietnam situation, it is difficult to deny that availability plays a substantial role.

Continuance Rates

As we saw earlier, legal drugs tend to have high continuance rates, while illegal drugs tend to have far lower continuance rates. That is, out of everyone who has ever taken a given drug, the proportion who continue to use it (let's say, they used it once or more in the past month) tends to be fairly high for the legal drugs and fairly low for the illegal drugs.

As we have seen, nearly six out of ten of all at least one-time drinkers consumed alcohol during the previous month (59%); for tobacco, the comparable figure is one-third (37%). In contrast, for marijuana, the continuance rate is only 15 percent, and for most of the other illegal drugs, considerably less than one at least one-time user in ten used in the past month; for PCP and LSD, the figure is 1 and 1.5 percent, respectively. The same relationship holds in Amsterdam, where marijuana (but not the hard drugs) is de facto decriminalized, and users and small-time dealers of the hard drugs are rarely arrested. There, alcohol's continuance rate is 80 percent, tobacco's is 63 percent, marijuana's is 24 percent, that of most prescription drugs falls somewhere in between tobacco's and marijuana's rates, and that of the illicit, criminalized drugs is under 10 percent (Sandwijk, Cohen, and Musterd, 1991, pp. 20–21).

The fact is, although many factors influence a drug's continuance rate, other things being equal, if a drug is legal, users tend to stick with it longer; if it is illegal, they tend to use it less frequently and more sporadically, and they are more likely to give up using it altogether. Clearly, then, it is simply not true that, under criminalization, illegal drugs are as freely available as the legal drugs. Criminalization makes drugs more difficult to obtain and use on an ongoing basis; for many would-be regular users, the hassle factor makes use simply not worth it.

Progressive Legalizers versus Progressive Prohibitionists

The debate between advocates of drug legalization and advocates of prohibition might seem to be where we ought to direct our attention. But, in fact, the debate between the advocates of two positions that share a great deal in common yet stand on opposite sides of the "great divide" may yield proposals that will prove to be workable a decade or two down the road. In fact, precisely this debate is taking place in most of the countries of Western Europe right now. The majority of Western European countries have adopted or are moving toward adopting some form of a harm reductionist policy. The debate taking place there is between the progressive legalizers and the progressive prohibitionists. Politically, the term "progressive" refers to an ideology that seeks to achieve equalitarian and humanistic goals, one that favors reform instead of returning to traditional, authoritarian values. In the sphere of drug legislation, progressives seek a solution to the drug problem by acknowledging that punishing the drug offender may have harmful, unintended consequences and, consequently, the drug laws and their enforcement are very much in need of a drastic overhaul. Though they have the same goals in mind, the legal solutions proposed by progressive legalizers and progressive prohibitionists are somewhat different.

Progressive Legalizers

Progressive legalizers are generalists; they hold a definition of drugs that is based on their psychoactive quality, not their legality. In fact, legalizers wish to dismantle or at least radically restructure the legal–illegal distinction. Unlike the free-market libertarian, the progressive legalizer does believe in state control of the dispensation of psychoactive substances. Unlike the radical constructionist, the progressive legalizer argues that the drug laws are the problem. Matters of reforming the economy, the political system, and redistributing society's resources are important in themselves, but the reform of drug policy, too,

is a crucial issue in its own right. Progressive legalizers are more concerned with what to do about drugs than about reformulating the political and economic system generally. They think that there are many things seriously wrong with the present system, but that the laws prohibiting drugs represent one of them; they wish to reform them, so there will be less pain and suffering in the world (Nadelmann, 1988, 1989, 1992, 1995).

How does the progressive formulate or frame the drug legalization issue? What is the nature of the drug problem, and what is the solution? For the most part, progressive legalizers see the drug problem as a human rights issue. What they are talking about when they discuss drug reforms is treating drug addiction as a health problem, much like schizophrenia or alcoholism—not as a crime or law enforcement problem. Above all, society should, in Ethan Nadelmann's words, "stop demonizing illicit drug users;" "they are citizens and human beings." Criminalizing the possession and use of the currently illegal drugs is unjust, oppressive, and inhumane; it has no moral justification. It represents a kind of witch hunt, and it penalizes the unfortunate. Innumerable young lives are being ruined by imprisonment for what are essentially victimless crimes. It is the suffering of the drug user that is foremost on the progressive legalizer's mind in demanding the reform of drug policy. Says Nadelmann, the progressive legalizers' foremost and most well-known spokesperson: "Harm reduction means leaving casual drug users alone and treating addicts like they're still human beings" (1995, p. 38). "My strongest argument for legalization," he adds, "is a moral one. Enforcement of drug laws makes a mockery of an essential principle of a free society—that those who do no harm to others should not be harmed by others, particularly by the state." Adds Nadelmann, "to me, [this] is the greatest societal cost of our current drug prohibition system" (1990).

A key to progressive legalizer thinking is the belief that drug use is a sphere of behavior that is influenced by much the same rules of human nature as any other activity. They believe that drug users are no more irrational or self-destructive than are participants in such routine—and far less legally controlled—activities as skiing, boating, eating, drinking, walking, talking, and so on. There is, in other words, no special or unique power in psychoactive drugs that makes it necessary for the society to erect laws to control and penalize their use. Why do we penalize people who use drugs and harm no one (perhaps not even themselves), but leave the stamp-collecting, chess-playing, and television-watching addict untouched? It is a philosophical tenet of progressive legalizers that it is unjust to penalize one activity in which the participant harms no one while, at the same time, other, not significantly safer, activities are left legally uncontrolled. The assumption that drugs possess uniquely enslaving and uniquely damaging qualities is not only widely held in American society, it is also sharply challenged by the progressive legalizer. No special or uniquely negative qualities means that there are no extraordinarily compelling reasons why drugs should be singled out to be criminalized or prohibited. Most drug users are every bit as rational as, let's say, chess players; society has no more cause to penalize the former for their pursuits than the latter (1988, 1989).

Another point. Progressive legalizers claim to be serious in considering a cost-benefit analysis, but insist that others who also make that claim leave out at least one crucial element in this equation: pleasure. Few other perspectives that weigh losses and gains are willing to count the psychoactive effects that users seek—and attain—when they get high as a benefit. But why don't they? Sheer bias, the progressive legalizer would say. Most people take drugs because they enjoy their effects; this must be counted as a benefit to the society.

If we are serious about counting positives and negatives, why ignore the most central positive of all—the enjoyment of drug taking? It is what motivates users, and it must be counted as a plus. Clearly, such a consideration would outrage cultural conservatives, who see hedonism and the pursuit of ecstasy as signs of decay and degeneracy—part of what's wrong with this country.

The position of progressive legalizers can best be appreciated by a contrast with that of the progressive prohibitionists, a position we'll examine in the next section. Advocates of both positions urge reforms in the drug laws, both are, or claim to be, concerned with harm reduction, both attempt to weigh cost and benefit carefully and empirically in any evaluation of drug policy, and both believe that users of the illegal drugs are treated too harshly, and that the legal drugs are too readily available. But the differences between these two positions are as important as their similarities.

There are three major and profound differences between the progressive legalizers and the progressive prohibitionists (Nadelmann, 1992, pp. 89–94). First, in their evaluation of cost and benefit, progressive legalizers weigh the moral values of individual liberty, privacy, and tolerance of the addict very heavily, while the progressive prohibitionist to some degree sets these values aside and emphasizes concrete, material values—specifically, public health—much more heavily.

Second, in considering the impact of legalization—more specifically, whether it will increase use or not—progressive legalizers are optimists (they believe that use will not increase significantly), while progressive prohibitionists are pessimists (they believe that use will increase, possibly even dramatically). Even if use does increase, the progressive legalizers say, legalization is likely to result in the increased use of less harmful drugs and the decreased use of more harmful substances.

And third, legalizers believe that most of the harms from the use of the currently illegal drugs stems from criminalization, while the progressive prohibitionists believe that such harms are more a product of use per se than of the criminalization of those drugs. Harm from contaminated drugs, the grip of organized crime, the crime and violence that infects the drug scene, AIDS, medical maladies from addiction are all secondary, not primary effects of drugs. And all will decline or disappear under legalization: Progressive prohibitionists are skeptical.

With a very few exceptions, progressive legalizers have not spent a great deal of time or space spelling out what their particular form of legalization would look like. Still, they do not mean by legalization what free-market libertarians mean by decriminalization, nor, indeed, what their critics mean by legalization. "When we talk about legalization, we don't mean selling crack in candy stores," says Nadelmann (Schillinger, 1995, p. 21). Many progressive legalizers point to harm reduction strategies that seem (to some observers) to have worked in the Netherlands, Switzerland, and the United Kingdom. All support steps in that direction: legalize or decriminalize marijuana, increase methadone maintenance programs, reschedule many Schedule I drugs (such as LSD, Ecstasy, and heroin) that may have therapeutic utility, stop arresting addicts, get them into treatment programs, and so on. However, they see these as only stopgap or transitional steps. If not the supermarket model, then what would full legalization look like? Nadelmann suggests that the mail order model might work: sell drugs in limited quantities through the mail (Nadelmann, 1992, pp. 111–113). While not the ideal solution, it is the best compromise "between individual rights and communitarian interests." It must be noted that, while all progressive legalizers emphasize the

unanticipated consequences of prohibition, they do not spend much time or space considering the possible unanticipated consequences that legalization might have.

Progressive Prohibitionists

Progressive prohibitionists (Kleiman, 1992b; Kaplan, 1983, 1988; Currie, 1993; Zimring and Hawkins, 1992) urge many of the same reforms for which progressive legalizers argue; most of them, for instance, would support most of the following: needle exchange, condom distribution, an expansion of methadone maintenance, no incarceration of the addict, rescheduling of many Schedule I drugs, a consideration of legalization or decriminalization of marijuana, higher taxes and more controls on alcohol and tobacco. The progressive prohibitionists draw the line, however, at the legal, over-the-counter or even mail-order sale of drugs such as heroin, cocaine, and amphetamine.

Progressive prohibitionists are not as distressed by the moral incongruity of criminalizing the possession and sale of powerful psychoactive agents and legally tolerating substances or activities that also cause harm. Once again, to demarcate their position from that of the legalizers, they say, to some degree, there is a special and unique quality in certain drugs that compels some users of them to become abusers. Not a majority of the society, they say, but a sufficiently sizable minority to warrant concern for the public health of the collective as a whole. In fact, to step back and look at their political, ideological, and moral position more generally, progressive prohibitionists are far more *communitarian* than *individualistic*. While the touchstone of the progressive legalizer is the rights of the individual, for the progressive prohibitionist, the guiding principle is the health of the community. The individual, they would say, does not have the right to harm the society; certain rights have to be curbed for the good of the society as a whole. If injured, the individual has to be cared for by the community; foolish acts engaged in by the individual are purchased at the price of a very substantial cost to the rest of us. The individual does not have the legal or moral right to ignore the seat belt laws, the helmet laws, or rules and regulations against permitting him or her to be placed in extreme danger—or any other laws, rules, or regulations that attempt to protect individuals from harming themselves. Any humane society must balance freedom against harm, and in this equation, quite often, certain freedoms must be curtailed. In short, compared with progressive legalizers, progressive prohibitionists are much more concerned with a potential gain in public health than with the moral issue of what human rights are, supposedly abridged. For instance, coercing addicts and drug abusers into drug rehabilitation programs by arresting them and giving them a choice between imprisonment and treatment is not a moral problem for the progressive prohibitionist, whereas it is for the progressive legalizer.

It is almost in the very nature of the progressive prohibitionist's argument that there is an assumption of greater use under any possible legalization plan. (Marijuana may very well represent an exception.) This position sees the American population—or a segment of it, at any rate—as being vulnerable to the temptation of harmful psychoactive drugs. Progressive prohibitionists are pessimists when it comes to contemplating the extent of use under legalization. They do not necessarily see the dire and catastrophic worst case scenario predicted by the cultural conservatives, for instance, the tens of millions of new cocaine and heroin addicts and abusers predicted by William Bennett under legalization. But many progressive prohibitionists do see a doubling, tripling, or even quadrupling of hard drug abuse

in the United States as an entirely possible outcome of many of the currently proposed legalization schemes. And they find that unacceptable. Most Americans will resist the temptations and blandishments of these seductive, dependency-producing substances. But focusing on the potential behavior of "most" Americans is a distraction and an irrelevancy. What counts is whether the small minority who use destructively is likely to grow. Most distressing is that the volume of drug abuse of current addicts and abusers is likely to increase, and along with it, the harm that flows from it.

And last, the progressive prohibitionist sees more direct harm from use of the hard drugs, such as cocaine, amphetamine, and heroin, than the progressive legalizer sees. There are, they say, some secondary harms and complications caused mainly by the legal status of these drugs; certainly HIV/AIDS ranks high among them. But most of these secondary or indirect harms can be attacked through modifications of the current system that fall far short of outright legalization. Certainly needle exchange and condom distribution programs would go a long way in combating the problem of HIV contamination. The fact is, cocaine and heroin are a great deal more harmful than the legalizers claim, say the prohibitionists. Harm has been kept low by the very fact of the drug laws, because far fewer people use currently than would be the case under legalization. Alcohol and tobacco kill many Americans in part because their use is intrinsically harmful (at least, given the way we use them) and in part because they are widely used. Cocaine and heroin—considering the many possible ways that drugs can be harmful—are also intrinsically harmful drugs. (Although they are harmful in very different respects.) And they are taken, recklessly, by segments of the population who are far more likely to take extreme risks with their health than the rest of us. If they were to be used as widely and as commonly as alcohol and tobacco are used today—not a real possibility—many, users would die as a result of their use. Do as many die as a result of using legal drugs? Possibly. The number is in the same ballpark in any case. It is foolish and unrealistic, the progressive legalizer says, to imagine that these illegal drugs are harmful today entirely or even mainly simply because they are illegal. While the progressive legalizer stresses the secondary harms and dangers of the illegal drugs, the progressive prohibitionist stresses their primary harms and dangers.

Again, while the more progressive prohibitionists and the more moderate or progressive legalizers share many items in their drug policy agenda, they differ on these three major issues: (1) how much they stress individual liberty versus public health; (2) their prediction of whether drug abuse and its attendant harms will increase significantly under legalization; and (3) their notion of whether the currently illegal drugs are more intrinsically or directly harmful or harmful indirectly, that is, mainly because they are illegal. Ironically, although the progressive legalizers and the progressive prohibitionists stand on opposite sides of the great legalization divide, they share more particulars of their drug policy proposals than any two major positions in this debate. If major changes in drug policy do take place in the next century, they are likely to be drawn from the substantial overlap in these two positions.

Clearly, then, there are various approaches to drug legalization (for a summary of these positions, see Table 15–1). These approaches fit more or less comfortably into, and have relevance and resonance for, quite distinct political views or orientations. Drug legalization may be said to be a specific instance of, or a specific issue for, a more general political, ideological, and moral position. The issue is considered in terms of a broader image or worldview expressing how things ought to be. In this sense, then, it is misleading to think about

TABLE 15–1 Summary of Ideological Positions toward Legalization of "Hard" Drugs

Political Ideology	Attitude toward Legalization	Attitude toward Decriminalization	Attitude toward the War on Drugs	Other Agendas
Cultural conservatives	Strongly opposed	Strongly opposed	Strongly in favor	Drug use as immoral: let's strengthen "moral values"
Free market libertarians	Strongly opposed	Strongly in favor	Strongly opposed	Drugs as private property; against government control
Radical constructionists	Conflicted	Conflicted	Strongly opposed	Economic redistribution; let's empower the powerless
Progressive legalizers	Strongly in favor	For some drugs, in favor	Strongly opposed	Civil rights of the drug user; persecution of drug user is immoral
Progressive prohibitionists	Opposed—increases drug use	Opposed—increases drug use	Opposed—harms the public	Health of the community; harm reduction

the debate strictly in pragmatic or empirical terms. In many ways, it is an ideological debate about which political perspective will dominate the policy on drugs in the years to come.

Moreover, it is foolish to picture the drug legalization debate as an either/or proposition. What counts is the particulars of a given proposal; the position taken by some observers (Arnold Trebach is an outstanding example) is that nothing could be worse than what we've got now. The position that we should legalize at once and take care of the specifics as we go along is irresponsible in the extreme. All policy changes represent a minefield of potential unanticipated—and undesired—consequences. Both God and the devil are in the details.

SUMMARY

Many critics and observers argue that the system of prohibition that currently prevails in the United States doesn't work and is counterproductive, doing more harm than good. The very nature of legal prohibition makes obtaining a banned product or a service expensive, hence, profitable to supply. Because of the profit motive, the arrest of one purveyor does not result in a disruption in the supply of illicit goods and services. Instead, another purveyor steps in and maintains business as usual. Moreover, the illicit drug business breeds corruption, brutality, violence, and crime, not to mention tainted drugs of unpredictable quality. These crit-

ics have proposed that the current system of prohibition be replaced with a system of drug legalization, in one form or another.

Three major changes have been proposed: legalization, decriminalization, and a policy of harm reduction. Legalization proposes that the currently illicit drugs be regulated by the state in much the same way alcohol and tobacco are. Drugs would be taxed. The state would set limits on their potency and purity and would determine to whom they may be sold. Presumably, the government would control issues such as drug advertising, and determine who may sell drugs and in what sort of establishment, who is permitted to manufacture them, where and under what circumstances they may be used, and so on.

Decriminalization is a very different proposal from legalization. Full decriminalization entails no state regulation or control whatsoever. ("Full" decriminalization should be distinguished from "partial" decriminalization, which currently prevails in 12 states for marijuana, which permits small-quantity possession without arrest.) It is a laissez faire or "hands-off" policy of virtually no regulation or control whatsoever. Under this program, anyone may manufacture and distribute any psychoactive substance for any reason. (The sale to and use by minors is presumably an exception, as is being under the influence while flying a plane, driving a car, or handling dangerous machines and equipment, and, in the case of a drug, like cigarettes, public use which results in forcing others to inhale the drug's fumes.) Complete decriminalization is not a serious proposal and has no hope of implementation at any time in the foreseeable future.

Some observers argue that drug abuse be regarded as a medical matter and that Schedule I drugs be rescheduled as Schedule II drugs, that is, that they be available to addicts and abusers by prescription. By the lights of this proposal, they would be controlled in the same way that psychoactive medications such as Prozac, Valium, and morphine are, the difference being that maintaining the abuser on the drug would be legally permitted. The "condition" that would be treated is the abuse of the drug, and that "treatment" would be the administration of the abused drug. This proposal assumes that abusers and addicts take drugs not to get high but because they are dependent and cannot control their use.

Harm reduction is a pragmatic or consequentialist proposal rather than a moralistic or ideological proposal. It argues that the purpose of the law is not to wipe out drug use or abuse, for that is an impossibility, but to reduce the total volume of harm to the society, including such harms as death, disease, a decline in productivity, educational deficits, monetary cost, and so on. Harm reductionists treat each drug on a case-by-case basis and every detail of every proposal on a case-by-case basis. A major element of the harm reductionist's program is to reduce the harm from the legal drugs; in the case of tobacco, that means drastically lowering its use, period. Harm reductionists are also tinkerers; they believe that any proposal that doesn't work should be scuttled and any proposal that does should be retained. Some elements of a harm reduction policy are currently being instituted in Western Europe, with some success.

A major plank of the legalizer's platform is that drug use and abuse will not rise significantly under legalization. Legalizers reason that prohibition is inherently and fatally flawed because if there is demand for a service or a product, purveyors will find a way to distribute it and consumers will find a way to purchase it. But there are many services and products whose availability and consumption are strongly reduced by their illegality and law enforcement—national alcohol prohibition being a major example. While there were other harmful consequences of Prohibition, alcohol consumption declined by half between

1920 and 1933. On the other hand, the "doomsayers" who argue that the worst-case scenario will come about as a result of legalization are completely wrong; under any conceivable form of legalization, most Americans will not use the currently illicit drugs. The regular use of many now-illicit drugs would require a drastically disruptive change in the user's day-to-day lifestyle, and that is extremely unlikely to happen. On the other hand, a great deal of evidence indicates that availability strongly encourages use for a substantial percentage of the population. Moreover, today, the heaviest and most chronic abusers do not use as much as they'd like; legalization would increase their use as well as the harm that such use causes.

Key Terms

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LEGALIZATION: AN AGNOSTIC LOOK

Peter Reuter

What would actually happen if illicit drugs were legalized in the United States? As I and my co-author Robert MacCoun detail in our book *Drug War Heresies: Learning from other Vices, Times, and Places,* a decade of study has convinced us that legalization of cocaine, heroin and marijuana would lead to large reductions in drug-related crime and mortality but also to large increases in drug use and addiction. Whether American society would be better off is impossible to predict.

Choosing the best policy for controlling use of illicit drugs in the United States is not a simple matter of adding up benefits and harms. There are two fundamental problems. First, the damages from drugs and drug control come in many different forms. How can we weigh the increased addiction certain to result from legalization against the reduced crime and corruption that it would generate? How would we balance reductions in violence against potential increases in accidents and other behavioral risks of drug use? Money is hardly a satisfactory measure.

Further complicating the picture, the advantages and disadvantages of the various approaches to legalization would be unevenly distributed in society. Any substantial reduction in illegal-drug markets will help urban minority communities, which suffer so much from the accompanying crime and disorder. That's likely to be true even if the level of drug use and addiction were to increase in those communities. For the middle class, however, the benefits of eliminating black-market operations may seem very small in comparison to the increased risk of drug involvement, particularly among adolescents. Redistributing the damage away from the poor may seem desirable and even justify some worsening of the overall problem—but not everyone will agree with that.

What's clear to us is that we do not have to choose between the two extremes that are usually presented in the American debate: either an all-out war on drugs with stiff penalties for possession and sales, or a libertarian free market. More moderate alternatives are possible. Policies in the Netherlands and Switzerland and, increasingly, in the United Kingdom and Germany, demonstrate that it is possible to reap most of the benefits of prohibition without inflicting the harms caused by the punitive U.S. system. Our government's failure to see this is largely traceable to the popular notion that the only defensible goal for drug policy is to reduce the number of users to zero. It is equally rational, however, to seek also to reduce the harmful consequences of drug use when it occurs.

One size will not fit all drugs. There is, for instance, a strong case to be made for not only eliminating the penalties for marijuana possession but allowing people to cultivate the plant for their own use—the approach currently taken in the state of South Australia. The downside risks (some increase in marijuana use and related illness) seem modest, while the gains look very attractive: the elimination of 700,000 marijuana-possession arrests in the United States annually and the possibility of weakening the link between the soft and hard drug markets without launching Dutch-style commercial promotion. But in the case of heroin, the desirability of some sort of prescription approach, on the model of the Swiss and Dutch heroin-maintenance regimes, is much harder to

gauge. And with cocaine, it seems that any policy that permits easier access is likely to produce sizeable increases in use.

To this end, we could take a tack familiar from the U.S. approach to controlling use of alcohol, that is to reduce the quantity of drugs consumed by those who won't quit taking them. We could also attempt to diminish harm with efforts that draw on the model of U.S. consumer-product safety regulations, which focus as much on reducing the consequences of accidents as on cutting the number of them that occur. It's true that working out similar strategies to control illicit drugs would not be easy or free of risk. But such strategies are likely to be far more humane than either of the extreme options usually put before us.

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