
The Politics of Drug Decriminalisation

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Originally published online at [John Menaude – Pearls and Irritations](#)

6 August 2018

In a forum held at the NSW Parliament in 2016 and organized by a cross-party drug law reform group it was pointed out that the 1999 NSW Drug Summit recommendation to decriminalise drug use hadn't seen the light of day and remained at most, if not the most, important goal for the harm reduction movement in Australia. Decriminalisation is, notes Professor Alison Ritter, different from legalisation and "largely applies to drug use and possession offences, not to the sale or supply of drugs". It can be done, she notes, either by changing legal penalties to "civil penalties, such as fines, or by diverting drug use offenders away from a criminal conviction and into education or treatment options".ⁱ There's lots of evidence to support such a proposal as a more humane and effective strategy for a nation seeking to tackle the harms that can come with drug use and abuse. However, my objective here is not to deal with definitions and models and the evidence for and against each but rather with the blood and guts politics of the issue. To do this I start by taking you on journey in place and time to the Italian city of Florence but more particularly to the Piazza della Signoria and the adjacent Palazzo Vecchio in the late fifteenth century. I do this because so much about modern politics and its ongoing struggle between the utopians and realists - or as we might say today between the fundamentalists and the pragmatists - is there to see, feel and reflect. For example, there's the place in the Piazza where the priest/politician Savonarola was hanged and burnt in 1498. Overlooking this is the Palazzo within which is the office occupied by the philosopher/public servant Machiavelli from 1498 to 1512.

Savonarola's party ("the Frateschi") came to power in 1494 and started out well with a new and more democratic constitution. At the heart of his politics, however, was the belief in religious renewal. He sought to rid the city of vice, passing laws against sodomy, adultery, public drunkenness and other moral transgressions. He raged a war against the vanities and called upon the citizenry to burn their books, paintings and all luxuries. His aim was to establish Florence as the New Jerusalem with God and God alone as the sovereign. Popular at first the people began to tire of his extremism – so too the Pope Alexander VI who excommunicated him in 1497. His allies deserted him, the mob turned on him and in 1498 he was hanged and fired in the same square as his "bonfire of the vanities". Surely the irony of that didn't escape him as the noose was placed around his neck!

The new government brought into its employ the young Machiavelli, then 29 years of age and already wise in the ways of the world. He served the city until 1512 when the republic collapsed and the Medici returned to power. Working in the Palazzo Vecchio so close to the place of Savonarola's death would have been a constant reminder of the madness of fundamentalism, just as his arrest and consequent bout of torture by way of six drops from the strappado would have been a painful reminder that politics was a ruthless business, not to be taken lightly. The strappado was a device in which its victims were raised by their arms tied behind their backs and then

suddenly released. He survived all of this and was retired to the country where he wrote **The Prince** and other books on politics and history.

Machiavelli urged us to start our inquiries with experience rather than the imagination. Study people as they are and as they live – and accept as a working principle all of the imperfections therein uncovered as part and parcel of human nature. In politics, he said, never rule out factors like self-interest or ambition and recognise that sometimes unsavoury means may be needed if good ends are to be achieved. Those who wish to make a profession of goodness in everything, he said, “must necessarily come to grief among so many who are not good”ⁱⁱ. A humanist, he feared that Christianity encouraged decision-making to be too influenced by “imaginary ideals” and not enough by the relevant facts revealed by in-depth study and reflection. But all this being noted it was a better society in which he believed; one where government was in the public interest and organised along republican lines with proper checks and balances.

You may very well ask – what’s this contrast between the politics of Savonarola and Machiavelli – one the utopian and the other the realist – got to do with drugs policy today? It is, in fact, one way to frame the ongoing conflict between those who resist and those who seek reform in law and practice. We have the fundamentalists on one side armed with their belief in abstinence and their commitment to “zero-tolerance” and a “drug-free” future. They see **illicit drug use as abuse**, point to those whose lives are effectively destroyed by their drug use, and are buoyed by the few personal transformations that occur under their watch but not fazed by the many that don’t. Redemption, they say, is available to all. In their view these are the facts that keep their hopes alive and justify The War on Drugs. It’s a case of right and wrong without a middle. Each and every compromise the state proposes they fight – and fight hard believing that these compromises have legitimised the unhealthy practice of drug consumption. The criminal law they see as a weapon in their struggle, a beacon that **makes clear to all what is expected of all**. However, just like political revolutionaries and alcohol prohibitionists they battle to cope with the evidence about human desire and human weakness, over-simplifying the power of the will to transform people and down-playing the negative consequences of the utopian path they follow.

The pragmatists on the other hand start out with a realistic view of human nature and freedom. They look into society over time and see humans using drugs – and alcohol. Why do people use? Sometimes they seek pleasure, even enlightenment, and sometimes they seek to avoid pain. Some use a lot and some infrequently. Some are addicted and some not. They don’t always think clearly, they take risks and a safe assumption to make is that this is how things are and always will be, the use of the criminal law against users, but not all laws and regulations in and around the issue, being inappropriate and problematical from a human rights perspective, a barrier to healthy outcomes rather than an effective deterrent. Take a consequentialist approach, they say, and look at a range of factors including the real-life situation of many who use drugs. Do criminal penalties act as a deterrent or are they a hindrance to better outcomes overall, both for individual users and for the community more generally? With these questions in mind late twentieth-century Australian politicians and their electors have sanctioned a range of legal reforms and harm reduction measures suggested by realist-led research and prompted by crises in public health; some degree of cannabis decriminalisation, needle exchange and medically supervised injecting for example.

How important it was, claimed Savonarola, to extinguish pride and vanity – it was God’s will for humanity. How stupid and misconceived was that, replied Machiavelli, perfection isn’t possible but improvement overall is. How important it is, say the drug-free advocates, to persist with the War on Drugs, it’s a battle that can and must be won. How stupid and misconceived is that say the pragmatists, why not seek to reduce harm instead? It’s progress and its achievable. These battles then and now involving the fundamentalists and the pragmatists are the heart and soul of politics, more important than the ongoing debates about the existence or non-existence of God. Fundamentalists may or may not be believers in a divine presence and pragmatists may or may not be atheists. Remember it is the Uniting Church that manages the Medically Supervised Injecting Centre here in Sydney. Bring religion in and it muddies the waters but it doesn’t empty the lake. The same applies to the political battles between left and right with fundamentalists and pragmatists on both sides of the aisle. Remember it is democratic socialist Sweden that leads the drug-free brigade.

This leads me to my first political point – that what we see playing out are two sets of beliefs about human nature and human freedom, one highly aspirational, even utopian, and the other more realistic and evidence-focussed. It’s not just a war over “the facts” but also a war over “world views” and in the case of some drug-free advocates it’s a case of holding the line against further changes just as it is with a number of similarly positioned issues like marriage equality, abortion and euthanasia. However, as Savonarola found in the 1490s holding the line isn’t easy in what we might define as the “real world”. This all being said the advocates for decriminalisation in Australia have yet to break the back of opposition in this same “real world” and comprehensive reform such as we have seen in Portugal remains unfulfilled, a step too far.

Four factors immediately come to mind when seeking an explanation of this failure to embrace drug decriminalization more widely. Firstly, there’s many different versions of “drug law reform” including legalisation as well as decriminalisation. Some reformers are laissez-faire ideologues for whom the right to choose needs little or any law and regulation surrounding it. They are the fundamentalists on the reform side, libertarians first and foremost whose consistency shines through as clearly as does their political impotence. Others seek decriminalisation in a narrow sense, but even then, there are differences in respect of particular drugs and models of reform. In the real world of politics such divisions cause doubt in the minds of voters and often leaves them satisfied with staying put in the half-way house. A second complication arises from the stigma associated with illegality; it restricts user and other participation in campaigning as does the marginal and disadvantaged status of many who use. It’s a case of “out of sight out of mind” for many, perhaps a majority. Thirdly, one wonders too about how the knowledge the public now has about the consequences of alcohol and prescription drug use and abuse may be impacting on their view about decriminalisation of currently illicit drugs. Worry can burden the mind and limit what is deemed acceptable and/or feasible whatever the bigger story tells about what will create the greatest happiness for the greatest number. Finally, and not to be under-estimated is what **The Economist**ⁱⁱⁱ has called the “post-truth” times in which we live and which demands equal status to all opinions no matter how far-fetched, thus devaluing the role the scientific investigation can play in keeping our feet on the ground and our eyes on the ball. In effect it sanctions the holding of beliefs independently of the consequences of their application.

With these observations about the real world of politics in mind I take you back to Machiavelli. He wasn't just making a claim about how the world of men and women worked but also about the centrality of politics and power in that world. He warned those who wished to improve things for the people that they couldn't be complacent or cavalier about the politics and power business. It's one thing for the extremists like Savonarola to rely too much on imaginary futures as a guide for law-making but so too is it naïve to think that valid realist- driven research findings can in and of themselves win the day in a world of vested interests, committed opposition and fear campaigns. This, then, is my second political point – it's one thing to gather general support for the idea of reform (note, of course, that it's still vital that this occurs) but quite another to win the numbers when the future of that idea put into specific form is on the line in say a parliamentary vote or some form of plebiscite or referendum. The Australian Republican Movement learnt that lesson the hard way in 1999.

Writing in the 1920s John Dewey spoke of an unfortunate tendency of experts to isolate themselves from the mainstream: "A class of experts is inevitably so removed from common interests as to become a class with private interests and private knowledge, which in social matters is not knowledge at all".^{iv} This is a problem for all the sciences; physical, human or social. At some point they have to engage the people and their governors and how to do that should be – as it increasingly is – a priority for the research community. Detailed work is needed on not just public opinion generally but on how different segments of the population view the issue and respond to different arguments. Some work along those lines has been done by the National Drug and Alcohol Research Centre. They've compared drug user's views with those of the general public^v and investigated whether there's heterogeneity of opinion amongst drug users themselves^{vi}. Other work at the Centre by Dr Francis Matthew-Simmons has concluded that public opinion appears to be nuanced. He writes: "Public support for cannabis legalisation (and depenalisation) has decreased since the mid-1990s. However, support for criminal penalties for drug possession is also low, and support for harm reduction has also increased"^{vii} Not surprisingly perhaps, he found what we might call more "lenient" attitudes amongst the young and better educated and more "conservative" attitudes amongst those who were married. Research by the Australian Institute of Health and Welfare also found a nuanced view, there being clear support for higher penalties for those who sell or supply but for users the most popular responses were referral to treatment or education programs, a caution or warning or no action at all^{viii}.

More work and more reflection in relation to all of these things, and premised on a mix of rights, health and community safety principles and not just one of these principles at the expense of others has the potential to fine-tune a decriminalisation narrative that would be a worthy contributor to national debate. So, to my third and last political point - it would it be helpful to confirm, or otherwise, public support for decriminalisation by way of a randomly selected and deliberative citizens' assembly. Participants could consider the evidence presented to them and seek to find common ground as to what the public interest would say is the right way to go. It would take us beyond "the usual suspects" involved and allow reason and opinion to seek agreement in a world where declining trust is fanning the flames of fundamentalism. Now, surely, that would add value to a debate we can't avoid!^{ix}

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- ⁱ “Decriminalisation or legalisation: injecting evidence into the drug law reform debate”, **The Conversation**, 12 April 2012.
- ⁱⁱ **The Prince** (The New American Library Edition, 1952), p.84.
- ⁱⁱⁱ “The Art of the Lie”, 10 September, 2016. See also Geoff Gallop, “A post truth world”, **Australian Rationalist**, Vol. 108, March 2018, pp.19-21.
- ^{iv} Quoted in Yves Sintomer, “Random Selection, Republican Self-Government, and Deliberative Democracy”, **Constellation**, Volume 17, No 3, 2010, p.482.
- ^v Kari Lancaster, Alison Ritter and Jennifer Stafford, “Public opinion and drug policy in Australia: engaging the affected community”, **Drug and Alcohol Review**, January 2013
- ^{vi} Kari Lancaster, Rachel Sutherland and Alison Ritter, “Examining the opinions of people who use drugs towards drug policy in Australia”, **Drugs: education, prevention and policy**, April 2014
- ^{vii} “Public opinion, the media, and illicit policy in Australia”, **National Drug and Alcohol Research Centre**.
- ^{viii} AIHW National Drug Strategy Survey, 2013 quoted in Tom Gotsis, Chris Angus and Lenny Roth, Illegal drug use and possession: Current policy and debates, **NSW Parliamentary Research Service Briefing Paper**, No 4/2016, pp.80-83.
- ^{ix} See Geoff Gallop, “Helping our democracy to work better”, **Meanjin Quarterly**, Vol. 74, Spring 2015, pp.146-49. More generally see <https://www.newdemocracy.com.au>.