

In defence of the decriminalisation of drug possession in the UK

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Abstract

In this review article, we develop the case for the decriminalisation of drug possession in the UK by describing our ‘modest proposal’ to repeal the relevant sections of the Misuse of Drugs Act 1971 and its advantages. We defend this proposal against possible critiques from both conservative and radical positions. On the conservative side, these criticisms include that it would increase drug use and harm and that it would be illegal under international law. From the more radical position, we anticipate the criticisms that decriminalisation of possession would leave the harm associated with illegal drug supply to continue, that it would leave in place restrictions on the rights to use drugs, that it would forego the possible tax income from a legally regulated market, and that the drug laws would continue to act as tools of social control. In response, we argue that decriminalisation offers a feasible first step towards reducing the harm of drug control which would not increase drug-related harm.

Keywords

Drug policy, Decriminalisation, Law, United Kingdom

Introduction

The harmful effects of criminalising people for possessing illicit drugs are obvious. They include the imposition of criminal convictions – and all they entail – on people who use drugs, as well as the costs of arresting, prosecuting and punishing these people. In contrast, there is little evidence that such criminalisation reduces drug use and related harm (Home Office, 2014; Scheim et al., 2020; Stevens et al., 2022). Alternatives to criminalisation include depenalisation (de facto non-application of penalties for possession) and diversion (diverting offenders away from prosecution towards an educative or therapeutic alternative). By decriminalisation we mean a third alternative, which is the removal of the offence of possession (but not production, importation or sale) from the criminal law (Stevens et al., 2021). Alternatives to criminalisation have not generally been found to increase drug use and related harm, but they have been found to reduce the social costs of drug use and to reduce the damage done to people’s job and other prospects (Scheim et al., 2020; Stevens et al., 2022).

Decriminalisation can be achieved in multiple ways, depending on its aims and contexts (Greer et al., 2022). In this article, we describe our proposed model of decriminalisation for the United Kingdom, which we first published in Drug Science’s book on the Misuse of Drugs Act (Douse et al., 2022). We then defend decriminalisation, and our specific proposal, from potential criticisms. These come

from two directions. One is from people who think decriminalisation is a dangerous and radical step away from prohibition. The other is from people who think that decriminalisation does not go far enough and who advocate the legalisation of supply. We respond to these criticisms in separate sections on the conservative and radical critiques, respectively.

Our modest proposal to decriminalise drug possession in the UK

Our ‘modest proposal’ is that the possession of drugs that are controlled under the Misuse of Drugs Act 1971 should be decriminalised by repealing subsections 5(1) and 5(2) of the Act (Douse et al., 2022). Subsection 5(1) makes it unlawful to possess controlled substances, except in circumstances permitted by regulations authorised by the Secretary of State.¹ Subsection 5(2) makes such

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possession a criminal offence. Subsection 5(3) makes it an offence to possess these substances with intent to supply them to another person. Our modest proposal does not extend to the repeal of subsection 5(3), neither does it include what is often referred to as legalisation. This would involve the removal of criminal offences of importation, production, or supply of these substances.

Our proposal may require some adjustments to other parts of the Misuse of Drugs Act and related regulations. This would ensure alignment of the 1971 Act with the Psychoactive Substances Act 2016, as recommended by the Advisory Council on the Misuse of Drugs (ACMD, 2016). The 2016 Act does not criminalise the possession of the substances it controls, outside custodial settings. These changes could include: amendment of section 23(2) of the 1971 Act, removing police powers to search people or vehicles and to seize substances, if possession is reasonably suspected; removal of reference to section 5(2) from Schedule 4 of the Act which currently dictates the punishment for a possession offence; amendment of section 28 that specifies possession as an offence; repeal of section 5(4) which provides a defence for possession that would no longer be necessary if our proposal is implemented; and removal of multiple references to sections 5(1) and 5(2) from the Misuse of Drugs Regulations 2001.

Our proposal is similar to existing decriminalisations in Germany, Portugal, the Czech Republic, and the US state of Oregon in that it applies to all illicit drugs, not just cannabis. We see no strong argument why the unjustified harm of criminalisation should be applied to people who use some drugs, but not to others. On the basis of the available evidence, we do not believe that there are any better grounds for suspecting that the use of, say, heroin would be increased by decriminalisation of possession than there is for cannabis. The benefits that come from reducing the harm of criminalisation and facilitating entry to treatment may be even more important for users of heroin than cannabis. The crucial distinction in our proposal is between those who possess drugs for their own use and those who supply them and not between the different qualities or quantities of the drugs possessed.

Our proposal only applies to the offence that is sometimes referred to as ‘simple’ possession. Possession with intent to supply, and other supply-related offences, would remain in the Misuse of Drugs Act. This means that any supply of controlled drugs would still be liable to prosecution, including supply without remuneration (sometimes known as ‘social supply’) (Coomber et al., 2016). There may be a case for reform to address the apparent inequity of treating non-commercially motivated supply in the same legal way as profit-driven supply (Moyle et al., 2013). For the sake of simplicity, we do not make that case here. The continuing criminal offence of possession with intent to supply means that police officers would still have legal powers to stop, search and arrest when they have reasonable grounds to suspect such intent.

We describe our proposal as modest because it does not require a complete overhaul of our drug laws, as recommended by several political and medical bodies (Home Affairs Committee, 2012; Rae et al., 2022), but rather the excision and revision of a few subsections of the 1971 Act. It is also modest in that it does not move drug policy very far in the direction of more radical reform, which could include the legalisation of production and supply of some substances, as has been done for cannabis in an increasing number of countries, starting with Uruguay, Canada and many states of the USA.

The advantages of decriminalisation

We see several strong arguments for the government to adopt our modest proposal. The first is that it will prevent the harm that are done by criminalisation to people who are arrested, charged with and convicted of drug possession. Statistics published by the Ministry of Justice show that thousands of people get criminal records every year for drug possession. In the 10 years to March 2020, nearly 162,000 court cases in England and Wales where drug possession was the most serious offence ended in conviction. Of these, over 10,000 received immediate custodial sentences (MoJ, 2021). The harm of these punishments and the criminal records that come with them are not justified by any effect they are proven to have in reducing drug use or the related harm. Removing the unjustified harm from UK citizens is a principal benefit of decriminalisation.

A second advantage is that it will save time and costs for the criminal justice agencies that carry out these arrests, prosecutions and convictions. It has been estimated that processing each drug possession arrest takes an average of 10 h of police time, and this estimate was made before several increases in the paperwork required of police officers when recording an arrest (May et al., 2002). More recently, it has been estimated that £1.6b is spent annually on policing the drugs trade (HM Government, 2017). This money could be better spent, for example, on providing cost-effective treatment for people who have problems with drugs or on investing in housing and community space (Black, 2021).

A third advantage is that decriminalisation would reduce the over-policing of people who are racialised as Black for drug offences. This drives much of the disproportionate policing of Black communities. For example, over two-thirds of all stop and searches are carried out for drug offences (usually on suspicion of cannabis possession) (Akintoye et al., 2022). Black people are multiple times more likely to be subjected to such searches and consequent arrests despite there being little evidence that drug use is commensurately higher in Black communities (Akintoye et al., 2022; Shiner et al., 2018; Woolley, 2021).

A fourth advantage is that decriminalisation would reduce the stigmatisation and exclusion of people who

use drugs. This has been found to act as a barrier that keeps people who need it away from drug treatment (Lloyd, 2013). This is particularly important for people who have problems with Class A drugs such as heroin and cocaine. These are associated with the highest levels of harm (Black, 2020). Decriminalisation of the possession of all drugs is internationally recognised as a crucial step to address the public health crisis of drug-related deaths (Rae et al., 2022). The UN has repeatedly endorsed the decriminalisation of people who use drugs, acknowledging that decriminalisation is a critical enabler for accessing health services (UNAIDS and WHO, 2017; UNCEBC, 2019; UNHRC, 2023). Criminalisation of people who use drugs may also deter people from seeking assistance from emergency health services. Recent research from the Higher Education Policy Institute, which explored student drug use, found that 16% of students who described themselves being in a 'scary situation' with drugs did not seek emergency help (Ozcubukcu and Towl, 2022). Decriminalisation of possession would facilitate the seeking of healthcare when it is needed.

The social inclusion of people who use drugs was one of the motivating forces for the decriminalisation of personal possession of all drugs in Portugal in 2001 (Hughes and Stevens, 2010). This was followed by a reduction in prison overcrowding, an increase in entry to treatment, and substantial reductions in drug-related deaths, HIV infections, and the numbers of people who were assessed as having problems with heroin (Cabral, 2017; Hughes and Stevens, 2010; Rêgo et al., 2021). It also led to a reduction in the total social cost of problematic drug use in Portugal (Gonçalves et al., 2015).

Another advantage is that it would end, or at least reduce, the risk of criminalisation of patients who are currently accessing insufficient regulatory medical models for controlled drugs in the UK. Here, medicalised supply is the closest there is to a regulated market for currently controlled drugs (Nutt et al., 2020), but even this does not remove all risks of criminalisation. There are a limited number of patients who have a prescription for injectable diamorphine – an opiate that they use at home – but when treatment services prescribe sub-optimal doses or attempt to transfer to a less suitable alternative, or there are shortages caused by production issues, there is a real risk of relapse with people being forced to the illicit market (Wilkinson, 2022). Similarly, failures to properly fund supervised injection of prescribed diamorphine – known as Heroin Assisted Treatment – leave patients vulnerable to criminalisation when the service ends. This happened in Middlesbrough, where a HAT service was closed by the ending of its funding despite the wealth of evidence for the effectiveness of such services (BBC News, 2022; Strang et al., 2015). These issues are not limited to heroin. Those who have prescriptions for cannabis-based

medicinal products are only considered lawful users if using specifically as prescribed, which precludes smoking even if this is the patient's preferred and effective mode of consumption (*S16A(3) of the Misuse of Drugs Regulations 2001 as Amended by Regulation 4 of the Cannabis Regulations 2018*). Smoking a medicinal cannabis product is an offence by way of Section 18(1) of the 1971 Act. If behaving contrary to this requirement, possession may not be considered lawful, and so people are still at risk of criminalisation.

A final and particular advantage of our proposal is that it does not replace criminal penalties with civil sanctions, as has been done in Portugal, Italy and several US states (Stevens et al., 2022). When decriminalisation retains the use of civil or administrative penalties, over-policing of racialised communities can continue (Drug Policy Alliance, 2017; Levine, 2009). It also leaves the door open for criminalisation of the same people but for different offences. In South Australia, one of the effects of replacing arrest for cannabis possession with on-the-spot fines was an increase in people being imprisoned for non-payment of fines (Christie and Ali, 2000). People who use drugs themselves have called for models of decriminalisation that do not retain civil sanctions for possession or use (Madden et al., 2021).

These are not just technocratic or empirical arguments. They reflect normative commitments to different moral positions on the rights and wrongs of drug use and intoxication (Stevens, 2024). We do not hope to persuade those who believe – for religious or other reasons – in the inherent wickedness of drugs that drug use is morally acceptable. We can question why such preferences should be imposed on people who do not share them. We can also reassure people who hold this belief that there is little evidence to suggest that decriminalisation would increase the activities that they see as immoral.

We state our own normative preference that drug laws should be based on human rights, including the rights to privacy, freedom of conscience, and bodily autonomy. This is the underlying basis of both international law and rational moral principles on the use of mind-altering substances (Bone, 2021; Lines, 2017; Stevens, 2011a). We argue that respect for these legal and moral principles should take precedence over religious or moralistic objections to the use of some drugs.

Conservative critiques

In this section, we take on the arguments that decriminalisation would inevitably increase drug use, which would increase the harm, and that decriminalisation of possession is prohibited by international law. These critiques are conservative in that they represent traditionalist moral positions on drug use, but are not limited to the Conservative Party (Stevens, 2024).

Decriminalisation and levels of drug use

Many conservative critiques rely on the assumption that decriminalisation would necessarily increase the use of the substances that are controlled under these legal instruments. Even if it is accepted that increased drug use would be undesirable, we need to examine the evidence on whether consumption would actually increase if drug possession were decriminalised.

The usual mechanism that is used to anticipate such increased use involves assuming that the threat of criminalisation deters people from using drugs. Let us examine this assumption more closely and compare it to the evidence on actual implementations of decriminalisation. Since the beginning of criminology, we have known that effective deterrence requires punishments that are swift and certain but not necessarily severe (Beccaria, 1986; Kleiman, 2009). We know from practical experience that punishment for drug possession is far from certain and rarely swift. Of the three million adults who are estimated by the Crime Survey for England and Wales to use an illicit drug each year (Home Office, 2018), only a tiny fraction is caught in possession by the police. These people have no way of telling in advance what will happen if they are caught. It is up to the discretion of first the police and then the Crown Prosecution Service whether they will be arrested and prosecuted. In several police force areas, many drug possession offences are dealt with by out-of-court disposals which lead to no sanction (Shaw et al., 2022; Stevens et al., 2023). Repeated offences may lead to a criminal sanction, but possessors cannot know in advance whether this will apply to them. If they do get charged and go to court, the penalties available to sentencers under the Misuse of Drugs Act range from conditional discharges to a maximum prison sentence of seven years; hardly certain (Sentencing Council, 2021: 20). If the offence is prosecuted, then it is likely to take months to come to court; hardly swift (Casciani, 2023).

For these reasons, it is unsurprising that studies of actual implementations of decriminalisation – both longitudinal and cross-sectional – show different results to those anticipated by conservative opponents (Gabri et al., 2022; Grucza et al., 2018; Orsini et al., 2023; Stevens et al., 2022; Vuolo, 2013). These studies have shown no general effect of punishment in reducing drug use. There seems to be no link across time or jurisdiction between the severity of threatened punishment and levels of use, at least for cannabis (which is the only drug of which the use is sufficiently widespread to be able to test this link reliably). There are two studies that suggest that decriminalisation of cannabis possession in Australia was followed by increased use (Bretteville-Jensen and Williams, 2011; Williams, 2004). However, these studies are limited and inconsistent. For example,

these two Australian studies disagree on whether the effect of decriminalisation in increasing use is limited only to minors (with an observed reduction in use among adults) or only to males over the age of 25.

This fits a general pattern of weak research designs and inconsistent results that have been found by previous reviews in this field (Pacula et al., 2015; Scheim et al., 2020; Stevens et al., 2022). In the absence of consistent evidence that imposing the harm of criminalisation is justified by its effects, we argue that the burden of proof lies on those who wish to impose the harm, not on those who wish to reduce them. It might be argued that the precautionary principle applies: that we should not risk reform because of the uncertainty of its effects (Edwards, 2004), but this would be to argue that the unknown and uncertain harm of decriminalisation outweigh the known – and deliberately inflicted – harm of criminalisation.

The precautionary argument is made even weaker when we consider the potential harm that we are being warned against. These include that drug use is inherently harmful and that it is always dangerous to physical and mental health. While it is undeniable that the use of some currently illicit drugs poses some risks, it is important not to exaggerate them or to ignore that adults are usually allowed to take risks with their own health. Conservative opponents of decriminalisation often cite the link between cannabis use and mental health problems as a reason to oppose reform (Hitchens, 2012). The causal role of cannabis is still uncertain (D'Souza et al., 2022; Hamilton and Monaghan, 2019). There is a well-established correlation between higher levels of cannabis use and mental health problems among young people. This could indicate that the former causes the latter. But it might be the other way around; that people use cannabis to alleviate symptoms of pre-existing mental health issues. It is also possible that other factors cause both cannabis use and psychosis (Verweij et al., 2013). Recent studies of twins who have or have not used cannabis suggest that other factors might also explain the higher rates of cognitive impairment and physical health problems that have been found by some studies of cannabis use (Ross et al., 2019, 2022).

The argument for direct harm from use is stronger for drugs which, unlike cannabis, are fatal in overdose, such as alcohol, cocaine, benzodiazepines and opiates (e.g. heroin), especially when they are used in combination. But the fact remains that it has not been proved that criminalisation reduces the types of use that lead to these harmful effects. Indeed, the argument for decriminalising drugs that are more likely to lead to acute health harm may be even stronger, given the role of criminalisation in reinforcing the stigma that acts as a barrier to treatment entry for many people. Increasing numbers of street-level drug seizures have, for example, been associated with increased and not reduced levels of drug overdoses (Mohler et al., 2021). Criminalisation tends to increase, not reduce, the risks of

transmitting infectious disease via injecting drugs (DeBeck et al., 2017). Our argument is not, therefore, that drug use is harmless. It is that criminalisation increases the harm to people who use drugs, without there being evidence that it does any good or that decriminalisation would do harm.

International obligations

Conservative opponents of decriminalisation also argue that it would be illegal under international law (World Federation Against Drugs, 2012). This argument was easier to sustain before the fracturing of the international consensus on drug prohibition (Bewley-Taylor, 2012). In those days, prohibitionists could point to the parts of the international drug conventions that seem to require criminalisation of possession. For example, Article 3 of the 1988 Convention Against the Trafficking of Narcotic Drugs and Psychoactive Substances requires that state parties:

Adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

As international opinion and practice have diverged from the prohibitive norm that informed the development of these conventions, more and more state parties have come to agree that there is ‘room for manoeuvre’ (Dorn and Jamieson, 2000). This is provided, for example, by interpretations of the conventions that limit the criminalisation of possession to when it is for trafficking and disapply it when it conflicts with the parties’ constitutional protection. For example, if criminalisation of drug use or possession breaches the right to privacy, or conflicts with the principle of proportionality in punishment, then it can be argued that it is not required by state parties’ commitments under the international law. More recently, the argument that decriminalisation of possession is contrary to the UN conventions has been undermined by statements from UN bodies that explicitly support decriminalisation and encourage member states to adopt it (UNCEBC, 2019; UNHRC, 2023).

Another argument deployed by conservatives is that decriminalisation would lead to further changes, such as the legalisation of sale as well as possession. This argument is often couched as a warning against either a ‘slippery slope’ or a ‘Trojan horse’. The first of these metaphors implies that there is no return from decriminalisation of possession; it only furthers the movement down the incline to full legalisation of all activities to do with currently prohibited drugs. The second metaphor implies a deceptive stratagem by supporters of legalisation, as if they are hiding their more far-reaching objectives inside the argument for decriminalisation.

The first of these arguments is factually incorrect. It is not inevitable that decriminalisation leads to legalisation. Abortion was decriminalised in Great Britain – under certain conditions – by the *Abortion Act* 1967. It has not been fully legalised since then. There is still no right to abortion on demand. In the field of illicit drugs, we can see that previous decriminalisations of possession have not been followed by legalisation over long periods. In the USA, a wave of state decriminalisations of cannabis in the 1970s did not lead to legalisations of sale until a fresh campaign 40 years later (Weiss et al., 2017). The 1969 depenalisation of drug possession in Denmark was reversed in 2004 with the reintroduction of criminal sanctions (Møller, 2010). Similarly in the UK, the downward move of cannabis from class B to class C of the Misuse of Drugs Act in 2004 was reversed in 2009 (Stevens, 2011). Possession of small quantities of all drugs was decriminalised in Portugal in 2001 and in the Czech Republic (then Czechoslovakia) in 1991 (Stevens et al., 2022). Neither country has yet moved to legalisation of supply. The slope from decriminalisation to legalisation does not appear to be very steep or slippery.

The second of these arguments – that decriminalisation is a Trojan Horse for legalisation – seems rather odd, given that there are plenty of people who openly advocate for legalisation without feeling the need to hide that argument inside a model of decriminalisation. Indeed, many of them argue against decriminalisation as part of their support for legalisation. It is to their arguments that we now turn.

Radical critiques of decriminalisation

Many drug policy reform advocates criticise decriminalisation for leaving the production and supply of illicit drugs unregulated (GCDP, 2014). They argue that decriminalisation neither addresses the harm associated with the supply side of the drug market, nor does it deal with the fact that consumers will continue to use substances that are not subject to quality controls. For some, decriminalisation of possession without legalising supply continues to limit their perceived right to consume what they want if it causes no harm to others. Supporters of legalisation also cite the lost tax opportunity from a legalised market.

Other criticisms of decriminalisation are premised on the type of model adopted, where penalties, albeit civil ones, are applied, and the possession of drugs is still subject to policing (Madden et al., 2021). These arguments are addressed in our response to radical critiques, recognising the tension in rights, especially for communities harmed by the prohibition.

Harm of supply side goes unaddressed

It is fair to say that decriminalisation does not address some of the most harmful aspects of the drug trade, including violence and exploitation by drug suppliers and law enforcers.

The enforcement of drug laws has been used to justify many atrocities. Over the last two decades, the drug war that has been waged in Mexico has led to the deaths of over 300,000 citizens, and two million people have been displaced (Wasserman, 2022). In the same period, a toxic drug supply in North America has resulted in nearly a million people dying from drug overdoses (CDC, 2022; Government of Canada, 2022). In the UK, there is concern over the exploitation of young people in drug supply, especially in the ‘county lines’ supply model (Spicer, 2021; Windle et al., 2020). However, with the exception of cannabis, the legalisation and regulation of all currently illicit drugs is not on the political horizon in the UK. Both of the main parties are set against decriminalisation, let alone legalisation.

Cannabis regulation may have positive impacts in reducing the harm of the criminal justice system for those who use this substance and for those who have been overpoliced because of its prohibition, but it will do little to help people who use or are policed for other substances. Decriminalisation would relieve some of the harm experienced by people who use drugs such as heroin or cocaine. As stated, our proposal is a modest one which does not require wholesale legislative reform.

There is also a risk that a legalised market can result in continued criminalisation of people where there is use of drugs outside of the regulated framework. Canada’s legal framework for cannabis regulation created a criminal offence of possession of cannabis obtained outside the legal market.² It is likely that those subject to criminalisation under the new market rules are those who have historically been overpoliced (Koram, 2022). This is why decriminalisation of the possession of all drugs should be a core element of any regulated market. Failure to adopt this approach would open up the possibility that the harm of prohibition continues for those unable to access the legal market.

The right to use and access controlled drugs

The argument for legalisation can be made on the basis of consequentialist, utilitarian arguments that doing so reduces the harm, or from a deontological, libertarian approach that focuses on personal autonomy and liberty (Husak, 1992; MacCoun and Reuter, 2001). These can be combined in rationalist arguments that establish the right to use and sell drugs, but it is a right that is limited according to the actual consequences of doing so for other people’s right to life, health and property (Stevens, 2011b).

The principles of bodily autonomy and the right to privacy and proportionality have been at the core of many constitutional cases that have resulted in decriminalisation of possession for private use (Eastwood et al., 2016). In the case of Spain’s legal framework, the Supreme Court decision of 1972 determined that the use and possession of a controlled drug in private were not a criminal offence, and this extended to the supply without financial motivation (Marks, 2019). The Mexican Supreme Court has provided constitutional

protection to people who possess and cultivate cannabis and has extended similar protection to the use and possession of cocaine, at least for two Mexican citizens (MUCD, 2019).

In the UK, the Court of Appeal did consider the rights to freedom and privacy as protected by the European Convention on Human Rights, enshrined in the UK law through the Human Rights Act 1998, in *R versus Taylor*.³ The case involved a Rastafarian man who had been arrested for possession with intent to supply cannabis. He argued that his use of cannabis was for religious purposes and so protected under Article 9 (1) the right to freedom of thought, belief and religion, and/or under his right to privacy contained in Article 8 (1). The Court accepted that both Articles were engaged but that those rights were qualified by reason of Article 8 (2) and Article 9 (2) which allow the State to limit rights where there is a legitimate aim to do so. In this, the Court judged that the law’s aim was to protect public health and public safety and so ruled against Mr Taylor’s claims. The broader philosophical arguments on the right to use drugs and the role of the State are pertinent to drug policy discourse but are unlikely to be a legal route to reform in the UK context.

Loss of tax income

Some arguments for legalisation focus on the potential to generate tax income. In 2022, US states reporting cannabis-related tax revenue ranged from US\$28.9m in Alaska to US\$774.4m in California (Urban Institute, 2023). Canada’s gross domestic product is reported to have increased by US\$34.2b between 2018 and 2021 because of the cannabis industry (MJBizDaily, 2022). In the UK estimates for the potential size of the market for adult recreational use of cannabis range from £750m to £3.5b, implying substantial potential for taxation, although it should be noted that these estimates come from think tanks with an interest in legalising cannabis (Shepherd, 2022; Starling, 2016).

Critics of decriminalisation are right that it would not lead to increased tax revenue, but it would result in savings to the economy. We have already outlined some of the costs associated with the policing and enforcement of drug laws in the UK. These would be reduced by decriminalisation. There may also be savings in the health system, as found in Portugal (Gonçalves et al., 2015). On the other hand, there is a stronger case for arguing that legalisation would increase the use more than decriminalisation would. It would likely lead to reductions in price and increased availability, which predictably lead to increased harm – and costs to the public purse – from ‘temptation goods’ (Caulkins, 2017).

Decriminalisation still a tool for social and racial control

There is another radical critique that, in some circumstances, rejects decriminalisation of drug possession offences.

Criminological abolitionists see the carceral state as inherently violent and oppressive, particularly in respect of marginalised and racialised communities (Gilmore, 2017). Drug prohibition is one of the major drivers of incarceration and policing, with one in five people globally in prison for drugs. In the UK, stop and search is mostly on suspicion of drug offences, with Black and brown people being disproportionately impacted. Abolitionists are concerned that the harm and violence of punishment, prison and policing do not reduce the actual harm suffered by communities. They argue that addressing *the* harm – crimes of violence, both physical and sexual, and property crimes – requires reforms that tackle structural inequalities and for communities to work together to seek peaceful solutions that prevent such harm from happening in the first place. Therefore, reforms to policing – what Ruth Wilson Gilmore (2017) refers to as ‘police humanitarianism’ – have led to the ‘strengthening of a system that is inherently violent by design, rather than the intended diminishing of racist outcomes. Thus, reforming policing will always only reproduce and/or displace the same violent outcomes’ (Robinson, 2021: 292).

Decriminalisation models where some forms of punishment or intervention are kept have also led to people who use drugs reporting continued police abuse. The International Network of People who Use Drugs (INPUD) has highlighted that many jurisdictions that have decriminalised drug possession and – despite reporting some improvements in the behaviour of law enforcement – continue to witness police brutality against people who use drugs (Madden et al., 2021). INPUD’s position is, ‘[a]ll models of decriminalization [should] fully decriminalize people who use drugs, including: the removal of all administrative sanctions and mechanisms of monitoring, surveillance, coercion and punishment for use and possession of drugs’ (Madden et al., 2021: 38).

We agree with abolitionists and INPUD that retention of sanctions for possession offences will do little to address the over-policing of Black and brown communities and allows for the continued harassment and surveillance of people who use drugs. This is why our proposal would ensure a no-punishment model of decriminalisation. We deliberately do not argue that the criminal penalties for possession should be replaced by civil sanctions or by diversion to treatment or education. Our proposal will not – on its own – end institutionally racist policing practices. However, it will at least remove one of the tools of that oppression.

Conclusion

Our modest proposal is just one among many ways that could reduce the harm of criminalisation on people who use drugs (Greer et al., 2022; Madden et al., 2021). We propose it as a relatively simple, straightforward step which can be taken without needing to replace the Misuse of Drugs Act 1971 in its entirety. There may be a case for

abolishing the Misuse of Drugs Act and starting from scratch but that seems even less likely to us (politically) than that the current UK government will agree to our modest proposal. This government is moving in the opposite direction, towards catching more people who use drugs in the net of penal control, with a rhetorical focus on increasing ‘tough consequences’ for ‘so-called recreational users’ (Home Office, 2022). We see no evidence that such consequences will be swift, certain or effective. We make and defend our modest proposal in the hope that a future government will be interested in ways to avoid repeating the mistakes of the past.

We emphasise that we are not arguing that drugs are harmless, that decriminalisation would reduce drug use, or that it is better than legalisation and regulation of supply as a long-term framework for drug policy. On the first two points, we accept that drug use can be harmful in some settings for some people, but we believe that these harmful effects are increased rather than reduced by the criminalisation of possession. Decriminalisation in other places has been shown to reduce the harm of criminalisation without increasing drug use (Stevens et al., 2022). On the third point, we are open-minded about whether and how the supply of drugs should be legally regulated. We argue that, whatever the approach taken to supply, possession of drugs for personal use should not be a criminal offence.

So we remain open-minded about what would come after such a modest decriminalisation. One of us has previously argued for ‘progressive decriminalisation’ (Stevens, 2011b). This involves a series of carefully evaluated steps towards a more evidence-informed and rationally debated drug policy. This may lead to the legalisation of the sale of some drugs under some conditions. It is also possible that it would lead back to tighter regulation of use, if improved data and methods show that this is necessary in order to protect the right to life and the highest attainable standard of health.

We will not know what is the best way to reduce the harm related to drug use and its control – and their benefits – unless we take steps away from the current prohibitionist model, with its increasing levels of drug-related death (Rae et al., 2022). Drug laws, on their own, will not be sufficient to end this crisis. It will require short-term investment in treatment and long-term efforts to reduce the social determinants of problematic drug use, including housing and social security (Stevens, 2011a). Here, we have argued that our modest proposal to decriminalise drug possession in the UK is a viable and necessary part of this work.

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Notes

1. Section 7 of the Misuse of Drugs Act permits the Secretary of State to authorise activities that would be otherwise unlawful under the Act through regulations. For examples, see the Misuse of Drugs Regulations 2001.
2. Cannabis Act (S.C. 2018, c. 16), section 8(1)(b) & 8(2).
3. REGINA v Taylor [2001] EWCA Crim 2263.

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