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**Title**

Prohibition, Privilege and the Drug Apartheid: The failure of drug policy reform to address the underlying fallacies of drug prohibition.

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**Abstract**

It appears to be a time of turbulence within the global drug policy landscape. The historically dominant model of drug prohibition endures, yet a number of alternative models of legalisation, decriminalisation and regulation are emerging across the world. Whilst critics have asserted that prohibition and the ensuing 'war on drugs' lack both an evidence base and legitimacy, reformers are embracing these alternatives as indicators of progressive change. This paper, however, argues that such reforms adhere to the same arbitrary notions, moral dogma and fallacious evidence base as their predecessor. As such they represent the 'metamorphosis of prohibition', whereby the structure of drug policy changes, yet the underpinning principles remain unchanged. Consequentially, these reforms should not be considered 'progressive' as they risk further consolidating the underlying inconsistencies and contradictions that have formed the basis of drug prohibition.

**Key words**

Drug policy, reform, prohibition, decriminalisation, legalisation, evidence.

## **Introduction**

There is a transformative change in the global drugs policy landscape with significant adjustments to the historically dominant model of prohibition emerging, leading some commentators to suggest a 'quiet revolution' is taking place (Rosmarin and Eastwood, 2011). Policies of drug decriminalisation, legalisation and regulation are materialising in a number of jurisdictions around the world, a phenomena welcomed by critics of prohibition who have long exposed its lack of evidence base (Boland, 2008), efficacy (GCDP, 2014) and legitimacy (Pryce, 2012). Whilst a number of these reforms have been posited as 'progressive' (Transform, 2014), this paper argues that they represent the 'metamorphosis of prohibition' whereby the face of drug policy changes yet the fundamental principles remain unaffected. Inadvertently, this reform 'revolution', camouflages the underlying contradictions that have lain at the heart of global drug policy since they were enshrined in the United Nations (UN) Single Convention on Narcotic Drugs in 1961.

This paper, therefore, seeks to expose how the fundamental inconsistencies of drug prohibition continue to be accommodated in policy reform. It will do so by exploring two interlinking issues; firstly it will identify the untenable flawed assumptions underpinning drug law enforcement and prohibition. It will contend that certain 'fallacies' used to legitimise drug prohibition lack an evidence base, and instead draw upon myth and a reductionist discourse that obscures nuanced drug policy debate. These fallacies arbitrarily frame particular substances as 'drugs' and skew the risks of 'drug use' by focussing almost

exclusively on specific types of use and users, and concentrating attention upon associated negative outcomes. This process allows certain substances to attain an unwarranted position of privilege whilst others are prohibited, creating a 'drug apartheid' – a deeply divisive system of segregation and punishment determined by the substance used. Secondly, the paper will reflect on how the changing global policy landscape and ad hoc reform strategies are essentially rooted within a prohibitionist mind-set resulting in the 'metamorphosis of prohibition' – whereby a raft of reforms give the impression of progressive drug policy evolution, yet actually mask a continuation of the arbitrary and contradictory processes that underpin contemporary drug policy. Consequentially the paper concludes that given the paucity of rationale, evidence and lack of scientific analysis upholding both prohibition and the current wave of alternative strategies, that the repeal of drug laws rather than superficial policy reform is necessary.

The paper will utilise the United Kingdom as a lens through which to scrutinise drug prohibition whilst drawing on comparative reform policies from across the globe to illustrate how fallacy continues to inform, motivate and legitimise drug policy change. This examination of drug policy, critiquing the fundamental evidence base upholding both drug prohibition and drug reform has international significance.

### **A changing landscape?**

The 1961 UN Single Convention on Narcotic Drugs listed those 'narcotic' substances that required strict legal controls. In doing so it represented a significant shift away from drug regulation towards a more prohibitive approach (Bewley-Taylor and Jelsma, 2012),

providing the legislative bedrock for contemporary global drug control<sup>i</sup>. For almost five decades relatively little changed, however, recent years have witnessed a wave of alternative drug policies, including models of decriminalisation (e.g. Portugal, Spain, Jamaica), legalisation (e.g. Uruguay, US States) and regulation (e.g. New Zealand). Despite these adjustments, no single jurisdiction has completely decoupled itself from the prohibition model<sup>ii</sup>. Whilst these reforms indicate a growing turbulence and diversification within the drug prohibition landscape, it is questionable whether this amounts to a 'revolution'. Some reform advocates have argued that incremental drug policy change represents positive progress (Rolles and Kushlick, 2014), however, such strategies risk strengthening rather than challenging the fundamental flawed principles on which prohibition is built. We argue these 'reforms' fail to address the drug apartheid and instead perpetuate the arbitrary distinctions concerning 'drugs' that privilege some substances as legal while prohibiting others.

The 1961 Convention asserts that 'narcotic drugs' have no place in society and must be restricted to medical and scientific purposes, but the Convention, offers no scientific definition to determine a 'narcotic' drug<sup>iii</sup>. Narcotics or controlled drugs as they are referred to, are simply those substances listed in the UN document, a list that reflects social and cultural practices of the mid-20<sup>th</sup> century, rather than any pharmacological or scientific evidence (Bancroft, 2009), and despite new knowledge this arbitrary categorisation of substances prevails. Under the UK Misuse of Drugs Act 1971, strict rules govern storage, cultivation, possession and supply of these controlled substances, and any breach attracts severe penalties. The UK Drug Strategy (Home Office, 2010: 9) emphasises the danger posed

by narcotics: 'people should not start taking drugs and those who do should stop', however, the government warning against 'drugs', excludes state approved drugs such as caffeine, alcohol, tobacco and sugars. Further, the Misuse Of Drugs Act 1971 with its ABC classification system sanctions severe punishments for anyone possessing or supplying 'drugs', vehemently enforced by a concerted national and international collaboration involving police, armed forces, border control officials, security and secret services. In addition, rapidly expanding civil enforcement measures include 'drug' testing by employers, schools, colleges and welfare agencies (Buchanan, 2010), while government bodies, non-government organisations and private companies exclude known 'drug' users from education, employment, travel, housing, medical provision, financial credit and/or insurance.

The rationale for this relentless punitive approach led by the UN, may appear to have some validity given the perceived threat posed by 'drugs'. The association between 'drug' use and crime in the UK is well documented and commonly asserted (Boreham et al., 2006; Budd et al., 2005), and the detrimental impact of drug use upon individuals, families and communities is frequently cited in UK governmental documentation (Home Office, 2008, 2010). Whilst this apparent body of evidence has been contested as methodologically flawed (Stevens, 2007) and limited in scope (Moore, 2008), it nonetheless presents a persistent and forceful rhetoric to bolster prohibition.

### **The social construction of 'drugs'.**

The omission of legal drugs from drug policy debate, portrayed as ‘non-drugs’, has created a bifurcation, reinforced by the social construction of narcotics or dangerous ‘drugs’ (Buchanan, 2006). Dangerous drugs are perceived as those substances listed under the Misuse of Drugs Act 1971, a continually expanding list, with Mephedrone, BZP and Khat more recent additions. Once included in the Act substances become ‘controlled’ dangerous drugs, while legally promoted counterparts fly under the ‘drug’ radar. Scientists, academics and experts in the field have long questioned the rationale of this drug bifurcation, highlighting the contradictions, inconsistencies and hypocrisy (GCDP, 2014) and the misleading nature of the Misuse of Drugs Act 1971 as a guide to potential risk (Rolles and Measham, 2011). Indeed, Nutt et al.’s (2010) research illustrates that legal-illegal distinctions are not based on scientific principles of harm, and that legally approved substances such as alcohol and tobacco, present far greater potential for harm than many Class A drugs.

In recent years a number of jurisdictions (e.g. Uruguay, certain US states) have amended their drug laws to permit the use of cannabis, and proponents for drug reform appear to assume that cannabis is the obvious drug to legalise ‘first’, but the reasons for this seem no different to the arbitrary classifications in the 1961 UN Single Convention that prohibited substances used by a minority of ‘others’ whilst privileging those that were popular in the western world (Hari, 2015). The justification to privilege cannabis rather than substances such as ecstasy, LSD and psilocybin mushrooms which are relatively less harmful (Nutt et al., 2010) is a populist driven decision, rather than one rooted in science. The lack of scientific evidence driving the legalisation of cannabis indicates the capricious nature of drug law reform and perpetuates a drug apartheid based on privilege and populism rather than

rationale and evidence. Given the dearth of scientific rationale upholding drug laws it may seem difficult to comprehend how policies based on such arbitrary notions attain and maintain legitimacy, however, an examination of the reductionist discourse surrounding the social construction of 'drugs' can help our understanding.

### **Deconstructing drugs: A reductionist discourse**

Since the Misuse of Drugs Act 1971 there has been an intensive multi-disciplinary effort across the UK to remove banned substances from circulation and protect communities from the purported dangers (Home Office, 1998, 2008, 2010). This campaign is part of a global effort impelled by the UN to ensure zero-tolerance towards narcotics. In 2012, when confronted by a growing number of countries seeking to accommodate certain narcotic drugs (particularly cannabis), Raymond Yans, President of the UN International Narcotics Control Board (INCB), urged countries to stand firm:

“governments must continue to strengthen their efforts in the licit control of narcotic drugs and psychotropic substances...I cannot over-emphasize the importance of international cooperation and shared responsibility in facing all facets of the global drug problem” (UNIS, 2012: 1).

Those substances labelled as 'drugs' are seen to pose a global threat requiring international cooperation and tough action. In response to the legalisation of cannabis in certain jurisdictions, the INCB President robustly asserts "such initiatives, if pursued, would pose a grave danger to public health and well-being, the very things the States, in designing the conventions, intended to protect" (INCB, 2014: v). Furthermore, Yury Fedotov Executive



Director of the UN Office on Drugs and Crime (UNODC) called for greater international resolve: “many countries around the world are suffering...we must also ask ourselves tough questions about whether we have managed to reduce the global drug threat....if we are really determined to confront illicit drugs, we must move with more determination” (UNODC, 2013). In the context of drug policy liberalisation, the UN seeks greater commitment for tough enforcement and prohibition.

The UK Home Office (2014a, 2014b) recently underlined its full support of prohibition when it published simultaneous reports, one considering international comparative drug policies while the other explored the management of Novel Psychoactive Substances (NPS) – the former resulted in UK Prime Minister David Cameron declaring ‘the evidence is, what we’re doing [prohibition] is working’, emphasising that reform is not on the political agenda, whilst the latter report extended prohibition by proposing a blanket ban on all NPS<sup>iv</sup>. It seems curious that during a period of apparent reform, the UK is set to join Eire and New Zealand by banning all NPS, further entrenching the drug apartheid. The UK government’s commitment to drug prohibition and refusal to consider any ‘liberalisation of drug laws’ (Home Office, 2010: 2) remains resolute with the Prime Minister emphasising that ‘I don’t believe in decriminalising drugs that are illegal today ...I’m a parent with three children – I don’t want to send out a message that somehow taking these drugs is okay and safe because, frankly, it isn’t’ (cited in Morris and Cooper, 2014).

While some writers have contributed to an informed nuanced narrative of illicit drug taking (Aldridge et al., 2011; Seddon, 2010; Stevens, 2011), political rhetoric and UK media coverage of drug policy delivers a strong ideological crusade against what it calls ‘drugs’, focusing almost exclusively upon the damaging consequences arising from a minority of

problematic drug users, and conveniently conflating drug *use* with drug *misuse*, resulting in a negative portrayal and stereotype of the 'drug user' (UKDPC, 2012). The dominant prohibitionist discourse on 'drugs' then takes place within a framework preoccupied by compulsion, pain and pathology (O'Malley and Valverde, 2004), in which drug use is presented as an activity undertaken by a small group of risk bearing 'outsiders', that inevitably leads to desperation and addiction (Taylor, 2008).

Media representations frame 'drugs' as causing; petty crime (Salkeld, 2009); serious crime (Stretch, 2014); organised crime (Daily Mail, 2013); mental illness (Byrne, 2011); psychosis (Bloom, 2014); and physical and moral decay (Ayres and Jewkes, 2012) and wrongly presents drug use as a significant causal factor in a range of societal problems including: car accidents (Romano et al., 2014); workplace accidents (Price, 2014); disease (Ceste, 2010); and child abuse (Ryder and Brisgone, 2013), and so prohibition is legitimised by the construction of 'drugs' as unsafe and extremely harmful. Whereas in contrast to the rhetoric, the reality is that the majority of illegal drug use is non-problematic, most commonly associated with leisure, pleasure and desired outcomes (Hunt et al., 2010) and rarely does drug use lead to addiction (Cloud and Granfield, 2001) or require treatment (Siliquini et al., 2005). Importantly, given the lack of empirical evidence to uphold prohibition the rhetoric could be more accurately described as fallacies that have their roots in the social and political construction of 'drugs' and a reductionist analysis (Ayres and Jewkes, 2012). Crucially, this discourse employs and indeed perpetuates these myths as the ongoing evidence base to provide legitimacy for prohibition.

By distorting the social reality surrounding drugs and drug users, the media provides the 'reality effect' of ideology (Hall, 1982). In symbolising normality (Cohen, 1971) the media

constructed matrix of 'drugs=danger=death' provokes social conformity by frequent graphic illustrations of the negative consequences associated with the use of these prohibited drugs. By engendering fear and highlighting extreme case stories, the media create a hyper-reality constructing a 'simulacrum' of drug use (Baudrillard, 1994), what Baudrillard aptly refers to as a process 'of proving the real by the imaginary; proving truth by scandal' (1983: 36). Since the creation of the 1961 UN Single Convention this simulacrum of 'drug use' has become more real and influential in shaping our perceptions, knowledge and policies on drugs, than rationality, science and evidence, and indeed worryingly, such distortions have been accepted and adopted by drug reformers (Reynolds, 2015).

Perpetuating these fallacies within a reductionist discourse has far reaching consequences. Firstly, it continues the 'routinisation of caricature' (Boyd, 2002) whereby all use of illicit substances becomes conflated with problematic drug use. Secondly, the enjoyment, benefits and pleasures derived from illicit drug use are inadequately researched, acknowledged and discussed (Moore, 2008). Thirdly, drugs policy becomes impervious to scientific evidence and instead takes its lead from political ideology (Boland, 2008). Fourthly, policy responses tend to focus almost exclusively upon problematic use and fail to comprehend the policy needs of recreational drug users (Taylor, 2011). The current raft of policy 'reforms', which tweak and utilise the existing drug war paradigm have done little to address these fundamental issues that sustain the drug apartheid.

### **Reforming Prohibition?**

In 2012 when Nick Clegg (UK Deputy Prime Minister) advocated drug policy reform it was perhaps indicative that he simultaneously maintained his commitment to reductionist drug

war propaganda, arguing '**I'm anti-drugs**, it's for that reason that I'm pro-reform' [our emphasis]. The underlying motivation for reform here is rooted in moral bias rather than science and reasoning.

A key reformist argument is to cite countries like The Netherlands and Portugal who have introduced elements of decriminalisation, and claim they are successful precisely because decriminalisation has had little impact on rates of drug use (Rosmarin and Eastwood, 2011: 42). Portugal for example, has been heralded as a progressive reform model for drug policy since it decriminalised personal possession of all drugs in 2001 with levels of drug use remaining stable and comparable to neighbouring countries (Hughes and Stevens, 2010). Such indicators of effectiveness, however, further reinforce the 'anti-drugs' prohibitionist discourse that sees drug use as undesirable and problematic. In addition, Portugal continues to support prohibition with 15% of personal possession rulings in 2012 resulting in a punitive outcome; Portugal continues to criminalise individuals caught in possession of amounts above the decriminalised threshold limit<sup>v</sup> and continues to imprison people for drug defined crimes with 21% of the Portuguese prison population incarcerated under drug laws (RNFP, 2013).

Within these 'liberal' reforms the central tenets of prohibition remain – the ability to criminalise and severely punish users and suppliers of certain substances. Such processes have been historically steeped in prejudice, resulting in a racially motivated 'war on drugs' (Boyd, 2002) and despite reform, discrimination and inequality endures. For example, black people continue to be arrested for possession of cannabis in Colorado at exactly the same disproportionate rate (2.4 times more than white people) as they were prior to cannabis

legalisation. Similarly, whilst black people comprise around 3.9% of the population in Colorado, they accounted for 18.1% of arrests for cannabis distribution in 2014 (Drug Policy Alliance, 2015a).

Whilst decriminalisation in Portugal has resulted in some promising developments in reducing drug related harm, such as: a reduction in drug related deaths; a reduction in infectious diseases; an increase in drug treatment uptake; and a reduction in the level of problematic drug users (Hughes and Stevens, 2010), these outcomes emerge through the lens of prohibition and the preoccupation with negative associations with drug taking such as death, disease and addiction. Whereas, the vast majority of illicit drug users in Portugal (as elsewhere around the globe) are recreational drug users, who do not die, contract diseases, require drug treatment or become 'problematic users'; yet their rights and needs seem to go unnoticed. Similarly, in respect of cannabis legalisation in Colorado reformers cite evidence of: arrests and judicial savings; decrease in crime rates; decrease in traffic fatalities; and increased tax revenue and economic benefits (Drug Policy Alliance, 2015b), measurements which once again have their roots in the prohibitionist reductionist discourse.

Prohibition has privileged and promoted particular drugs while the use of other substances has been outlawed and punished. The current reform momentum towards legalising or decriminalising particular substances (such as cannabis) so they can become 'privileged', reinforces the existing drug apartheid and fails to fundamentally address the contradictions and lack of evidence base upon which prohibition is premised. Such reforms amount to little

more than a 'metamorphosis of prohibition', since they fail to address the fundamental fallacies underpinning the drug apartheid.

### **Reconstructing Drugs: The five fallacies of drug prohibition**

#### **1. There is a scientific reason why some substances are categorised as 'drugs'.**

A war needs an enemy and successive governments have rallied a war against 'drugs', but there is no rationale for the substances we have come to regard as drugs. If we assume a drug is a psychoactive substance that alters our mood state (Nutt, 2012), then we have to include alcohol, tobacco and caffeine along with a wide range of other substances currently categorised as: herbs (e.g. nutmeg); medicines (e.g. codeine); foods (e.g. sugar); and legal highs (e.g. Spice). Angus Bancroft exposing the 'drug' fallacy explains: 'there are no pharmacological categories of 'illicit drugs', 'licit drugs' and 'medications'. They are social categories constructed because as a political community we have come to treat some substances differently from others, depending on who uses them, how and for what' (2009: 8). If instead we assumed that prohibition was concerned with outlawing the most 'dangerous drugs', then according to the evidence a range of illegal substances such as khat, LSD, psilocybin mushrooms and ecstasy would become legal; while currently legal substances such as alcohol, tobacco and arguably sugars would become prohibited.

Any scientific examination of 'drugs' renders the present classification of illicit drugs as illogical and the present cultural promotion of legal substances as misguided. The idea promoted by the UN of being against 'drugs' and seeking a 'drug free world', is not only untenable and unthinkable, it is undesirable. Therefore, the notion of Nixon's 'war on drugs'

is a contradiction; there has never been a war on drugs, only a war on particular drugs, a war seriously lacking coherence, without a rational basis to support it. More accurately it is a 'war between drugs' a system of drug apartheid that has privileged the use of certain substances and outlawed the use of other substances, a corrupt system that has much to do with who uses the drugs and little to do with the risks posed by the drugs (Nadelmann, 2014).

In the US, while several states have legalised cannabis, they continue to have a zero tolerance policy towards other less harmful substances (Nutt et al. 2010). Such reforms fail to address the fundamental flaws of prohibition and instead support the myth of 'drugs' by reinforcing the drug apartheid by inviting cannabis to enjoy the privilege afforded to alcohol, tobacco and caffeine. This is a move that potentially obfuscates important underlying drug policy issues and risks dividing the drug reform momentum by appeasing a large group of previously criminalised cannabis users. Worryingly, the key motivation for privileging cannabis appears to be its popularity and income generation potential.

Conversely, whilst drug laws around cannabis are relaxed in various US states, recent international responses to Novel Psychoactive Substances (NPS) suggest a strengthening grip of prohibition (Stevens and Measham, 2013) by extending the scope of substances classified as 'drugs'. One of the first countries to respond was New Zealand with the Psychoactive Substance Act 2013 which was hailed by reformers as showcasing 'world leading' drug reform (McCullough et al., 2013), because it included a theoretical possibility of drug regulation. However, the Act also provides new powers to prohibit and punish personal possession of every NPS unless state approved (s.71), impose two years prison for anyone supplying an unapproved NPS (s.70), and provides the police with new powers to

enter premises without a warrant (s.77). While the UK Misuse of Drugs Act 1971 prohibits only those substances listed, the New Zealand Psychoactive Substance Act 2013 reverses this process prohibiting every NPS unless state approved (no substances have currently been approved at the time of writing). The Psychoactive Substance Act strengthens the illegal-legal bifurcation of drugs, extends state control and widens the net of prohibition, yet reform experts promote it as 'a sensible and pragmatic approach' (Bassil, 2015).

## **2. Prohibiting drugs protects society.**

The arbitrary Misuse of Drugs Act 1971 classification of drugs posits that society requires protection from particular substances through the criminal justice system whilst simultaneously indicating that other legal substances can be managed via legal regulation, this taxonomy wrongly assumes prohibition is able to reduce supply and demand and protect society from harm. Prohibition not only fails to protect, it actually creates more harm by placing users at risk of a drug conviction that can have serious life-long consequences detrimentally impacting upon education, employment, housing, travel and relationships – indeed criminalisation itself arguably poses far greater harm to a person's future well-being than the drugs themselves (Buchanan, 2015; Lenton et al., 2000).

Evidence suggests that neither tough drug policy, nor liberal drug policy, have much impact upon levels of drug use (Hughes and Stevens, 2010), but prohibition places responsibility for the content, strength and purity of drugs to underground organisations who, whilst motivated by the same profit orientated goals as licit drug manufacturers, are unregulated and unable to operate openly. This forces illicit users to engage in criminal networks to



purchase and use unknown substances while having no legal recourse when issues arise. The risks of drug-related disease, overdose and death linked with drug use are largely caused by prohibition (Buchanan, 2009). Unless prohibition is abolished and all drugs are regulated and legal to possess, 'reforms' will continue to punish users of unapproved and/or outlawed drugs, driving them underground and significantly increasing harms.

### **3. Drug use causes crime and social problems.**

Drug policy has been premised on a contested causal relationship between drug use and crime (Home Office, 1998, 2008, 2010), 'evidenced' via research undertaken with unrepresentative samples of drug users (Boreham et al., 2006; Budd et al., 2005) which fails to acknowledge the complex and multifaceted nature of drug use (Stevens, 2011), or consider those users not in contact with criminal justice or treatment agencies (Manzoni, 2006; McSweeney and Turnbull, 2007).

Closer examination suggests the drug-crime connection is tenuous, while the majority of arrestees in the UK use drugs (59%), they are not problematic users<sup>vi</sup> and report little or no causal connection between their drug use and offending (UKDPC, 2008). Contrary to prohibitionist driven ideology problematic drug users represent only 22% of drug using arrestees, and although two thirds of this group (64%) report committing crime to acquire drugs, they represent a small minority of the drug using offender population (UKDPC, 2008). The popular stereotype of the drug-driven addict, however, continues to inform policy and exaggerate the extent of crime caused by drug dependence (Stevens, 2011).

There is however, a clear causal drug-crime connection established by the prohibition of substances under the Misuse of Drugs Act 1971 (Pedersen and Skardhamar, 2009), in which crime is not driven by any pharmacological impact of the drug, but fuelled by the process of tough law enforcement upon outlawed substances: 'using drug-related crime as a justification for the war on drugs is unsustainable given the key role of enforcement in fuelling the illegal trade and related criminality' (Rolles et al., 2012: 10). Prohibition amplifies the crime rate via the criminalisation of thousands of otherwise law abiding citizens and young people (Pedersen and Skardhamar, 2009). Further, the associated social problems of crime, violence and deviant behaviour linked with the 'drug underworld' have less to do with the drug and more to do with prohibition that spawns criminal activity and deviant sub-cultures. Research has shown that tough enforcement measures that disrupt and destabilize the illegal market, are strongly associated with increases in drug related violence (Werb et al., 2011) whilst simultaneously exacerbating the harms experienced by individual users and wider society (Kerr et al., 2005).

Current reform models fail to address these issues but continue to: criminalise users of certain substances; arbitrarily distinguish so called 'soft' drugs from 'hard' drugs (those that are perceived to lead to crime and social problems); employ policies based on a contested drugs-crime causal relationship which attempts to coerce offenders who use illicit drugs into abstinence orientated treatment; use considerable financial resources recouped from justice savings/confiscation orders in the policing of drugs to further step up enforcement on drug production and supply, inadvertently fuelling further criminal activity, risk and violence (Werb et al., 2011).

#### **4. Drug use has no place in civilised society.**

The 2014 Crime Survey for England and Wales (CSEW) suggests 2.7 million (8.2% of the 16-59 year old population) have used illicit drugs in the past year alone, with 920,000 (2.8% of this population) defined as 'frequent users' (ONS, 2014) compared to an estimated 298,752 'problematic' drug users (Hay et al., 2013). Clearly using illicit drugs is not uncommon, and problematic use is confined to a minority, despite this 'drug use' remains curiously framed as a deviant activity, undertaken by outsiders, resulting in undesirable life threatening outcomes (Taylor, 2008).

The use of drugs for pleasure or recreation has occurred throughout history (Buchanan, 2009) and will continue to do so. Drug use per se is not immoral, but the use of particular drugs (those made illegal in the UK Misuse of Drugs Act 1971) has been socially constructed as dangerous, immoral and deviant while the use of other substances is promoted and culturally embedded (Measham and Brain, 2005) - this position is contradictory, inconsistent and unsustainable.

Scientifically there is no pharmacological or rational basis to distinguish between licit and illicit substances. If recreational drugs have no place in society then the logical conclusion is there is no place for tea, coffee, fizzy drinks or hot chocolate that all contain the stimulant drug caffeine or the addictive substance sugar, and no place for the depressant drug alcohol. This would be an untenable position to defend and impossible to enforce. Currently legal substances are used daily and valued for: providing energy; making us more alert; helping us relax; become more sociable; chill out; sleep; and have fun; unsurprisingly illicit drugs are used as part of everyday life for the very same purposes and could also be beneficial to that individual's wellbeing and health (Boys et al., 2001).

This skewed perception embedded within the drug apartheid, of overlooking the harms posed by legally approved substances and denying the normalisation and benefits of recreational illicit drugs in society obscures that: drugs can be acquired easily and are readily available (Aldridge et al., 2011); drug use permeates all sections of society (Aldridge, 2008); most people use drugs responsibly, sensibly and recreationally (Measham et al., 2001); most drug taking is controlled rather than chaotic (Shewan and Dalgarno, 2005); most drug users enjoy and take pleasure from their use (Hunt et al., 2010); most drug users exercise agency and choose to use drugs rather than finding themselves propelled by a series of external pressures and/or negative life experiences (Aldridge et al., 2011); and most drug use does not result in drug-related crime (Stevens, 2011). Within a stifled prohibitionist drug discourse such statements, despite being evidenced, might be perceived as provocative, dangerous or even promoting drugs by 'sending out the wrong message'. Interestingly, if re-read in relation to caffeine and alcohol such statements suddenly become entirely reasonable. The social construction of 'drugs' provides a distorted lens through which licit and illicit drug use is seen, where reason, logic and science become clouded by ideology, dogma and intolerance. A process that reflects the wider political climate, which elevates feeling and prejudice above reason and evidence (Cohen, 2013).

Policies such as the New Zealand Psychoactive Substances Act 2013, represent little more than a metamorphosis of prohibition as they extend state power to determine and sanction the personal use of certain drugs while outlawing and punishing the use of other substances. Such laws fail to recognise that it is drug prohibition rather than substance use itself that causes most harm. With a lack of evidence that drug use per se causes significant

harm, the role of law enforcement over what a person can and cannot consume becomes very questionable.

### **5. Continued drug use inevitably leads to addiction.**

Use of any banned drug is portrayed as dangerous, and little distinction is made between use and addiction. Similar to people who use alcohol, illicit drug users are generally sensible, recreational users, and no more likely to be irresponsible or become 'addicts' than regular wine, beer or spirit drinkers are likely to become 'alcoholics'. There is no inevitable progression that regular drug use is *likely* to lead to drug addiction (Hart, 2013). The idea that a 'gateway' drug leads to escalated drug use and/or addiction is unfounded (ACMD, 2008), and while some substances are for some people more addictive than others, there is no substance that once taken turns people into 'addicts' (Hart, 2013).

It is widely assumed that the traumas associated with chronic dependent use of drugs are a direct consequence of addiction to illicit substances; however, closer examination indicates a host of other, more deep-rooted socio-economic issues, disadvantages and personal traumas often *precede* addiction (Stevens, 2011). It may be politically expedient to present lives that have been damaged by deindustrialisation, poverty, unemployment, exclusion, abuse and/or trauma as caused by 'drugs', however, chronic problematic drug use is more often a symptom of wider underlying issues, not the causal factor (Buchanan 2006; MacGregor and Thickett, 2011). In terms of problematic drug use, the set (the person) and setting (the environment) are more influential risk factors than the substance (Zinberg, 1984). For example, when Switzerland prescribed clean injectable heroin maintenance, long

term problematic users were able to move away from the damaging illegal environment and pattern of life and were able to engage in productive and healthier lifestyles - despite their ongoing use and physical dependence upon pharmaceutical heroin (Ceste, 2010).

Reformers seeking incremental change may be afraid to argue for the legalisation of all drugs, but the numerous successful Heroin Assisted Treatment programmes, such as in Switzerland, provide a robust evidence base (Strang et al., 2012) that drugs, even injected heroin, do not inherently of themselves lead to problematic drug use, and legalising all drugs would remove the associated harms caused through: cutting drugs with toxic agents; uncertainty of strength and purity; and the acquisition through the criminal underworld.

## **Conclusion**

The UK government claims it is 'committed to an evidence-based approach, high quality scientific advice in this complex field is therefore of the utmost importance' (Home Office, 2010: 9), however, this article has demonstrated there is a paucity of evidence to support this claim. Drug policy nevertheless, seeks to vindicate itself by continuing to assert that illicit drugs cause a wide range of harms, and that drug prohibition protects society from these harms, but to the contrary, the evidence indicates the present drug policy is causing more harm and offering little or no benefits to either users or non-users. Drug policy premised on media driven myth, flawed assumptions and political populism lacks credibility and legitimacy. The UK drug policy imbues prohibited drugs with innate powers to cause crime, poverty, family and community breakdown, disease and even death, and drugs have become society's scapegoat (Szasz, 2003). This demonization of drugs conveniently detracts

from the more complex personal, social and structural drivers of addiction, such as poverty and social exclusion (MacGregor and Thickett, 2011); whilst it also avoids addressing the hypocrisy inherent in the bifurcation of substances (Buchanan, 2009).

This paper contends recent shifts towards selective regulation, decriminalisation or legalisation fail to tackle fundamental drug war fallacies, and perpetuate a discourse rooted in prohibition rather than scientific evidence and reason. Selectively inviting particular drugs to join alcohol, caffeine and tobacco as commercial products is a dubious and uncertain pathway towards dismantling prohibition. Reform advocates may argue these alternative drug policies represent a progressive incremental movement – but we contend that these amendments symbolise the ‘metamorphosis of prohibition’, and are rooted in the drug policy malaise. Indeed, tweaking the flawed model risks obfuscating the fundamental contradictions and hypocrisy at the heart of prohibition and the 1961 UN Single Convention.

We would argue that the 1961 Convention was not a mistake; it was a deliberate strategy to protect the privileged position of the preferred drugs, its users and the associated industries dominating the western market in the 1950/60s. Prohibition created the ‘drug apartheid’ a brutal system of inclusion and exclusion, rooted in the politics and culture of maintaining power and privilege. The contradictions between legal and illegal drugs and the arbitrary classification of drugs in the UK Misuse of Drugs Act 1971 suggest this law is no longer fit for purpose and should be repealed not reformed. There is a need to challenge the social construction of ‘drugs’ and the ‘drug user’, a need to develop a new approach that is rooted in human rights, health and social care and not prohibition, criminalisation and punishment. Drug reform must engage in the difficult and complex process of exploring how best to legalise and regulate **all** psychoactive substances that are currently legal and illegal, to

develop a drug policy that seeks to embrace and accommodate the use of *all* drugs in society rather than prevent, deny or privilege particular drug use. Drug reformers who see incremental adaptations to existing drug policy as stepping stones towards ending prohibition should at the very least be clear about the transitory nature of such ‘reforms’, and vocal and explicit about long term goals. This is however, a risky strategy that too often involves compromising key principles and confusing important issues to achieve short-term gains. Each incremental step must be part of dismantling the drug apartheid; it cannot be seen to be colluding with or supporting ongoing systemic misinformation, unsound policies and practices that are rooted in prohibition.

The current raft of reforms fail to expose and challenge the very principles that underpin prohibition; instead they perpetuate the flawed discourse upholding it. The drug apartheid is a deeply divisive and damaging system that cannot be adapted, but must be dismantled. Abolition inevitably requires a process of transition, it could begin with the decriminalisation of all possession, cultivation and production for personal use – while acknowledging and planning a model of regulation to address the ongoing harm caused by the perpetuation of wider prohibition and the continued criminalisation of those involved in manufacture and supply. Unless a mature, scientific and evidence-based approach to drug policy reform is adopted that clearly starts to expose, challenge and dismantle the very foundations of the drug apartheid any new regulatory framework or so called reform is arguably little more than repackaged prohibition.



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<sup>i</sup> Although the Single Convention on Narcotic Drugs consolidated and reinforced international drug prohibition, this was initially established in 1909-1912 with the Shanghai Opium Commission (1909) and the subsequent International Opium Convention of the Hague (1912).

<sup>ii</sup> Despite the possession of certain substances or amounts of substances being decriminalised/legalised/regulated in certain jurisdictions there are no jurisdictions which have decriminalised/legalised/regulated the possession and/or supply of all previously illegal substances. As a consequence the prohibition of certain substances and the criminalisation of those who possess/supply these continues to be evident in every nation across the globe.

<sup>iii</sup> The term 'narcotic' first appeared in the 1914 Harrison Act in the US to refer to opiates and cocaine. According to the World Health Organisation (1994: 47) 'narcotic' refers to 'a chemical agent that induces stupor, coma, or insensibility to pain', which is why it was used as a catch all term for opiates and the anaesthetic cocaine in the Harrison Act. However, the 1961 Single Convention on Narcotic Drugs provides no scientific definition of narcotic and although medically the term still refers to opioids, in its legal context and

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everyday use it has become an all-encompassing term for prohibited drugs regardless of their pharmacology and thus erroneous. Due to the imprecise nature of the word narcotic the 1961 Convention should provide a clear and exact definition since it is the foundation of all subsequent prohibitionist legislation, despite only initially referring to opiates and cocaine.

<sup>iv</sup> The resulting Psychoactive Substances Bill proposes a blanket ban on all Novel Psychoactive Substances and at the time of writing is passing through the UK House of Commons on its journey towards becoming legislation.

<sup>v</sup> Portuguese possession limits are based on average consumption over a ten day period i.e. 25g for cannabis, 1g MDMA, 0.3g for cocaine, 1g of heroin.

<sup>vi</sup> Defined here as those who use heroin and crack cocaine.

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The authors declare that there are no conflict of interests.

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