COMMENTARY

Reconsideration of Contemporary U.S. Drug Policy

Paul L. Solano*

Ph.D., Health Services Policy Research Group, School of Urban Affairs and Public Policy, Graham Hall, University of Delaware, Newark, DE, USA

Abstract

In their recent book *Drug War Heresies: Learning From Other Vices, Times, and Places* (Cambridge: Cambridge University Press, 2001), MacCoun and Reuter challenge the continuation of contemporary U.S. drug policy. Depenalization and legalization of illicit drugs are evaluated as alternatives to U.S. prohibition policy, with harm reduction (mitigation of social damages) as the criterion for guiding drug regime change. The appraisal encompasses an analysis of underlying philosophical and social mechanisms of current U.S. policy as well as drawing analogies from a comprehensive review of American vices and also Western European governmental interventions into illicit drug activities. What is apparent is that the evaluation and the available evidence entail substantial complexity and do not readily present unequivocal positions. The evaluation also strongly indicates that considerable difficulty would be encountered not only for the implementation of alternative regimes but also for the engagement in open political discussion of prohibition alternatives.

Two recent incidents point to divergent perspectives in governmental drug policies among Western European countries that have implications for the United States. A report in August 2002 by the Council of Europe's narcotics monitoring Pompidou Group has stated that Oslo Norway is first among 42 European cities in the seizures of illicit drugs as well as deaths caused by the illegal substances. Yet, Norway has also some of the most stringent drug laws restricting access to psychotropic substances, mandatory treatment for abuse, and severe penalties for use and distribution of illegal drugs. In the same time frame, the British government announced in July 2002 that it intended to decriminalize marijuana consumption in 2003. Possession and use of small amounts of the drug would be a technical illegality but a "non-arrestable" offense; however, police would employ a new crime of aggravated possession against repeat offenders. This policy change has brought a quick, if not immediate, sharp response by the U.S. government through John P. Walters, (a.k.a. the drug czar), Director of the U.S. (federal government) National Office of Drug-Control Policy.[1] The response was not a formal rebuke to the British government but rather it was directed at the proponents of legalization of illicit drugs in the United States as a way to deflect or blunt any enthusiasm for similar action in America. Woven throughout Walters' response is the claim that decriminalization of cannabis (as in Britain) would lead ultimately to legalization of more potent drugs with resulting increased usage of illicit drugs by Americans. Such a view is indicative of the consistent long-term orientation that the U.S government has taken for twenty years. To wit: a drug policy regime, associated with the first Bush and the Clinton administrations, that pursues prohibition of illicit drugs by aggressive enforcement of laws that define criminal drug behavior and activities. This criticism of the legalization of psychoactive drugs, however, is incongruent with the analyses contained in the recently published and unfortunately overlooked book of *Drug War Heresies* by Robert MacCoun and Peter Reuter.[2] The authors solidly challenge prevailing U.S. prohibition policy, which has considerable impact on American society, and thus their arguments and policy recommendations warrant a review.

The book is a very important work. Public officials engaged in the formulation and implementation of drug policy would be remiss in their civic responsibility if they did not seriously consider the book's content and conclusions therein. Both MacCoun and Reuter have been engaged extensively in research and writing on government intervention against illicit drug activities as well as other vices (their word) of alcohol, tobacco and gambling. Moreover, they have become leading advocates for transformation of the prohibition policy, which is characterized, in their words, by intransigence and hostility to other views. Uniform legalization of drugs is not advocated; instead, a more sophisticated and heterogeneous approach to U.S. drug policy is offered, one that is more complex and

*Correspondence to: Paul L. Solano, Health Services Policy Research Group, School of Urban Affairs and Public Policy, Graham Hall, University of Delaware, Newark, DE 19716, USA
Tel.: + 1-302-831 0589
Fax: + 1-302-831 0889
E-mail: Solano@udel.edu

flexible than Walters' perspective. The guiding criterion is harm reduction, which prescribes implementation of alternatives to prohibition if they would result in less social harm to American society. Some of the suggested alternatives to the prohibition regime, MacCoun and Reuter assert, would be politically acceptable to the American population. The policy options are derived from a comprehensive analysis, reflected by the book's subtitle, of a wide range of multidisciplinary analytical and empirical evidence of drug behavior and policies. Consideration is given to whether social values and social mechanisms would induce or inhibit drug use. The history of U.S. public policies directed at other vices (prostitution, gambling, tobacco and alcohol) is probed for analogies applicable to drug behavior. In addition, the U.S. experience with heroin, cocaine and cannabis usage as legal and illegal substances is investigated. Finally, in an extensive undertaking, they scrutinize the experiences of 10 Western European countries from 1970s to 1990s for their governmental efforts to regulate drug use.

The purpose of forging policy change is clearly understandable, given that over the past two decades America's war against illicit drugs has been costly both in human and financial terms, and arguably it has been waged inequitably. For example, under this prohibition regime, compared to 50,000 individuals in 1985, 400,000 people were imprisoned by the late 1990s for drug offenses, accounting for 25% of the prison population.[2] Even with similar drug use among racial groups, Blacks and Hispanics have comprised 75% of the incarcerated.[2] During approximately the same time frame, federal spending on the drug war increased from $1.65 billion, in 1982 to $13.25 billion in 1995. These expenditures have been estimated to be at least $26 billion annually in 2002.[2,3] Moreover, the prevalence (number of users) of illicit drugs has not improved in recent years. Between 1990 and 2001, among individuals 12 years or older, prevalence has increased slightly from 11.7% to 12.6% for usage in the past year, and 6.7% to 7.1% for usage in the past month.[4] Together, these activities hardly seem a basis for an enthusiastic endorsement of policy effectiveness for the prohibition regime.

Underpinnings of Drug Policies

Philosophical Views

At the outset, MacCoun and Reuter examine various philosophical views that shape the drug policy debate and its policy formation. According to the authors, many of the moral arguments can only be resolved through empirical analysis of the consequences of illicit drug behavior. In contrast to this consequentialist perspective, examination is also made of three orientations about drug behavior in which the moral positions hold irrespective of the empirical consequences. One, a natural right to consume drugs is presumed under the libertarian position. Two, with the legal moralist view, drug use is taken to be intrinsically immoral and thus it should be banned. Three, the legal paternalism argument is supportive of prohibition because drug users cannot avoid inflicting harm on themselves and their families due to the addictive properties of illicit substances. Both the consequentialist and moralist positions reflect the social values of citizens and public officials that are constraints on policy decision making. It must be acknowledged that the extent to which legal moralism and legal paternalism predominate among citizens and especially American goventment officials and elite opinion, then achieving changes in prohibition are likely to encounter much difficulty even with substantial empirical evidence.

Dimensions of Prohibition and Alternatives

Prohibition policy has its roots in the moralist perspective, with substantial support from legal moralists. Consistent with this view, despite official government statements and declarations about the pursuit of other goals, the *de facto* objective of prohibition policy has been to curtail, if not eliminate, the prevalence of illicitly defined drugs. The major instrument of this effort - aggressive enforcement of criminal laws against the usage, distribution, and production of illicit drugs - has been based largely, in fact, on the economic law of demand, which is indicated by a downward sloping demand curve. With a lower (higher) price paid for illicit drugs, a greater (smaller) quantity of drugs will be consumed by individuals -i.e., intensity of their usage, and more (fewer) individuals will engage in consumption- i.e., prevalence. An underlying premise of prohibition is that the demand for illicit drugs manifests high price elasticity, which measures the percentage change in drug usage or users (prevalence) for a one-percent change in price. Present and potential consumers are sensitive to the monetary untaxed "street" price paid for drug purchases, whereby low (high) prices encourage considerably more (less) drug consumption. A consequence is that there would be substantially fewer (more) drug consumers when prevailing drug prices are high (low). As an example, a high price elasticity of 1.1 would indicate that a 10% decrease (increase) in price would result in an 11% rise (decline) in drug prevalence. Criminal penalties, ranging from fines to incarceration, are to produce a non-monetary price in the form of expected penalty for conviction for use, (or the probability of being caught and punished). The enforcement of criminal laws against the distribution and production of illicit drugs is to raise the street price of those drugs by limiting their supply, and in doing so, restrict the availability of illicit substances. Thus the intent of prohibition policy is to increase the costs or burden that current and potential drug consumers incur in their drug use or drug purchases in order to deter their consumption of illicit substances. Given prohibition's limited impact on prevalence, aggressive enforcement has also fostered what can be termed a count mentality. The emphasis of prohibition proponents has been on a metric of achievements that reflect policy implementation activities: e.g., seizures, arrests, and incarcerations, that are interpreted, at minimum, as constraining drug prevalence.

Street and non-monetary prices of illicit substances are expected to change, and consequently so is drug behavior, under the variants of two drug policy regimes -depenalization and legalization- that MacCoun and Reuter consider as

substitutes to current prohibition policy. Depenalization (a term preferred over decriminalization) would entail the replacement of criminal penalties with civil penalties -e.g., monetary fines- for the possession of modest quantities of prohibited psychotropic drugs, but the maintenance of aggressive criminal prosecution for the sale and manufacture of the drugs that would remain illegal. Legalization is based on the model of contemporary American alcohol consumption; currently prohibited psychotropic drugs would be regulated and would be available in retail stores for adults (individuals 21 years or older).

Social Mechanisms

According to MacCoun and Reuter, prohibition efforts to (i) restrict the availability of drugs, (ii) influence drug prices, and (iii) impose formal sanctions (represented by expected penalties) for drug activities are social mechanisms that play a important role as constraints on drug use. Four other social mechanisms encompassing informal self control (views of morality and legitimacy of use, forbidden fruit attraction of drugs), and informal social control (social norms/values and informal sanctions that promote or encourage usage) are also considered to affect individual decisions to use drug under the prohibition. MacCoun and Reuter conduct qualitative predictions of (i) the impacts that the seven social mechanisms would have on drug use under depenalization or legalization, and, (ii) in turn, reciprocal effects that these regimes have on the social mechanisms. In effect, drug laws themselves are viewed as social mechanisms that encourage or discourage drug consumption. In general, it is predicted that, unlike depenalization, legalization would weaken citizens' opposition to drug use that is exerted through morality and legitimacy, forbidden fruit, and social sanctions. The predictions also reveal that the availability and monetary price of illicit substances would not increase drug use under depenalization regimes but they would do so with legalization regimes. However, relaxation of formal sanctions would lead to more consumption under both types of policies. Irrespective of the extent of these impacts, MacCoun and Reuter argue that prevalence is too limited as a standard for evaluating effectiveness of drug policy, and a more global criteria of harm reduction should guide policy choices.

Harm Reduction Approach

The authors have unequivocally taken a consequentialist perspective as the general guide for evaluating variations of depenalization or legalization as alternative drug regimes to prohibition. In their *rational* approach, causal linkages are inferred between the requirements of different policy regimes and their expected (predicted) societal outcomes in the form of harm reduction. To summarize the MacCoun and Reuter harm reduction argument: illicit drug consumption, its provision, and governmental efforts to combat them causes harm to society; if existing social harms were reduced by any drug policy alternative, then current U.S. prohibition drug policy should be replaced. Short run and long run projections are made regarding the reduction in social harms, (as well as the prevalence and intensity of drug consumption) associated with drug behavior, that would occur with the *substitution* of prohibition with depenalization or legalization. Each policy regime is evaluated for their separate impacts on each of the three illicit drugs: heroin, cocaine and cannabis. In effect, separate regimes are considered for the different substances.

Harm Reduction Characteristics

Harm Dimensions

Harm reduction encompasses substantial complexity. On a *conceptual level,* the total harm to society that is caused by drug use is comprised of three major components that form the following mathematical relationship: *Prevalence* (the total number of users) X the *Intensity* of use (the average number doses per by drug users), X *Harmfulness* (the amount of harm per dose). (MacCoun and Reuter also use the term macro-harm for total harm, and micro harm for harmfulness). Harmfulness itself is multidimensional, and is manifested by numerous empirical elements viz., *harms.* MacCoun and Reuter provide a taxonomy of nearly fifty tangible harms that are social costs or damages incurred by individuals due to illicit drug activity under any policy regime. Four types of harms are delineated: (i) health -e.g., illness, health status, medical care costs, (ii) social and economic functioning - e.g., work, school, parenting performance, (iii) safety and public order -e.g., accident, violence, property devaluation, and (iv) criminal justice -e.g., police, judicial, and incarceration costs. Harms are also further cross-classified by the behavioral and institutional sources of the social damages: impact of drugs on users (curtailment of personal performance, illness); the illegal status of substances (detrimental social actions spurred by usage -e.g. legal violations, violence); and law enforcement (applications of laws and criminal penalties). It is harmfulness, as a collection of harms, that is the bases for assessing harm reduction obtained through drug policy implementation. In principle, the value of harms reduced would be derived through the assignment of monetary valuation to the separate harms. Total harm would be, in effect, a weighted outcome of the number of drug users (prevalence), the acuteness of their drug consumption (intensity), and the monetarily valued damages or costs that are imposed by both drug consumption and actions undertaken to combat drug usage (harmfulness). As formulated and employed by MacCoun and Reuter, harm reduction as policy evaluation standard has important implications for the conclusions drawn about depenalization and/or legalization as alternatives to prohibition.

Types of Harms

Some harms represent damages that drug users inflict upon themselves, e.g., suffering from illness due to usage, and thus their value is intrinsic (or internal) to them. Most harms are

negative externalities -or social costs that drug users indirectly impose upon others -that arise from the use and illegal status of illicit drug use, e.g., bad parenting, poor interpersonal relationships, crime. Government itself is a direct source of harm that stems from the financial resources, generally obtained through taxation, which are allocated for enforcement of laws against illicit drug activities. Spending on criminal justice functions (courts, policing, and incarceration) is an opportunity cost to American society since such expenditures hinder the obtainment of benefits being derived from other uses (i.e., other public programs, or private sector goods). If depenalization and legalization entailed less spending, then the opportunity costs of implementing drug policy would be reduced for citizens by the freeing up more resources for other alternative uses.

Governmental intervention also produces negative externalities. First, though unintended, government enforcement causes disruption of and secondary spillovers into families and communities of drug users, -e.g. family relationships, parenting, neighborhood cohesion and stability, infringement on liberty- who are subject to criminal penalties. Some harms reflect core American values of losses/ gains of individual liberty and justice arising from law enforcement but are ignored by federal prohibition policy. Second, citizens can also incur a considerable cost, -an issue omitted by MacCoun and Reuter -due to the detrimental effects of the taxes employed to finance legal enforcement. Virtually all taxation causes a reduction in the value of goods consumed or produced (foregone consumption and production) above the monetary value of the tax revenues collected (the marginal external burden or deadweight loss of taxation), and thus impose additional harm on individuals and firms beyond the taxes paid. Therefore citizens and firms would receive gains in utility if tax reductions accompany spending decreases on law enforcement that would be expected by the movement from prohibition to depenalization or legalization.

Trade-offs

MacCoun and Reuter investigate two types of trade-offs. For these analyses, the authors employ the insightful recognition that cocaine, heroin, and cannabis may be separate goods with different properties-dependency/addiction, pharmacological effects, recreational qualities -for which existing and potential drug users may have differences in preferences and valuation. Thus demand for each drug could vary in responsiveness to monetary and non-monetary prices, which would differ under alternative drug regimes. Some recent evidence on U.S. drug behavior is consistent with the inferences drawn about intensity and prevalence of drug use. The findings indicates high monetary (own) price elasticities of illicit drugs that vary by types of substance, - a condition that would spur more consumption if drug prices would decline under *legalization* regimes.[3]

Trade-offs among harms (harmfulness) as well as components of total harm that might occur with the relaxation of prohibition restrictions are evaluated. The analysis of

social mechanisms involving economic demand reveal that, under depenalization regimes, the availability and monetary price of illicit substances would *not* increase drug use but formal sanctions would lead to more consumption. These results are expected because less severe civil penalties, which would be substituted for criminal ones, would be applied to small usage; but the more severe criminal sanctions would be kept intact for distribution and production and thus street and non-monetary prices for substances would not change. At the same time, for example, harms due to use, illness and impaired personal performance would be likely rise but harms due to enforcement -incarceration court, and police costs- would decline. Under legalization regimes, all these same social mechanisms are predicted to encourage greater drug consumption. Because virtually all major criminal penalties regarding use and distribution would be removed, both the street and non-monetary prices applicable to drug activities would fall. However, the reduction in harms that result for illegal status (crime among street level distributors/pushers), and enforcement costs would be expected to decrease substantially. The extent of harm reduction value under any alternative regime design would differ according to the types of drugs for which the restrictions of prohibition were relaxed. In the analyses, the potential of excise taxation that could raise money prices of illicit drugs to mitigate drug usage under legalization is dismissed as a policy instrument. It is predicted that, based on the evidence drawn from other vices (discussed below), taxes on legalized (but formerly illicit) drugs would be levied at low levels.

MacCoun and Reuter quite astutely also explore the impacts of a particular policy regime on each drug, taking into consideration the effects of alternative regimes applied to other drugs. This "joint" evaluation across regimes is undertaken because cocaine, heroin, and cannabis may be either substitutes or complements. If they are substitutes, illicit substances can be easily replaceable for each other, with consumption serving similar purpose. A decrease (increase) in price of, say, cocaine, if brought about by depenalization or legalization, would lead to a decrease (increase) in the demand for, say, heroin. Complementary drugs would be consumed together so that consumption of each drug would rise (or fall) simultaneously. A decrease (increase) in the price of, say, marijuana, if induced by relaxing prohibition, would lead to an increase (decrease) in the demand for other substances, say cocaine. The central policy issue of the gateway hypotheses revolves around the complementarity of illicit drugs. This proposition stipulates that marijuana provides a steppingstone to more harmful drug usage, e.g., heroin and cocaine. Research on U.S. drug behavior lends strong support to this connection based on the statistical association of prices and consumption levels among different drugs.[3] MacCoun and Reuter conclude, however, that an appraisal of non-drug vices (e.g., alcohol), U.S. psychotropic drug history, and Western European drug policy experience especially the Netherlands' virtual legalization of cannabis, strongly indicates little evidence exist to verify that increased marijuana use results in increased consumption of hard drugs.

A 2002 study by the RAND Drug Policy Research Center

on drug use among youth from 1982 and 1994 is more unequivocal. The gateway hypothesis was refuted by the finding that teenagers who took hard drugs were predisposed to do so whether or not they tried marijuana first.[5] Within the MacCoun and Reuter framework, even without a gateway, movement away from the prohibition of marijuana should be judged on the basis of harm reduction achieved.

Policy Goals

With harm reduction as the dominant policy goal, MacCoun and Reuter have adopted, in effect, improvement in economic efficiency as the fundamental criteria to assess potential drug policy changes. Choosing policies that contribute to increased efficiency means that greater social welfare or well being would be realized because citizens would be made better off by obtaining higher levels of utility. Put concisely, economic efficiency would be enhanced where a drug policy is chosen that generates net social gains greater than any alternative drug policy. Net social gains would be determined by the difference in social costs (inclusive of resource costs and negative social impacts) and social benefits (positive outcomes) of policies, in which costs and benefits are measured in monetary value. The achievement of economic efficiency requires adherence to three principles encompassed by rational budgeting for policy implementation.[6] First, the resources employed for public action (the government program for illicit drugs) should yield more net benefits/gains to society than would be obtained if the resources remained in the private sector. Second, the resources used for government activities should be allocated among all public programs (e.g., transportation, environment, and welfare) so that government would provide the most net benefits. Third, within a program, the mix of strategies (or alternative policy designs) should be chosen because they maximize net benefits.

The MacCoun and Reuter evaluation is confined to this last dimension. Comparison of drug policy alternatives with other competing programs would be a Herculean undertaking. It is also beyond the scope of the MacCoun and Reuter objective of assessing the improvement in societal welfare through the replacement of prohibition policy with other drug policies. Moreover, choices based on efficiency that would be yielded among alternative drug regimes are independent of the extent to which net benefits would be achieved among different government programs.

Very significantly, MacCoun and Reuter sidestep the concern of whether more efficiency would be realized if financial resources were not extracted from the private sector. Put differently, they do not focus on whether benefits of drug consumption would be larger than the costs incurred to conduct any type of drug policy. Specifically, harms do not include explicitly defined direct benefits. Benefits of drug consumption, which are the "pleasures" to the users (or utility in the economic sense) like those obtained from alcohol, are excluded, since MacCoun and Reuter assert that their measurements are very difficult, involving value judgements of user' preferences. (Here a controversial issue is encountered: Grossman and others argue that drug users can

make rational choices and thus assess the benefits of their own usage, even if they are addicted to the illicit drugs.[3]) As a consequence, the harm reduction approach is a *de facto* acknowledgement that, inherently, illicit drug behavior (use, and its corollary activities of production and distribution) do not generate gains for society, and cause or induce only losses, i.e., declines in welfare. Within this perspective, government policy is constrained to ameliorating harms rather than eliminating them, and in so doing, policy interventions can facilitate societal gains. In this sense, since harms represent damages or costs to individuals that could be limited by policy, the gains from harm reductions are equivalent to benefits. This analytical orientation is cost avoidance or cost savings approach to policy evaluation that is often utilized in cost-benefit analysis (CBA), the evaluation methodology commonly employed by economists. The monetary values of harms avoided would signify the minimum value of the damages that individuals as societal members would save if the negative impacts (harms) of illicit drug behavior were prevented. Therefore the effectiveness of depenalization and/or legalization is gauged by the reduction in the value of harms (or social costs) that they would produce relative to prohibition.

Equity

Efficiency is not the only criterion evaluated. The equity (or fairness) implications of drug policies are appraised for their harms to social classes, racial groups, age groups, and communities. According to the authors, substantial inequity of harms prevails with prohibition. Some major harms of drug activities -crime, black market operations, and social and economic disruption of communities- are borne disproportionately by urban minorities. The disproportionate arrests and incarcerations of minorities are indicative of the inequitable application of prohibition laws. Gains and losses resulting from legalization regimes would also be distributed unevenly across segments of American society. For minority communities, large gains would be realized through the reduction in black market operations and neighborhood disorder, which would be offset by a smaller rise in losses due to increases in drug consumption. For the suburban middle class, little advantage would be obtained from declines in drug sale activities and neighborhood disruptions, but social costs could rise considerably because of increased risk of drug involvement especially among youth. A conclusion that can be drawn is removal of aggressive enforcement would have political support in minority communities but would generate much opposition among suburban middle class households.

Harm Measurement

The MacCoun and Reuter evaluation can be construed as a "loosely structured" cost-benefit analysis (CBA). Rigorous measurement and statistical analyses of social costs or harms are not undertaken (with social benefits ignored). While provisional estimates of some harms are given, the magnitudes of the consequences of separate harms are not estimated and

their resultant costs are not measured in monetary terms. The authors provide three reasons for this position. First, there are significant limitations in methodology and evidence -involving in large part to uncertainty about future addiction and relative harms- inhibit the quantifying and modeling of many harms. This argument is applicable for more intangible harms such as damages involving justice and liberty arising from enforcement, but research on the CBA of substance abuse treatment has made substantial progress in the monetary valuation of the social costs of drug abuse. Second, impact of harms is unevenly distributed across segments of American society. This concern is an equity issue; the efficiency dimensions can still be addressed by measuring the monetary value of harms; thereafter the question is the assignment of differential weightings of the harm valuations through appropriate political decision making. Third, weights (monetary valuation) of harms depend on one's values and the normative framework applied. Absence monetary valuations of harms, MacCoun and Reuter offer critical assessments of expected increases and decreases in the *scale* of many harms, prevalence and intensity for each drug under the different drug policy regimes. These estimations are based on their extensive and comprehensive review of seemingly all the available evidence and studies of U.S. and Western European governmental drug policies and U.S. response to related vices.

Some Evidence and Conclusions

U.S. Drug History

MacCoun and Reuter conduct an inquiry into the U.S. history of drug policy with respect to cocaine, heroin (opiates) and cannabis. Cocaine and opiates use was generally similar before and after the Harrison Act of 1914, which declared both substances to be illegal. Estimates of cocaine users in the 1990s are 5 times higher than the number in the 19th century, the period of legal availability in which cocaine use led to less violent crimes. Opiates were not considered as a severe problem as alcohol at the time of prohibition. Cocaine consumption decline substantially after 1914 and remained quite low until the 1960s so that prohibition appears to have been effective, but cocaine was declining before prohibition was introduced. However, history has rendered a murky determination. In the 1950s there were low heroin addiction rates and minimum cocaine rates so that restrictive regulation seem positive, but the high consumption of these drugs in 1990s obviate this interpretation. MacCoun and Reuter conclude that, given prohibition's high rate of cocaine use, legalization is unlikely to influence cocaine users to reduce their consumption, nor will legalization encourage users to consume less harmful forms of the drug. Consequently the authors recommend that more sophisticated regulatory schemes would yield greater effectiveness in prevalence and intensity reductions. In a historical review encompassing a shorter time frame, MacCoun and Reuter focus on the depenalization of marijuana possession by 12 State governments in the 1970s. They offer a twofold conclusion. One, the depenalization

changes appear to have little on no impact on prevalence of marijuana use or on adolescents' attitude towards and belief in the use of the drug. Two, there is no difference in marijuana use by adolescents in depenalization and nondepenalization states.

Other Vices

The U.S. experience with prostitution, gambling, tobacco, and alcohol are the non-drug vices examined by MacCoun and Reuter for analogies applicable to illicit drug activities. Prostitution has entailed limited criminal enforcement in which the objective is not the reduction of the vice, but rather the restraining of the social disorder and crime that would be produced through its unregulated activities. This policy is indicative of a harm reduction approach in which a large-scale market of socially undesirable behavior is viewed as a small social concern. Gambling illustrates the difficulty of restraining consumption as well as the production of vice upon its legalization. The legalization of gambling did channel money from criminal activities, but many States have entered this market through government-sponsored lotteries or sanctioned private gambling operations (e.g., casinos). In so doing, governments have promoted activities that have detrimental effects on the population (compulsive and problem gamblers) and have encouraged greater consumption of the vice. Tobacco and alcohol are substances similar to drugs; they have high dependency potential, are large-scale markets, and the target of public health organizations that seek to constrain the availability and promotion of the good as well as to raise its price. The tobacco industries, however, has countered these efforts and have effectively promoted its product in a legal market even though it can have fatal impact on its consumers. The consumption of alcohol has been more restrictive than tobacco. After its prohibition was repealed, restrictions have been eroded gradually and taxes on its purchases have declined in real value. Two conclusions are drawn from this review. First, very generally, once vices are legalized, Americans show little willingness to restrict their consumption. Second, if drugs are legalized, control of their consumption through taxation would be light, even though high tax burdens could deter drug use.

Western European Experiences

The governmental drug control experiences of ten Western European countries -Denmark, France Germany, Great Britain, Italy, the Netherlands, Norway, Spain, Sweden, and Switzerland- are reviewed for analogies applicable to harm reduction impacts that might occur through changes in America's prohibition regime. In these countries, there is no legalization of any drug prohibited in U.S., although the Netherlands government conducts a policy of *de facto* legalization of cannabis. Enforcement of drug laws are less aggressive in the ten countries than in the U.S., but within Western Europe policy has been very diverse and cannot be categorized easily, as a few examples illustrate.

180

The Dutch have exercised a policy of no prosecution for possession and sale of less than five grams of cannabis since middle 1980s. This *de facto* legalization regime evolved from depenalization that was initiated in the middle 1970s. The Netherlands also minimized criminal enforcement against hard drug users in the 1990s. Both Italy and Spain depenalized all psychoactive drugs in the 1980s, with Italy repenalizing illicit substances in 1990 and then again depenalizing them in 1993. Although criminal penalties are not applied to personal drug use, Spain does not pursue harm reduction strategies such as methadone maintenance or the provision of easy treatment access. Sweden enforces criminal penalties against drug users and has strongly refuted both needle exchange and methadone maintenance on a moral basis, but governments have staunchly supported substance abuse treatment. In 1994 Germany's constitutional court has declared that the possession of hashish or cannabis for private use without harm to others could not be subject to criminal sanctions; in addition, the federal government has devolved considerable authority to States (Lander) over drug policy and prosecution. As a result of the 1980s AIDS epidemic in many European countries, European governments have framed heroin addiction as a public health problem, and viewed police drug enforcement as a contributor to the spread of HIV. Implementing harm reduction strategies, many European countries have undertaken provision of clean needles and methadone maintenance programs for combating heroin addiction. Though weak, the available cross national evidence yield some support that these interventions have been associated with slight positive health consequences: declines in overdoses and HIV infection of users. A final note is that compulsory treatment for drug abuse as a harm reduction strategy is *not* consistently identified with particular types of policy regimes.

European governments have had more tolerant policies than the U.S., and all have smaller drug problems measured in drug use, drug addiction, or drug-related violence. Since 1980 the U.S. has had higher and faster rising arrest rate for drugs, generally two to four times higher than Europe. Except Switzerland, between 1980 and 1995 the arrest rates for drugs including marijuana were stable for Western Europe, under a 100 arrests per 100,000, while the U.S. experienced 250-500 arrests per 100,000. Even though a moderate to high fraction of youth (12 to 25 years old) in the selected countries, except Sweden, have used marijuana, the U.S. prevalence rate stands out as the highest with at least twice as many experimenters. Despite a "moderate" heroin epidemic that swept all the western European countries, except Sweden, in past 20 years, the U.S. has had a higher prevalence rate for hard drugs (up to 3 times greater for opiates). Unlike the U.S., cocaine has had only very limited impact in Western Europe.

Variations in strictness/leniency of enforcement among Western European drug regimes appear to have little systematic influence on the prevalence patterns of drug use. Sweden and Norway have low prevalence rates but have stringent drug laws, and the Netherlands with its strong harm reduction policy also has low prevalence levels. According to MacCoun and Reuter, Italy's serial drug policy changes

-depenalization, repenalization and redepenalization- indicate that its heroin addiction rates have not been influenced significantly by its changing drug laws. In the Netherlands' first phase of depenalized cannabis (mid 1970s to mid 1980s), the regime had no detectable effect on cannabis use. However, the evidence on the second phase illustrates that changes in drug laws can affect drug consumption and related harms. With Dutch *de facto* legalization, cannabis became increasingly commercialized through coffee shops that engaged in open promotion. This gradual commercialization corresponded to rising cannabis consumption in the Netherlands. This increase in marijuana consumption was not associated with increases in hard drug usage by cannabis users -a result that disputes the gateway effect.

Some Propositions

Several major conclusions inferred from the MacCoun and Reuter comprehensive evaluation of drug policy regimes have been stated in prior sections. Some additional ones are given immediately below. The conclusions may not be well received by public officials, legalization advocates, treatment providers, and even substance abuse researchers. Four propositions, drawn from the authors' appraisal lay the bases for their considered policy alternatives. First, the lifting of criminal penalties for possession of a drug (depenalization) is unlikely to increase the consumption of the drug. Second, sometime shortly after its initiation, legalization is very likely to produce commercialization of the now non-prohibited substance, which, in turn, would result in marketing promotion, easier access and reduced prices of the drug. Third commercialization will induce greater prevalence and consumption of a legalized drug. Fourth, prohibition is a major source of social harms (societal harmfulness), generated by especially public safety/order and criminal justice costs, but legalization of psychoactive substances would also cause substantial social harm, particularly health costs and social and economic functioning.

Specific Projections

MacCoun and Reuter derive numerous projections for seven regimes involving cocaine, heroin, and cannabis, which could be the bases of policy alternatives to U.S prohibition. Here, they evaluate the joint trade-offs of harm components and among harms themselves for each regime, and provide conclusions about the total (or macro) harm reduction that would occur under each policy substitution for prohibition. The projections are qualitative estimates, which the authors declare to be characterized by uncertainty due to lack of direct evidence.

First, regulated adult (legalized) markets for cocaine and heroin would produce a high increase in the number of users, with the magnitude of increased prevalence uncertain. The authors express little confidence in the expected slight rise in intensity estimates. Although harmfulness stemming from illegal activities and enforcement of prohibition would be

reduced, increased prevalence could result in a rise in health damage and responsible functioning that could offset, if not be greater than, harms attributed to criminality. Thus, in the long run, total harm reduction may be questionable. Second, because depenalization of heroin and cocaine would spur greater prevalence and intensity of use, the authors suggest a retention of penalties but at reduced levels (below that of the current prohibition regime) and a rising scale of penalties for repeat offenses. This regime would have little impact on the criminal activities associated with the distribution of the illegal drugs and therefore yield limited harm reduction.

Third, a heroin maintenance regime is seen as a halfway model between depenalization and legalization. This regime would provide selective access to the drug through strict regulatory controls. Selective targeting of heroin users who would most likely use the black market is recommended because taxes on heroin in a legalization regime would have to be high to discourage use and such levies would induce users back into the black market for the drug. If users could be diverted from the black market, an action which is surrounded by uncertainty, heroin maintenance could offer greatest gain (or total harm reduction). Prevalence would not increase greatly, and the curtailing the black market would produce gains through the reduction in health, social functioning and criminal justice costs. However, strong moral objections are expected from officials. Fourth, marijuana could be depenalized with the application of civil penalties for uses of small quantities. Prevalence in very unlikely to increase and the consumption of other substances is not likely to rise, since marijuana does not provide a gateway to harder drugs. Considerable harm reduction could be realized by the decrease in social costs associated with enforcement and infringement of liberty and privacy. A minor drawback of this regime is that while it could inhibit users from seeking treatment, only a small amount of those dependent on cannabis are presently in treatment. This is MacCoun and Reuter strongest projection since it is based on more relevant evidence.

Fifth, the legalization of marijuana should result in significant increases in prevalence and probably intensity, due to promotion by legal suppliers. It is doubtful that tight controls over commercialization could be maintained because, like gambling, cigarettes, and alcohol, the commercial cannabis industry would weaken regulatory control. Legalization offers reduction in the same harms associated with depenalization as well as decline in black market operations; this latter decrease would not be as great as would be gained with harder drugs, since with marijuana there is little drug induced crime to curtail. Sixth, the Alaska model of cannabis control is the preferred option for marijuana, and is viewed as the most politically acceptable regime change. It is depenalization with the removal of all sanctions against possession of small quantities and production for own use or gifts, but retention of penalties for sale. Home production is important; it removes the impediment that simple depenalization of possession is an empty stipulation if legitimate sources of supply are unavailable, and the continual illegality of all production generates large black markets. Large home production provides users' access and permits society

not to incur the risk of commercialization. Removal of criminal penalties for marijuana users would have virtually no effect on their prevalence and intensity of the drug or even harder ones, given the lack of a gateway effect. In addition, social gain would be obtained because harms associated with criminal behavior and public order would be reduced.

Some Additional Observations

MacCoun and Reuter are sanguine that the American public would support small policy changes for cannabis, but admit there are significant political obstacles to approval of harm reduction policies that trade-off increases in drug use for decreases in drug related social costs. Two views dominate policy making and politics: (i) the perspective that asserts society would be worse off with drug usage despite any evidence to the contrary; and (ii) the fixation of decision makers on prevalence reduction, which assumes a decline in the number of users will result in a better society. These two forces, however, provide only a partial understanding of the resistance to American drug policy reform. An additional and perhaps a complementary explanation of the federal policy position -not directly addressed by MacCoun and Reuter -is that income and political influence is being maximized. American drug policy is a highly centralized venture, controlled and directed at the federal (central) level of government. National uniformity and priorities are exerted over state and local government through various financial incentives especially in the form of categorical grants for law enforcement and prevention and treatment activities. These efforts have created a political clientele at all levels of government, seeking funding and programmatic and bureaucratic rewards and advantages for conducting drug policy -referred to as rent seeking by economists. A consequence is that advocacy groups, prevention and treatment providers, and government officials (law enforcement, substance abuse agencies, and school systems) have developed vested interests in the continuation of prevailing policy, maintaining adherence to policy requirements, and the pursuit of the ostensible policy goals and its measures of performance. Such a situation inhibits the voicing of opposition to current policy. These conditions may well explain the rigidity, inflexibility, and intransigence that have characterized prohibition policy over its long time frame despite its limited curtailment of illicit drug activities.

MacCoun and Reuter argue that prevention and treatment, which are incorporated in U.S. prohibition drug policy, will be inadequate as a mechanism to overcome the American drug problem. Correctly they declare that moderation of enforcement programs -i.e., changes in drug laws that can influence behavior- are the major mechanisms that can mitigate drug ills. Nevertheless, they may miscast the role of treatment. MacCoun and Reuter assert that treatment, as a demand side instrument, is more cost effective than other prohibition programs and more funding would facilitate a decrease in drug problems in America. Treatment is seen as having limits in its effectiveness due to client relapses and failure of completion, and the inability of treatment to absorb

funds that would be released from enforcement. Their "certain" conclusion rest on treatment literature that is itself limited in the number of studies (inclusive of cost-benefit analyses) and restricted to only short-term outcomes.[7] Moreover, the authors' perspective seems murky and confusing in the concepts of treatment. They consider methadone maintenance as an immediately feasible programmatic change because it would be an effective instrument for harm reduction; but many researchers and policy makers view methadone maintenance as treatment, an instrument that could be included in any drug regime. In this respect, what is not given sufficient attention is the role of treatment as a complement of any regime that has the objective of harm reduction, especially if the abandonment of prohibition may not substantially ameliorate externalities having to do with non-users and social functioning of users, as occurs with alcohol.

The authors' presentation has some limitations. A minor weakness of their book is that MacCoun and Reuter provide only a rather cryptic and brief orientation for their policy evaluation in chapter one (their apparent view of cost-benefit analysis). In this respect, they fail to describe the comprehensiveness of their decision-making framework, whereby some major concepts utilized in the analysis are mentioned only cursorily in the framework. A more detailed and clearly defined analytical design could more easily guide readers through the complex analysis that is undertaken. Likewise, the presentation is sometimes complicated, dense, and murky, seemingly directed at academics and policy observers, but it is not conducive to facile reading by the general public whose preferences and values would ultimately shape the policy debate and determines the acceptability of policies. A major implication of these limitations is that one must engage in a close reading of the data assessment, and arguments, and scrutinize the authors' interpretations.

This criticism should not take away from MacCoun and Reuter's considerable accomplishment. They have compiled an enormous amount of evidence, provided a very cogent analytical framework, and applied substantial analytical skills that yield extensive insight into the need for reform of American drug policy. They make explicit the weakness of available studies and data, and the difficulties in measurement of harmfulness dimensions. Although these limitations contribute to uncertainty in estimating the magnitude of changes in the harms, prevalence, and intensity of drug use, MacCoun and Reuter posit well-reasoned interpretations of available data and offer very measured conclusions about the harms to which drug use and drug policy jointly contribute. Walters of the ONDCP states that harm reduction is overstated and not warranted,[1] but a different conclusion can be drawn from the reading of the MacCoun and Reuter book.

Limitations aside, given the weight of the evidence and theory presented, the MacCoun and Reuter analysis provides an opportunity to break open a much needed national dialogue on how the American public and the federal and state governments should deal with illicit drug use. The dialogue requires that the American populace be informed about the available compatible and conflicting evidence of the social costs and gains (i.e., at minimum the harm reduction) of alternative policies of prohibition, depenalization, and legalization so that their views, which are based on their values, can be conveyed to public decision makers. How this can be done is not readily apparent. But this is also one side of the equation. A central question is how can the dialogue be initiated when drug policy implementation appears to be dominated by individuals of strong moral persuasion and bureaucratic rent seekers that present a formidable barrier to open and candid discussion among public officials. In a democracy, supporters of prohibition should not have reservations about challenges to position, for if their policy orientation is correct, i.e., it enhances social welfare more than alternative policy directions, then their policy should withstand scrutiny. For a serious discussion to ensue, elected officials and those seeking elective office must have the courage to publicly challenge the *status quo*, for as Diogenes points out, only through debate can society realize fruitful outcomes. Some may argue that, given the "incompleteness" of existing evidence on harm due to illegal drugs, that more studies should be undertaken before debate be initiated and changes can occur. However, data generation and additional studies require engagement over a period of time, and conclusiveness from future research may still prove to be elusive. In the meantime, American society would still incur opportunity costs of harm that could have been avoided. If debate proceeds in the near future and subsequent action is taken, a net gain in social welfare could be realized for American society.

References

1. Walters, J. P. Don't Legalize Drugs. *Wall Street Journal*, July **23**, 2002.
2. MacCoun R. J, Reuter P. *Drug War Heresies: Learning From Other Vices, Times, and Places.* Cambridge: Cambridge University Press, 2001.
3. Grossman, M. Chaloupka, F.J. Shim K. Illegal drug use and public policy *Health Aff* 2002; **22**: 134-145.
4. Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *National Household Survey on Drug Abuse* Various years 1990-2001.
5. Morral, A. R, McCaffery, D. F, Paddock, S.M. Reassessing the marijuana gateway effect. *Addiction* 2002; **12**: 1493-1504.
6. Solano, P L, Brams, M. R. 1996. Budgeting. In *Management Policies in Local Government Finance*, Aronson, J. R, Schwartz, E. International City/County Management Association, 125-168.
7. Cartwright, W S., Cost-benefit analysis of drug treatment services: a review of the literature. *J Ment Health Policy Econ* 2000; **3**:11-26.