

DRUG-RELATED CRIMINAL
LAW ENFORCEMENT
COSTS THE UK
£3.3 BILLION
EVERY YEAR



\$51 BILLION
SPENT ON THE WAR
ON DRUGS IN THE
U.S. EVERY YEAR

ENDING THE WAR ON DRUGS

WITH AN INTRODUCTION BY **RICHARD BRANSON**

1.6 AMERICANS ARE ARRESTED
MILLION EVERY YEAR FOR
DRUG OFFENSES

OVER **100,000**
LIVES LOST TO THE
WAR ON DRUGS
IN MEXICO IN THE
LAST 9 YEARS

**ILLEGAL DRUGS
ARE WORTH
LITERALLY MORE
THAN THEIR
WEIGHT IN GOLD**

Ending the War on Drugs

With an Introduction by
Richard Branson



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Sir Richard Branson

Sir Richard Branson is the founder of the Virgin Group, one of the world's best-known brands, with operations in diverse sectors from travel to telecommunications, health to banking and music to leisure. Through more than 100 companies worldwide, Virgin employs approximately 60,000 people in over 50 countries.

Since starting youth culture magazine *Student* at the age of 16, Branson has found entrepreneurial ways to provoke positive change in the world. In 2004 he established Virgin Unite, the non-profit foundation of the Virgin Group, which tackles tough social and environmental problems and strives to make business a force for good. An outspoken advocate for reform of global drug laws, he joined the Global Commission on Drug Policy in 2011.

Drug Policy: A Shameful Failure of Modern Civilisation

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By Ernesto Zedillo

Ernesto Zedillo

The amazing progress that a substantial portion of humanity has enjoyed in its recent history has been fundamentally a consequence of the various revolutions in human knowledge that have ensued since the original scientific revolution of the sixteenth and seventeenth centuries. The unprecedented advance in standards of living that occurred over the last two centuries throughout most of the world has been driven by the generation, dissemination and application of knowledge. Every day, that knowledge touches every aspect of human life practically everywhere on the planet. The accumulation of greater human knowledge has not been limited strictly to the scientific and technological. Considerable progress has also been made in the expansion of knowledge dedicated to better organisation of the production and consumption of the goods and services made possible by technology and human accomplishments. And, of course, knowledge accumulated since the Enlightenment and the scientific revolution has also decisively shaped the culture, values and governances of modern societies.

Unfortunately, the impact of knowledge on governance, and the resulting policies, have been uneven, frequently muted or, even worse, cast aside outright by policies that openly fall foul of that very same knowledge. In many areas with significant human consequences, there is a stark disconnect between the public policies applied and what knowledge would advise based on both scientific inquiry and practical experience. This is sheer folly, and examples abound; but a particularly conspicuous one is provided by the case of drug policy throughout the world.

In a nutshell, for too long and with far too few exceptions, drug policies have relied fundamentally on prohibition and law enforcement. This approach is wholly inconsistent with the best knowledge from life sciences, sound public health research and economic analysis.

Paradoxically, some of the best knowledge on drug abuse and addiction has been generated by the very same government

Some of the best knowledge on drug abuse and addiction has been generated by the very same government institutions that have also failed to apply that knowledge to their drug policies.

institutions that have also failed to apply that knowledge to their drug policies. For example, the National Institute on Drug Abuse (NIDA) is an excellent research institution of the US federal government, which has done much to advance the understanding of drug use. On its website, NIDA informs us with remarkable clarity and simplicity what science knows about why people begin taking drugs and why some people become addicted to drugs. This essential scientific knowledge should make it clearly understood that even if the best possible prevention strategies were applied – which unfortunately has never been the case – there would still be a residual demand for drugs

irrespective of whether they are prohibited or even highly priced in whatever market they are available.

For its part, economic analysis demonstrates that prohibiting the production and consumption of any merchandise for which demand exists invariably leads to the creation of a black market by individuals and organisations willing to violate the law. Significantly, economic analysis also indicates that decriminalising the use and production of a prohibited drug and taxing its consumption would cause a greater reduction in its output than the enforcement of its prohibition (even if enforcement were aimed at an optimal, although in practice most likely unachievable, level).

And yet for over a century, prohibition – and its intended enforcement – have prevailed as the preferred policy approach for

dealing with the consumption of drugs. This approach, initially adopted for only a few drugs by a certain number of countries, was progressively extended to cover many more substances and eventually universalised through successive international conventions that have been complemented by bi-national or regional agreements. What is remarkable about the origin, spread and prevalence of the prohibition and enforcement approach is how inconsistent it has proved to be, not only with the best knowledge but also with the results that such a policy has actually delivered in practice.

Looking at the history of drug policy it is tempting to conclude that most of the time it has been driven essentially by ill-informed politics. This is certainly the case for the country that has been most influential in the construction of the existing international regime for drug policy, the United States. The history of US drug policy seems to have been shaped over time much more by the ideological propensities of individuals in positions of power – and their purely tactical political objectives, partisan politics, bureaucratic disputes among government departments, short-sighted foreign policy objectives, sometimes even ethnic and racial misperceptions – and much less, if ever, by the objective of reducing the harm caused by the production, sale and consumption of drugs in the population.

That history was well documented by the late Professor David Musto of Yale University, who in several of his scholarly writings reminds us that the outlawing of opium in 1909 and passage of the Harrison Act in 1914 were partly an irrational and racist reaction towards some population groups. The opium ban reflected that drug's association with Chinese immigrant railroad workers in the West, and

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the Harrison Act responded to some Southerners' alleged fear that 'cocaine crazed African Americans might attack white society', a racist attitude that interestingly coincided with the peak of lynching, legal segregation and discriminatory voting laws.

He also documented that a narcotics committee appointed by the US Treasury Department to study the problem of control and to recommend changes to the law concluded, without providing any sound supporting evidence, that 'addicts are weak creatures, lacking in moral sense, and when deprived of their drug [they] may commit crime in order to obtain it'. This rather prejudiced and uninformed opinion was released to the public in 1919 and continued to influence policy from then on, despite the fact that many in the medical profession were already admitting publicly that drug addiction was a physical disease and not the result of 'weak willpower'. Instead of listening to the medical professionals, the US Justice Department indicted doctors who issued prescriptions for maintenance purposes for violation of federal narcotic laws.

The Federal Bureau of Narcotics (FBN) was created in 1930, when the incorrect idea that drug use caused criminal behaviour had become firmly and officially entrenched. Around that time, as a consequence of the Depression, immigrants were increasingly unwelcome in the United States. Mexicans in particular became linked with violence and with growing and smoking cannabis, an argument that was also used to carry out their mass deportation. It did not take long before the Marijuana Tax Act, prohibiting the sale, barter or transfer of cannabis between private citizens, became US law in 1937.

Never mind that the wisdom of this policy was questioned rather soon by not a few sensible voices. In the 1940s New York Mayor Fiorello LaGuardia's Committee on Marijuana (with members from the New York Academy of Medicine) reported that:

the marijuana user does not come from the hardened criminal class and there was found no direct relationship between the commission of crimes of violence and marijuana.

The FBN agents and administrators were livid, strongly minimising the report's findings before the media and the general public. Musto mentions that the FBN was instrumental in getting the *Journal of the American Medical Association* to attack the report in an editorial that concluded, 'Public officials will do well to disregard this unscientific, uncritical study, and continue to regard marijuana as a menace wherever it is purveyed.'

Curiously, a few years later the very same American Medical Association (AMA) allied with the American Bar Association (ABA) to create a joint committee to study narcotics and the drug problem. The committee's report, published in 1961, pointed out that:

some responsible authorities state that the physical and psychological dependence of addicts on narcotic drugs, the compulsion to obtain them, and the high price of drugs in the illicit market are predominantly responsible for the crimes committed by addicts and others claim that the drug itself is responsible for criminal behavior,

and concluded that:

the weight of evidence is so heavily in favor of the former point of view that the question can hardly be called a controversial one.

Here, backed by scientific research, are two authoritative institutions explaining that forcing drug users to rely on the black market – a market actually created by the policies themselves – and not the drugs, were at the root of the criminal problem. To further contradict the rationale of those policies, the AMA-ABA committee argued:

In terms of numbers afflicted, and in ill effects on others in the community, drug addiction is a problem of far less magnitude than alcoholism. Crimes of violence are rarely, and sexual crimes are almost never, committed by addicts.

The FBN, again livid, counter-attacked with its own report placing the members of the AMA-ABA joint committee in the category of 'crackpot' doctors and sociologists.

The FBN's aggressiveness did not discourage the experts. The Presidential Advisory Commission on Narcotic and Drug Abuse, established during the Kennedy administration, recommended in its 1963 report multiple suggestions for the rehabilitation of drug abusers, the relaxation of mandatory minimum sentences, increased appropriation for research and the dismantling of the FBN. Admittedly, that Commission also insisted that the illegal traffic in drugs should be attacked with the full power of the US federal government.

In fact, however, any hope that US drug policy might move away from an essentially repressive approach was soon all but extinguished. Just as drug use suddenly increased among the young during the second half of the 1960s – not least among American military personnel in Vietnam – the prohibitionists got their biggest champion when Richard Nixon was elected President of the United States. Just six

months after taking office, on 14 July 1969, President Nixon addressed the US congress on the issue of illegal drugs, and subsequently the War on Drugs began to take shape.

There is plenty of evidence that declaring the War on Drugs was essentially a political decision with total disregard for medical or other pertinent scientific considerations about the problem. Although it took place in June 1971, when some major initiatives on drug policy had already been launched by that administration, a conversation between Nixon and two of his closest advisers, John Ehrlichman and H. R. Haldeman, is highly suggestive of what was

motivating the US President to sustain his drug policy pursuit. Haldeman recalled that conversation as follows:

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He also told Ehrlichman to sit down and pick out the three main issues that really matter. He commented that revenue sharing only matters if it is tied to tax reduction, and welfare reform only if it related to getting people off of welfare. He emphasized that we shouldn't be concerned if it is something we will actually accomplish and pointed out that JFK was doing all of his progress building on phony issues. Rather, we should look in terms of how we create issues. We need an enemy. We need controversy. We need to do something that will build those things. Drugs and law enforcement may be one, especially since we are so weak in our standing in the polls on those.

It should come as no surprise how Nixon reacted to the report by the National Commission on Marijuana and Drug Abuse created by himself and Congress in 1970. The Commission, actually chaired by a Republican governor, was mandated to re-evaluate cannabis, its characteristics and demographics of use, and what should be done about it. Contrary to Nixon's very public opinion, the Commission's report de-emphasised cannabis as a problem, stated that the social and legal policies were out of proportion to the harm engendered by drug use and recommended decriminalisation of possession of cannabis for personal use on both state and federal levels. In March 1972 Nixon refused to accept the National Commission's final report, stating, 'I oppose the legalization of marijuana and that includes its sale, its possession and its use. I do not believe you can have effective criminal justice based on the philosophy that something is half legal and half illegal. That is my position, despite what the commission has recommended.'

There was some moderation of the Nixon era policies during President Jimmy Carter's administration, but this mild shift was short-lived. Under his successor, President Ronald Reagan, the War on Drugs was back on, including the rejection of any leniency towards consumption.

Although the rhetoric has changed in recent years, along with some significant changes in some states, US federal drug policies have

remained essentially within the framework of the Nixon War on Drugs approach.

This policy stability is remarkable considering that its results have been far from satisfactory, despite the immense fiscal cost of its intended and unsuccessful enforcement. Needless to say, the objective of a US free of drugs has proved illusory.

The attempt to enforce prohibition through the criminal justice system has led to mass incarceration, resulting in nearly half a million people currently serving jail time for drug offences

Not only has the US drug policy failed to diminish in any significant way the market for illegal drugs, but it has also brought about other deeply adverse social consequences. For example, the attempt to enforce prohibition through the criminal justice system has led to mass incarceration, resulting in nearly half a million people currently serving jail time for drug offences. In fact, the US has the highest incarceration rate in the world. Despite recent efforts to reduce the numbers of those imprisoned, there were as many as 2.2 million individuals in jail in 2013, as compared with 300,000 in 1972.

Consequently, in the US about 1 out of 100 adults is currently in jail or prison, and 1 out of 31 adults is incarcerated, on probation or on parole.

According to the experts, enforcement of drug policy has proved to be socially discriminatory against the poor. It is particularly detrimental to African Americans, who comprise only 14 per cent of regular drug users, but constitute 37 per cent of those arrested for drug offences and 56 per cent of those imprisoned for drug crimes.

Despite its unsatisfactory results in reducing trafficking and the consumption of drugs and the exceedingly high human and economic costs in the United States, this country's policy has become not only *de*

facto but also *de jure* the international approach to dealing with the illicit drug problem. The faulty model has been enshrined in three United Nations Conventions that frame national illicit drug regimes across the globe. Additionally the US has made it a hallmark of its foreign policy to agree to special enforcement mechanisms with countries considered key in the illicit traffic of drugs to its own domestic market.

As expected, since the prohibition and punitive model has failed to achieve its objectives in the US and other highly developed countries, it is not the least surprising that the model has proved to be not only ineffective, but actually disastrous, in countries with weaker institutions and fewer economic resources to enforce the rule of law. Many cases come to mind, unfortunately some of the most extreme in Latin America. Colombia, for one, has endured the loss of more than 200,000 people killed as a consequence of the violence of both organised crime and radical political movements – sometimes acting in symbiosis – and the government's actions to combat them. It took many years and vast resources – both domestic and those provided by the United States through Plan Colombia –

to reduce the violence displayed by the criminal groups. Nevertheless, as far as its consequences on the supply of drugs are concerned, the impact of Plan Colombia seems to have been rather modest.

Furthermore, as the security situation started to improve in Colombia, more markedly in the second half of the first decade of this century, Mexico began to suffer an epidemic of organised crime-related violence of proportions unprecedented in the country's history.

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Experts have yet to agree on the precise reasons behind this explosion of violent criminality but, without claiming to know the direction of causality, it is clear that such an explosion happened as the Mexican criminal gangs somehow displaced their Colombian counterparts in controlling the most profitable markets while at the same time the Mexican government attempted to tighten its grip on drug traffic and organised crime.

The confluence of these and other factors has been devastating for Mexico. And yet, for one thing, there is zero evidence that the supply of drugs going to the domestic American market was reduced at all, despite the greater law enforcement resources applied by the Mexican government and complemented by those provided by the US through the so-called Plan Merida. Furthermore, far from shrinking, drug trafficking directed to the Mexican market increased. The domestic consumption of illegal drugs has increased since the Mexican War on Drugs was intensified.

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in organised crime-related
violence between December
2006 and November 2015

But by far the highest price paid by Mexico is the extraordinary number of deaths brought about by gang-related violence. Eduardo Guerrero, a prestigious Mexican analyst, has carefully calculated that 90,772 people have died in organised crime-related violence between December 2006 and November 2015. Obviously, these

are figures only comparable to major warfare. The War on Drugs in Mexico is no longer just a metaphor; it has become exactly that – a war.

Equally worrying is the effect that organised crime has very likely had on the quality of Mexican security and justice institutions. Given organised crime's immense economic power and proven propensity for violence, as well as the fact that those institutions were not particularly strong to begin with, it is not outlandish to assume that they have been further infected by the disease of

corruption. Looking forward, this circumstance will make it very hard, if not impossible, for the current approach to drug policy to have any meaningful chance of success in Mexico. Extreme violence may be somewhat reduced, as has happened in very recent years; trafficking routes may be deviated towards Central America and the Caribbean, simultaneously worsening the security problems that these smaller and poorer nations already endure; and domestic drug consumption may be stabilised, but all of this can only happen at an immense sustained economic and human cost. And yet the risk of additional explosions in homicidal violence and further institutional erosion will remain as long as there is not a fundamental revision of the national and international approach to drug policy.

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True, the debate on drugs policy has been more open and intense over the last few years and some steps towards adopting policies that conform more with what science and experience would recommend have been taken in some places, even in the United States – albeit in only a few jurisdictions. But the pace of reform is too slow – and continually encounters significant obstacles – to allow such progress to be sufficient first to stop and then to reverse the damage that has been endured for too long. While advocates of serious reform have been accommodating of a gradualist approach, forces opposing it have proved to be extremely recalcitrant, despite the evidence in support of such reform.

I have been part of that reformist camp willing to accept that changes in the dominant policies may possibly only happen in incremental steps. When in public office, I pursued the policies dictated both by existing Mexican laws and by the international commitments that had been taken by my country at the multilateral and regional levels – most significantly with the United States. But at the same time our government worked with other governments to try to change the international framework. In this spirit we played a key role in the promotion and preparation of the 1998 United Nations General Assembly Special Session on drugs. Although, along with other like-minded governments such as Portugal, we got the documents emerging from the Special Session to recognise that the existing regime put too much of the responsibility for the problem on those countries involved in supply and not enough on those countries representing the bulk of the demand, any reconsideration of the international conventions that ruled then – and now – remained out of the question. Overall, the Special Session of 1998 proved to be a failed and rather frustrating attempt towards gradual reform. We found that the opponents of any significant change were not only the countries that traditionally championed the prohibitionist approach but, to our dismay, also some bureaucratic entities within the United Nations system that seemingly had developed a strong vested interest in deterring any reformist attempt.

I continued to abide by the gradualist approach to reform as a member of the Latin American Commission on Drugs and Democracy created 10 years after the UNGASS of 1998. Although our final statement was clear in declaring the War on Drugs a failure and advocating that drug use should be treated first and foremost as a matter of public health, we still refrained from suggesting that the international regime be scrapped. Nevertheless, our report contained recommendations that have become focal points in the recent drug policy debate. Rather timidly (although perhaps it seemed bold in February 2009, when the report was issued) we proposed to 'evaluate from a public health standpoint and on the basis of the most advanced

medical science the convenience of decriminalizing the possession of cannabis for personal use! We also said:

The enormous capacity of the narcotics trade for violence and corruption can only be effectively countered if its sources of income are substantially weakened. To accomplish this goal, the State must establish the laws, institutions and regulations enabling those who have become addicted to drugs to stop being buyers in an illegal market and to become patients of the health care system.

Thanks in part to the attention received by our 2009 report, the Latin American Commission evolved into a Global Commission on Drug Policy. This Commission has produced numerous papers and two main reports in 2011 and 2014. With a view to another Special Session of the General Assembly of the United Nations on the world drug problem due to take place in April 2016, the Global Commission, in its latest report of 2014, tried to be bolder in its recommendations. Among various key proposals, we have called for an end to the criminalisation of drug use. However, being aware that decriminalising consumption without taking away from organised crime the provision of the supply of drugs would be counterproductive, even disastrous, we also proposed to reform the global drug policy regime so that governments can intelligently regulate drug markets. As we put it frankly: 'Ultimately this is a choice between control in the hands of governments or gangsters ...'

Unfortunately, it is practically certain that the Global Commission's aspiration that the 2016 UNGASS be taken as 'an unprecedented opportunity to review and re-direct national drug control policies and the future of the global drug control regime' will be totally disappointed, or so it seems as the preparatory process to the Special Session stands towards the end of 2015.

'Ultimately this is a choice
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It is tempting to say – paraphrasing the great Gabriel García Márquez – that the preparatory process of UNGASS 2016 has become *a chronicle of a failure-to-reform foretold*, if for no other reason than that the United Nations entities most invested in preserving the status quo are the ones conducting the preparatory process. In diplomatic parlance, Vienna rather than New York will rule, meaning that the United Nations Commission on Narcotic Drugs (CND) and the United Nations Office on Drugs and Crime (UNODC) – both domiciled in Vienna – have been allowed to take over the negotiation and elaboration of the text that would be approved at UNGASS 2016.

Of course, the fact that the preparatory process was placed on to this track of safe failure is not to be blamed on the secondary layers of UN bureaucracy. It simply reflects that countries opposed to serious reform have used their influence to predetermine their desired outcome. Significant responsibility for this derailment of the needed reform process is also to be found in the governments that, having with good reason sought a change in the international framework for drug policy by promoting UNGASS 2016, have disturbingly become rather passive – and even doubtful about the very need for reform – during the preparation process. Regrettably, this certainly applies to the group of Latin American governments, not least that of my own country, that, having championed a change of approach, have now shrunk their reformist initiative.

Consequently, as I write these notes, I feel tempted to predict that unless a dramatic shift occurs in the early months of 2016 the April UNGASS, apart from using more compassionate and less hawkish language than that used in the past, far from starting a reform of the UN Drug Conventions, will instead reaffirm that these infamous instruments shall continue to be the cornerstone of international drug control policy. It will also reiterate the fallacious consideration that there is sufficient flexibility within those Conventions to accommodate national and regional drug policies.

As the Global Commission and other sources (including the UNODC) have pointed out, it is possible to interpret the Conventions as allowing the decriminalisation of drug consumption. However, as carefully analysed by the experts of the Transform Drug Policy Foundation:

It is also important to note that, while exploration of these less punitive approaches to personal possession and use is allowed within the international legal framework, no form of legal production and supply of any drug prohibited under the conventions, or domestic law, can be explored for non-medical use in any way. The medical prescription model is the only real quasi-exception to this rigid rule; as such, it exists as an island of regulated production and supply, albeit within very narrow parameters. Beyond this there is zero flexibility for any regulated production and supply models to be piloted, tested, researched or explored. Furthermore, this absolute legal barrier creates genuine political obstacles to even discussing or proffering such policy alternatives ...

This means that governments could conceivably decriminalise demand without being able to regulate the supply that would satisfy that demand, if they want to operate within the Conventions. But, obviously, it would be inconsistent to decriminalise demand without taking supply out of the hands of criminal organisations. Other aspects being equal, demand liberalisation would boost the illegal traffickers' revenues and thus their criminal power. Ironically, on this topic Nixon (as quoted above) was right: something should not be half legal and half illegal. The problem is that he decided to make that particular something fully illegal rather than legal.

It is a disturbing fact that authorities that have moved their drug policies in the direction suggested by sound knowledge and experience must do it in violation of the international legal framework. Hence the urgency to reform this framework so that countries clearly find within it the policy space to pursue strategies that were vociferously called for in 2014 by the Global Commission: put health and community safety first by moving from failed punitive

Ending the War on Drugs

enforcement to proven health and social interventions; stop criminalising people for drug use and possession; allow and encourage diverse experiments in legally regulating markets in currently illicit

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drugs, beginning with but not limited to cannabis, coca leaf and certain novel psychoactive substances; and focus on reducing the power of criminal organisations as well as the violence and insecurity that result from their competition with both one another and the state.

If UNGASS 2016 denies the creation of that policy space – as, sadly, it seems, will happen – enlightened governments should keep looking for it somewhere else. The stakes are too high to wait 18 years for another United Nations Special Session to start seriously fixing the blatant failure of civilisation that drug policy has been for more than a century.