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Legalize It All

How to win the war on drugs

By [Dan Baum](#)

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In 1994, John Ehrlichman, the Watergate co-conspirator, unlocked for me one of the great mysteries of modern American history: How did the United States entangle itself in a policy of drug prohibition that has yielded so much misery and so few good results? Americans have been criminalizing psychoactive substances since San Francisco's anti-opium law of 1875, but it was Ehrlichman's boss, Richard Nixon, who declared the first "war on drugs" and set the country on the wildly punitive and counterproductive path it still pursues. I'd tracked Ehrlichman, who had been Nixon's domestic-policy adviser, to an engineering firm in Atlanta, where he was working on minority recruitment. I barely recognized him. He was much heavier than he'd been at the time of the Watergate scandal two decades earlier, and he wore a mountain-man beard that extended to the middle of his chest.



A patient drinks a dose of methadone at the Taipas rehabilitation clinic in Lisbon, Portugal © Rafael Marchante/Reuters

At the time, I was writing a book about the politics of drug prohibition. I started to ask Ehrlichman a series of earnest, wonky questions that he impatiently waved away. "You want to know what this was really all about?" he asked with the bluntness of a man who, after public disgrace and a stretch in federal prison, had little left to protect. "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."

I must have looked shocked. Ehrlichman just shrugged. Then he looked at his watch, handed me a signed copy of his steamy spy novel, *The Company*, and led me to the door.

Nixon's invention of the war on drugs as a political tool was cynical, but every president since — Democrat and Republican alike — has found it equally useful for one reason or another. Meanwhile, the growing cost of the drug war is now impossible to ignore: billions of dollars wasted, bloodshed in Latin America and on the streets of our own cities, and millions of lives destroyed by draconian punishment that doesn't end at the prison gate; one of every eight black men has been disenfranchised because of a felony conviction.

As long ago as 1949, H. L. Mencken identified in Americans "the haunting fear that someone, somewhere, may be happy," an astute articulation of our weirdly Puritan need to criminalize people's inclination to adjust how they feel. The desire for altered states of consciousness creates a market, and in suppressing that market we have created a class of genuine bad guys — pushers, gangbangers, smugglers, killers. Addiction is a hideous condition, but it's rare. Most of what we hate and fear about drugs — the violence, the overdoses, the criminality — derives from prohibition, not drugs. And there will be no victory in this war either; even the Drug Enforcement Administration concedes that the drugs it fights are becoming cheaper and more easily available.

Now, for the first time, we have an opportunity to change course. Experiments in alternatives to harsh prohibition are already under way both in this country and abroad. Twenty-three states, as well as the District of Columbia, allow medical marijuana, and four — Colorado, Washington, Oregon, and Alaska — along with D.C., have legalized pot altogether. Several more states, including Arizona, California, Maine, Massachusetts, and Nevada, will likely vote in November whether to follow suit. Portugal has decriminalized not only marijuana but cocaine and heroin, as well as all other drugs. In Vermont, heroin addicts can avoid jail by committing to state-funded treatment. Canada began a pilot program in Vancouver in 2014 to allow doctors to prescribe pharmaceutical-quality heroin to addicts, Switzerland has a similar program, and the Home Affairs Committee of Britain's House of Commons has recommended that the United Kingdom do likewise. Last July, Chile began a legislative process to legalize both medicinal and recreational marijuana use and allow households to grow as many as six plants. After telling the BBC in December that "if you fight a war for forty years and don't win, you have to sit down and think about other things to do that might be more effective," Colombian president Juan Manuel Santos legalized medical marijuana by decree. In November, the Mexican Supreme Court elevated the debate to a new plane by ruling that the prohibition of marijuana consumption violated the Mexican Constitution by interfering with "the personal sphere," the "right to dignity," and the right to "personal autonomy." The Supreme Court of Brazil is considering a similar argument.

Depending on how the issue is framed, legalization of all drugs can appeal to conservatives, who are instinctively suspicious of bloated budgets, excess government authority, and intrusions on individual liberty, as well as to liberals, who are horrified at police overreach, the brutalization of Latin America, and the criminalization of entire generations of black men. It will take some courage to move the conversation beyond marijuana to ending all drug prohibitions, but it will take less, I suspect, than most politicians believe. It's already politically permissible to criticize mandatory minimums, mass marijuana-possession arrests, police militarization, and other excesses of the drug war, even former attorney general Eric Holder and Michael Boticelli, the new drug czar — a recovering alcoholic — do so. Few in public life appear eager to defend the status quo.

This month, the General Assembly of the United Nations will be gathering for its first drug conference since 1998. The motto of the 1998 meeting was "A Drug-Free World — We Can Do It!" With all due respect, U.N., how'd that work out for you? Today the U.N. confronts a world in which those who have suffered the most have lost faith in the old strong-arm ideology. That the tide was beginning to turn was evident at the 2012 Summit of the Americas in Cartagena, Colombia, when Latin American leaders for the first time openly discussed — much to the public discomfort of President Obama — whether legalizing and regulating drugs should be the hemisphere's new approach.

When the General Assembly convenes, it also will have to contend with the startling fact that four states and the capital city of the world's most zealous drug enforcer have fully legalized marijuana. "We're confronted now with the fact that the U.S. cannot enforce domestically what it promotes elsewhere," a member of the U.N.'s International Narcotics Control Board, which monitors international compliance with the conference's directives, told me. Shortly before Oregon, Alaska, and the District of Columbia added themselves to the legal-marijuana list, the State Department's chief drug-control official, William Brownfield, abruptly reversed his stance. Whereas before he had said that the "drug control conventions cannot be changed," in 2014 he admitted that things had changed: "How could I, a representative of the government of the United States of America, be intolerant of a government that permits any experimentation with legalization of marijuana if two of the fifty states of the United States of America have chosen to walk down that road?" Throughout the drug-reform community, jaws dropped.

As the once-unimaginable step of ending the war on drugs shimmers into view, it's time to shift the conversation from *why* to *how*. To realize benefits from ending drug prohibition will take more than simply declaring that drugs are legal. The risks are tremendous. Deaths from heroin overdose in the United States rose 500 percent from 2001 to 2014, a staggering increase, and deaths from prescription drugs — which are already legal and regulated — shot up almost 300 percent, proving that where opioids are concerned, we seem to be inept not only when we prohibit but also when we regulate. A sharp increase in drug dependence or overdoses that followed the legalization of drugs would be a public-health disaster, and it could very well knock the world back into the same counterproductive prohibitionist mind-set from which we appear finally to be emerging. To minimize harm and maximize order, we'll have to design better systems than we have now for licensing, standardizing, inspecting, distributing, and taxing dangerous drugs. A million choices will arise, and we probably won't make any good decisions on the first try. Some things will get better; some things will get worse. But we do have experience on which to draw — from the end of Prohibition, in the 1930s, and from our recent history. Ending drug prohibition is a matter of imagination and management, two things on which Americans justifiably pride themselves. We can do this.

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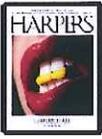
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