TESTIMONY

RAND

What We Do and Don't Know About the Likely Effects of Decriminalization and Legalization: A Brief Summary

Robert J. MacCoun, Peter Reuter

CT-161

July 1999

Testimony presented to the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the House Committee on Government Reform, July 13, 1999

Drug Policy Research Center

The RAND testimony series contains the statements of RAND staff members as prepared for delivery

Published 1999 by RAND
1700 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138
1333 H St., N.W., Washington, D.C. 20005-4707
RAND URL: http://www.rand.org/
To order RAND documents or to obtain additional information, contact Distribution Services: Telephone: (310) 451-7002; Fax: (310) 451-6915; Internet: order@rand.org

Testimony Before the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the House Committee on Government Reform

Tuesday, July 13, 1999

Robert J. MacCoun*

Peter Reuter**

Thank you for the opportunity to testify. I ask that my written statement be entered into the record.

Professor Reuter and I have spent almost a decade analyzing the likely consequences of alternative legal regimes for the currently illicit drugs. We have examined (a) data on policies and outcomes in Western Europe and Australia; (b) historical American experiences with legal cocaine and heroin, and with the prohibition of alcohol; and (c) experiences controlling other vices, including gambling, prostitution, tobacco, and alcohol. Our research will be published in a book next year by Cambridge University Press [1].

Decriminalization, legalization, and harm reduction are three distinct concepts. Unfortunately, these terms are often used interchangeably in the policy debate. From a policy standpoint it is unhelpful to blur these distinctions because these three strategies differ in their likely benefits and their likely risks. The empirical base for projecting consequences of a change in law is strongest for marijuana decriminalization, weaker for marijuana legalization, and quite weak for the decriminalization or legalization of cocaine or heroin. There is a fairly sizeable body of evidence regarding needle exchange, a form of harm reduction, but we will not discuss that topic due to time limitations.

Marijuana Decriminalization in the United States and Australia

In brief, decriminalization refers to the elimination or substantial reduction of penalties for possession of modest quantities of the drug in question. Depending on the jurisdiction, possession may or may not be punished by a civil fine; multiple offenses or serious offenses may trigger criminal prosecution. But it is important to emphasize that in a decriminalization regime, the sale and manufacture of the drug remains illegal and is criminally prosecuted. Marijuana has been decriminalized in 11 U.S. states [2], in some regions of Australia, and in the Netherlands,

Italy, and Spain. Italy and Spain have also decriminalized possession of heroin and cocaine; the Netherlands and Australia have not.

Several lines of evidence—on the deterrent effects of marijuana laws [3], and on decriminalization experiences in the United States, the Netherlands, and Australia—suggest that eliminating (or significantly reducing) criminal penalties for first-time possession of small quantities of marijuana has either no effect or a very small effect on the prevalence of marijuana use.

There are several statistical analyses of survey data on marijuana use in decriminalization and non-decriminalization states [4]. Survey analyses in decriminalizing states have found either no change in marijuana use, or an increase that was slight and temporary. Decriminalization was not associated with any detectable changes in adolescent attitudes toward marijuana. Most cross-state comparisons have found no difference in adolescent marijuana use in decriminalization vs. non-decriminalization states [5].

These actual changes in marijuana laws and their enforcement were fairly subtle; arrest rates for marijuana possession are the same in those U.S. states that decriminalized and those that did not, though in the decriminalization states the penalties are presumably less severe. When MacCoun asks his undergraduate students at Berkeley whether they are in favor of California removing penalties for the possession of small amounts of marijuana about two thirds say yes and the rest are opposed. Almost none know that it already occurred 25 years ago.

But the conclusion that cannabis decriminalization in the U.S. had little or no effect is bolstered by evidence from a similar policy change in two regions of Australia. Studies of decriminalization in South Australia [6] and in the Australian Capital Territory [7] report no changes in marijuana use associated with this legal change, and no differences in marijuana use between these regions and non-decriminalization regions of Australia.

Dutch Cannabis Policy

Our statements about marijuana decriminalization should not be generalized to marijuana legalization. Legalization goes well beyond the decriminalization of user possession to allow some form of legally regulated sales or distribution. We know of only one contemporary example that comes close to marijuana legalization, and that's the Dutch model of de facto legalization.

Dutch cannabis policy and its effects are routinely mischaracterized by both sides in the U.S. drug debate. Much of the confusion hinges on a failure to distinguish between two very different aspects of Dutch policy—decriminalization of personal possession vs. the non-prosecution of commercial sales and promotion.

In compliance with international treaty obligations, Dutch law states unequivocally that cannabis is illegal. Yet in 1976 the Dutch adopted a formal written policy of non-enforcement for violations involving possession or sale of up to 30 grams (5 grams since 1995) of cannabis—a sizable quantity, since one gram is probably sufficient for three joints. Not only are prosecutors forbidden to act against users but a formal written policy regulates the technically illicit sale of those small amounts in licensed coffee shops and nightclubs. The Dutch implemented this system of quasi-legal commercial availability to avoid excessive punishment of casual users and to weaken the link between soft and hard drug markets; the coffee shops allow marijuana users to avoid street dealers, who may also traffic in other drugs.

In a 1997 article in Science magazine [8], we argued that Dutch policy evolved from a decriminalization regime (mid-1970s to mid-1980s) to a commercialization regime (mid-1980s to 1995), and that these two phases appear to have had quite different consequences. The initial decriminalization phase had no detectable impact on levels of cannabis use, consistent with evidence from the U.S. and Australia. Survey data showed literally no increase in youth or adult use from 1976 to about 1984, and Dutch rates were well below those in the U.S. Marijuana was not very accessible, being sold or traded in just a few obscurely placed outlets.

But between 1980 and 1988, the number of coffee shops selling cannabis in Amsterdam increased tenfold; the shops spread to more prominent and accessible locations in the central city and began to promote the drug more openly. Coffee shops now account for perhaps a third of all cannabis purchases among minors, and supply most of the adult market. As commercial access and promotion increased, the Netherlands saw rapid growth in the number of cannabis users, an increase not mirrored in other nations. Whereas 15 percent of 18-20 year olds reported having used marijuana in 1984, the figure had more than doubled to 33 percent in 1992. That increase might have been coincidental—the data permit only weak inferences—but it is consistent with other evidence (from alcohol, tobacco, and legal gambling markets) that the commercial promotion of vice increases consumption. Since 1992 the Dutch figure has continued to rise but that growth is paralleled in the United States and most other rich Western nations despite very different drug policies—apparently another of those inexplicable shifts in global youth culture.

The rise in marijuana use has not led to a worsening of the Dutch heroin problem. Though the Netherlands had an epidemic of heroin use in the early 1970s, there has been almost no recruitment since 1976. Heroin and cocaine use are not particularly high by European standards and a smaller fraction of marijuana users go on to use cocaine or heroin in Holland than in the United States. There is no evidence that the Dutch cannabis policy has resulted in any increase in property crime or violence, and claims that it has are simply not plausible.

The Dutch have made a policy choice; less black market activity at the retail level and less police intrusiveness in ordinary life in exchange for higher levels of marijuana use. Whether that is the right choice depends on one's views about the dangers of marijuana use. At any rate, it seems likely that the Dutch might have achieved their goals with a less extreme policy; e.g., South Australia allows home cultivation of small quantities of marijuana, but not commercial sales or promotion.

Alternative Policies for Heroin and Cocaine

Much less is known about the consequences of alternative drug laws for heroin or cocaine. There is no instance of legal commercial access to cocaine or heroin in a modern industrialized nation. Spain and Italy have decriminalized these drugs but do not produce suitable statistics for analysis [9]. Few British doctors exercise their privilege of prescribing heroin for addict maintenance; contrary to widespread claims, this program was already greatly curtailed before the heroin epidemic of the 1970s [10]. Switzerland reports significantly improved health and reduced criminality among participants of their heroin prescription program, though more rigorous testing is still needed [11].

Thus we can offer only a theoretical analysis that highlights the tradeoffs involved in legalizing heroin or cocaine.

Critics of current U.S. policies argue that many if not most of the harms associated with drugs are actually caused by our drug prohibition, or by the way it is enforced [12]. Defenders of prohibition counter that legalization would significantly increase drug use and drug addiction in American society. Both arguments are at least partially correct.

First, it is almost certainly true that many of the harms currently associated with heroin and cocaine are due to the fact that those drugs are illegal [13]. Prohibition deserves much of the blame for the crime and violence around illicit drug markets, for a large fraction of all drug overdoses and drug-related illnesses, and for corruption and violations of civil liberties.

Second, other harms are clearly due to the drugs themselves and the influence they have on the user's health and behavior. Legalization would eliminate the harms caused by prohibition, but it would not eliminate the harms caused by drug use.

And third, as we argued with respect to Dutch coffee shops, we believe that legalization would significantly increase the number of drug users and the quantity of drugs consumed. We limit this conclusion to legalization in the form of commercial availability; the available evidence does not suggest that medical prescription, decriminalization, or harm reduction programs increase drug use to any appreciable degree.

So on the one hand, legalization would probably reduce the adverse consequences (to the user and to others) associated on average with each drug taking episode. And on the other hand, legalization would increase the number of incidents of drug use, by increasing the number of users and possibly by increasing the amounts they would use [14].

Thus, the choice between drug control models involves a central tradeoff. If average harm went down under legalization without an increase in use, we'd clearly be better off than we are today.

But if legalization produced a significantly large increase in total use, total drug harm would go up, even if each incident of use became somewhat safer. Because ***Total Drug Harm*** = ***Average Harm Per Use*** × ***Total Use***, total harm can rise even if average harm goes down [15].

At present there is no firm basis for predicting the relative magnitude of these effects. Thus, legalization is a very risky strategy for reducing drug-related harm.

But it is unhelpful to dichotomize the debate into two polar extremes: our current heavily punitive approach vs. an alcohol-type free adult market in drugs. In fact, there are a whole range of policy alternatives in between those extremes. For example, harm reduction interventions like needle exchange aim to reduce the harmful consequences of drug use. Contrary to recent claims, harm reduction does not imply legalization, and in fact many harm reduction advocates explicitly reject legalization. What is often overlooked is that in Europe, harm reduction is being implemented entirely within prohibition regimes. The drawbacks of legalization do not imply that our current version of prohibition is the optimal drug strategy; it may well be possible to implement prohibition in less harmful ways [16].

ENDNOTES

* Professor of Public Policy (Goldman School) and Law (Boalt Hall) at University of California at Berkeley, and Consultant to RAND's Drug Policy Research Center.

** Professor of Public Affairs and Criminology at the University of Maryland, and Consultant to RAND's Drug Policy Research Center.

[1] MacCoun, R., & Reuter, P. (to be published in 2000). *Alternatives to the drug war: Learning from other times, places, and vices* (working title). Cambridge University Press. This work was funded by a grant from the Alfred P. Sloan Foundation to RAND's Drug Policy Research Center. The views expressed here are our own and are not intended to represent the views of RAND or the Sloan Foundation.

[2] Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, and Oregon.

[3] Reviewed in MacCoun, R. J. (1993), "Drugs and the law: A psychological analysis of drug prohibition," *Psychological Bulletin, 113,* 497-512.

[4] See Johnston, L. D., O'Malley, P. M., & Bachman, J. G. (1981), *Marijuana decriminalization: The impact on youth, 1975-1980* (Ann Arbor, MI: Institute for Social Research); Maloff, D. (1981), "A review of the effects of the decriminalization of marijuana," *Contemporary Drug Problems, Fall,* 307-322; National Governor's Conference (1977), *Marijuana: A study of state policies and penalties* (Washington, DC: U.S. Government Printing Office); Single, E. (1989), "The impact of marijuana decriminalization: An update," *Journal of Public Health Policy, 10,* 456-466; Dinardo, J., & Lemieux, T. (1992), "Alcohol, marijuana, and American youth: The unintended consequences of government regulation" (NBER Working Paper 4212); Thies, C., & Register, C. (1993), "Decriminalization of marijuana and the demand for alcohol, marijuana, and cocaine," *Social Science J., 30,* 385-399.

[5] One exception is an unpublished analysis in 1995 reporting somewhat higher levels of use in decriminalization states. This study differs in several respects from previous analyses (a different survey instrument, a different time period, inclusion of adults in the sample, and different statistical techniques), any one of which might account for the discrepancy with the published literature. See Saffer, H., & Chaloupka, F. (1995), "The demand for illicit drugs," NBER Working Paper No. 5238. Another study found a small increase in mentions of marijuana in emergency room records in decriminalization states; this may indicate increased consumption by current users, or increased willingness to acknowledge marijuana use. That same study found a decrease in emergency room incidents involving hard drugs following decriminalization. See Model, K. E. (1993), "The effect of marijuana decriminalization on hospital emergency room drug episodes: 1975-1978," *Journal of the American Statistical Association, 88,* 737-47.

[6] Christie, P. (1991), *The effects of cannabis legislation in South Australia on levels of cannabis use* (Adelaide: Drug and Alcohol Services Council); Donnelly, N., Hall, W. & Christie, P. (1995), "The effects of partial decriminalization on cannabis use in South Australia 1985–1993," *Australian Journal of Public Health, 19,* 281–287.

[7] McGeorge, J., & Aitken, C. K. (1997), "Effects of cannabis decriminalization in the Australian Capital Territory on university students' patterns of use," *Journal of Drug Issues, 27,* 785-793.

[8] MacCoun, R., & Reuter, P. (1997), "Interpreting Dutch cannabis policy: Reasoning by analogy in the legalization debate," *Science, 278,* 47-52. See that article for a full reporting and documentation of the statistics described here.

[9] MacCoun, R. J., Model, K., Phillips-Shockley, H., & Reuter, P. (1995), "Comparing drug policies in North America and Western Europe," in G. Estievenart (ed.), *Policies and strategies to combat drugs in Europe* (pp. 197-220; Dordrecht, The Netherlands: Martinus Nijhoff).

[10] Strang, J. & Gossop, M. (eds.) (1994), *Heroin addiction and drug policy: The British system* (Oxford: Oxford University Press).

[11] Uchtenhagen, A., Gutzwiller, F., & Dobler-Mikola, A. (1997), *Programme for a medical prescription of narcotics: Final Report of the Research Representatives* (Summary; University of Zurich).

[12] See MacCoun, R. J., Kahan, J., Gillespie, J., & Rhee, J. (1993), "A content analysis of the drug legalization debate," *Journal of Drug Issues*, 23, 615-629.

[13] A detailed taxonomy of drug-related harms and their likely sources appears in MacCoun, R., Reuter, P., & Schelling, T. (1996), "Assessing alternative drug control regimes, "*Journal of Policy Analysis and Management*, 15, 1-23.

[14] Legalization would probably increase the quantity consumed by heavy users by reducing drug prices; this effect would be offset somewhat by the fact that those new users under legalization who would not have used under prohibition are likely to have greater self control.

[15] See MacCoun, R. (1998), "Toward a psychology of harm reduction," *American Psychologist, 53,* 1199-1208.

[16] See Reuter, P. (1997), "Why can't we make prohibition work better? Some consequences of ignoring the unattractive," *Proceedings of the American Philosophical Society, 141,* 262-275.