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LETTER

Regulation of Illegal Drugs – No Longer "What"?, but "How"?

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The debate about the prohibition of drugs has taken a fundamental turn with the publication of 'Regulation: The Responsible Control of Drugs' by the Global Commission on Drug Policy. This edition of the journal publishes papers addressing how to regulate drugs, which informed the Global Commission report. These papers shift the discussion from *what* must be done, i.e. end prohibition, to *how* regulation can be implemented. These papers shift the discourse from a 'drugs are the problem' paradigm to 'management of drugs is the problem'. Implications of regulation means:

- accepting that people should have controlled access, within a public health framework, to a range of psychoactive substances for non-medical use purposes
- highlighting of the incoherence of substance use management policy and regulation between legal and illegal substances
- blurring the dichotomy concept of medical and non-medical use
- supporting rigorous monitoring, evaluation, and research

Consideration of implementing public interest–based regulated drug markets is gaining traction. This will not be without challenges, including pressure from profit-driven interests to weaken the public health orientation. Governments can be capable and competent when provided with technical support to regulate risky products, so should move from rigid adherence to the failed drug prohibition policy to regulation based on public health and human rights principles. This will help refocus on achieving the fundamental aim of the UN drug treaties – promotion of the health and welfare of humankind.

Keywords: regulation; prohibition; drug policy; harm reduction; legalization

The debate about the international prohibition of drugs, which restricts use for medical or scientific purposes only, has taken a fundamental turn with the publication of 'Regulation: The Responsible Control of Drugs' (Global Commission on Drug Policy 2018). Most of the debate to date, with exceptions (e.g. Rolles 2009; Rolles & Murkin 2013; Haden, Emerson & Tupper 2016; Haden & Emerson 2014; Haden 2008), has been whether or not prohibition should be maintained, rather than how alternatives to prohibition should be implemented. Cannabis legalization in Uruguay, Canada and a number of US states has broached the implementation discussion, and now the Global Commission has provided clear guidance on how to end prohibition of all drugs through regulation.

This edition of the journal publishes papers addressing how to regulate drugs, which informed the Global Commission report.

The paper by Ben Lakhdar describes regulation tools, such as state monopoly wholesale and retail distribution based on the experience of government-owned alcohol monopolies, which he points out are considered more successful than private institutions in ensuring public health through such measures as price controls, advertising bans, health warnings, child-resistant packaging, licensing and public interest–oriented governance boards.

The paper by Schneider addresses how regulating drug markets may help better control organized crime. He assesses the limitations of regulation on organized crime and mentions challenges such as dealing with popular support for drug trafficking organizations due to their links to a labor-intensive illegal economy, developing alternative sources of income and support for economically neglected regions and reforming and re-directing law enforcement to more effectively deal with drug trafficking organizations.

Jelsma and Walsh point out that ignoring or denying that regulation of cannabis and coca contravene UN drug control treaties obligations is 'untenable and risks undermining basic principles of international law'. Their view is that revising or amending the treaties to accommodate regulation is not feasible and that the most legitimate approach is 'elaborating a new agreement among like-minded countries on the basis of the *inter se* procedure for treaty modification, as provided by Article 41 of the Vienna Convention on the Law of Treaties'.

Snapp, Tinasti, and Herrara describe the challenges of regulation in developing economies with fragile or corruption-sensitive institutions and the importance of a social justice perspective. They highlight the risks of corruption and diversion, point out best practice examples to mitigate these risks and for enhancing social justice, remind us that prohibition has not been successfully implemented in fragile or well developed states, and that all 'Governments know how to regulate risky products'.

These papers continue to shift the discussion from *what* must be done, i.e. end prohibition, to *how* regulation as an alternative to prohibition can be implemented. By describing details, challenges, potential unintended effects, and successes of regulation these papers shift the discourse from a 'drugs are the problem' paradigm to the paradigm that 'management of drugs is the problem'. In reality, all drugs are simply plants, plant extracts, or synthetic substances, which do not possess an inherent malevolent nature, i.e. they are not evil, as intimated by the UN Single Convention (Anonymous, 1972).

A common observation of these papers is that there is much to be learned from the management, and mismanagement, of alcohol, tobacco, pharmaceuticals, gambling, and even coffee that could be applied to regulating currently illegal drugs. The flip side is that the lessons about the mismanagement of tobacco, alcohol, and pharmaceuticals could be applied to improve regulation of these legal substances as well.

While these papers and the Global Commission report provide helpful ideas about how to implement regulation, the implications are also important to consider.

In particular, regulation means accepting that people should have controlled access, within a public health framework, to a range of psychoactive substances such as opioids, stimulants, and psychedelics for non-medical use purposes. This may sound radical given the strict limitations of the UN Treaties to use drugs only for medical and scientific purposes, but is in fact an outcome of the legalization of cannabis.

A second implication is the highlighting of the incoherence of substance use management policy and regulation between legal and illegal substances, and the importance of managing all substances from a public health and human rights perspective. Attention to policy coherence across substances leads policy makers to learn from the profit-driven commercialization and promotion mismanagement of tobacco and alcohol, which has been to the detriment of hundreds of millions of people (Global Burden of Disease, 2018). Profit-driven commercialization and promotion mismanagement of pharmaceutical opioids is also part the cause of the current opioid overdose epidemic in North America (Kolodny et al. 2015; Global Commission on Drug Policy 2017). These lessons are important to inform plans to regulate illegal drugs.

A third implication of regulating drugs will be blurring the dichotomy concept of medical and non-medical use. Given that people use substances for a wide range of purposes (Muller & Schumann 2011), recognizing this reality will raise critical questions: Should there be other gatekeepers to drugs beyond doctors and pharmacists, and if so, who should they be? What should be their training? How should they be regulated? Should there be public insurance coverage for a broader range of substances? What are the implications for the current medical/pharmacist prescription control of drugs system? These are very challenging issues to be addressed, but recognizing this false dichotomy will lead to more reality-based policies.

Fourthly, given that re-regulation of currently prohibited substances has not been done until recently, in a limited way with cannabis, and that such a shift in policy will be done based on expert opinion and other rationale rather than direct evidence, it will be critical that governments commit to supporting rigorous monitoring, evaluation, and research and anticipate being flexible to change course should unintended negative consequences emerge.

If successful, regulation may demonstrate the following:

- Out-competing, rather than waging war, on the illegal market is a more productive, efficient, and humane approach.
- One-size-fits-all approaches are more harmful than helpful.
- Pragmatism rather than ideology is a more useful guiding principle.
- Most people are capable of safe self-management of their use of drugs, and for the minority who develop use problems, help should be readily available.
- A socio-medical model is more productive than a strict medical model.
- Regulation is harm reduction on a grand scale.
- Regulation can free up police and other criminal justice system resources.
- People, not drugs need to be the focus.
- Setting clear goals and objectives and measuring progress is important.
- Reparations for people harmed by the "war on drugs" are warranted.

In conclusion, consideration of how to replace profit-driven illegal and commercial drug markets with public interest–based regulated markets, known as a public health approach (Emerson & Haden 2017) is gaining traction. However, this shift will not be without significant challenges, including continuous pressure from profit-driven interests to weaken the public health orientation. Experience with regulating cannabis and coca can generate knowledge that can be applied to the more complicated efforts of regulating more harmful substances, such as heroin, synthetic opioids, and amphetamines. Because governments can be capable and competent when provided with technical support to regulate risky products, it behooves them to move from rigid adherence to the failed drug prohibition policy to regulation based on public health and human rights principles. This will refocus on achieving the fundamental aim of the UN drug treaties – promotion of the health and welfare of humankind.

> 'This approach is neither one of total abdication nor an indication of abandonment but rather a vision of the role of the State and criminal law as developing and promoting but not controlling human action, and as stipulating only necessary prohibitions relating to the fundamental principle of respect for life, other persons, and harmonious community, and as supporting and assisting others, not judging and condemning difference.'
>
> Senator Pierre Claude Nolin (Nolin 2002: 617)

Competing Interests

The author is an employee of the British Columbia Ministry of Health. The opinions in this article are the author's and not those of the BC Ministry of Health.

References

Emerson, B and **Haden, M.** 2017. Public Health and the Harm Reduction Approach to Illegal Psychoactive Substances. In: Quah, WC and Cockerham (eds.), *International Encyclopedia of Public Health*, 6: 169–183, 2nd edition. Oxford: Academic Press. DOI: https://doi.org/10.1016/B978-0-12-803678-5.00510-5

Global Burden of Disease. 2018. *Global Burden of Disease*. Available at http://www.healthdata.org/gbd [Last accessed 7 November 2018].

Global Commission on Drug Policy. 2017. *The Opioid Crisis in North Americ*a. Global Commission on Drug Policy.

Global Commission on Drug Policy. 2018. *Regulation: The Responsible Control of Drugs*. Geneva, Switzerland: Global Commission on Drug Policy.

Haden, M. 2008. Controlling illegal stimulants: A regulated market model. *Harm Reduction Journal*, 5(1). DOI: https://doi.org/10.1186/1477-7517-5-1

Haden, M and **Emerson, B.** 2014. A vision for cannabis regulation: A public health approach based on lessons learned from the regulation of alcohol and tobacco. *Open Medicine*, 8(2): e73–e80.

Haden, M, Emerson, B and **Tupper, K.** 2016. A public-health-based vision for the management and regulation of psychedelics. *Journal of Psychoactive Drugs*, 48(4): 243–252. DOI: https://doi.org/10.1080/02791072.2016.1202459

Kolodny, A, Courtwright, DT, Hwang, CS, Kreiner, P, Eadie, JL, Clark, TW and **Alexander, GC.** 2015. The prescription opioid and heroin crisis: A public health approach to an epidemic of addiction. *Annual Review of Public Health*, 36(1): 559–574. DOI: https://doi.org/10.1146/annurev-publhealth-031914-122957

Muller, C and **Schumann, G.** 2011. Drugs as instruments: A new framework for non-addictive psychoactive drug use. *Behavioural and Brain Science*, 34: 293–347. DOI: https://doi.org/10.1017/S0140525X11000057

Nolin, PC. 2002. *Cannabis: Our Position for a Canadian Public Policy – Report of the Senate Special Committee on Illegal Drugs*. Ottawa: Senate of Canada.

Rolles, S. 2009. *After the War on Drugs: Blueprint for Regulation*. United Kingdom: Transform Drug Policy Foundation.

Rolles, S and **Murkin, G.** 2013. *How to Regulate Cannabis: A Practical Guide*. United Kingdom: Transform Drug Policy Foundation.

United Nations. 1972. *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961*. New York: United Nations.

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