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## Liberal moralities and drug policy reform

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### ABSTRACT

**Background:** While debates on drug policy express a range of ethical viewpoints, many are underpinned by core ideas drawn from liberal philosophy. Much recent analysis on the moral principles underpinning drug policy debates focuses on differences between reformers and supporters of the status quo. Less attention has been given to divergences among advocates for drug policy reform, which often hinge on the interpretation and application of liberal principles.

**Methods:** This paper examines three concepts from liberal philosophy in relation to drug policy debates: 'positive' and 'negative' freedom, rational autonomy, and social contract. The articulation of these ideas, and the extent to which they underpin different positions on policy reform, is explored with reference to three areas of advocacy: legal regulation; decriminalization; and harm reduction.

**Results:** Agreement on drug policy reforms does not necessarily imply shared views regarding concepts of freedom, rational autonomy, or social contract. Specific policy solutions may be supported by a range of ethical and political positions and can serve as points where divergent, and sometimes conflicting, philosophical perspectives converge.

**Conclusion:** Drug policy advocacy expresses a range of underpinning moral, political, and philosophical perspectives. Recognizing commonalities and differences among these perspectives is important for coalition-building and strategic planning.

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### Introduction

In recent years, increasing attention has been paid to the moral, ethical, and political values that underpin debates on drug policy and its possible reform (e.g. Curchin et al., 2021, 2024; Dea, 2020; Harris, 2021; Holland, 2020; Lerkkanen & Storbjörk, 2023; Porter, 2020; NB here and throughout 'reform' refers to arguments for alternatives to policies driven by principles of interdiction, enforcement, and punishment). It is often noted that opponents of drug policy reform deploy 'moral' arguments to support their positions (e.g. Dalgarno et al., 2021; Klein, 2020). However, as others have pointed out, *all* arguments on drug policy are built on, or deploy, moral claims (e.g. Hathaway, 2002; MacCoun & Reuter, 2001; Ritter, 2022; Stevens, 2024; Weatherburn, 2009; Zampini, 2018). Furthermore, while reform advocates often state that their positions are purely 'evidence-based,' it is important to recognize that evidence is not value-neutral; rather it is typically used in support of ethical positions rather than existing independently of them.

Stevens (2024) has shown that public actors within the drug policy arena can be grouped into clusters, or 'policy constellations,' that share broad aims and values or appeal to similar ethical principles (such as compassion) when justifying their views. This paper seeks to contribute to the ongoing analysis of the moral foundations of drug policy by

examining ethical divergences *within* key areas of drug policy reform advocacy through the lens of key concepts in liberal political philosophy. The concepts discussed do not cover all the key principles of liberal philosophy. Furthermore, like other underpinning moral concepts, they are rarely expressed in formal terms in public debate. Nevertheless, they are key components of ethical thinking within broadly liberal frameworks. Therefore, they provide useful analytical tools for distinguishing underlying principles that might otherwise be obscured by apparent similarities in policy goals.

Throughout this essay, 'liberal' refers to ideas rooted in the broad philosophical tradition of liberalism: a diverse, post-Enlightenment tradition grounded in the belief that while political authority and law are legitimate, they must be justified. As Courtland et al. (2022) put it, 'If citizens are obliged to exercise self-restraint, and especially if they are obliged to defer to someone else's authority, there must be a reason why.' It is important to note that 'liberal' here is not synonymous with 'progressive' as it is commonly used in North American political discourse—though liberal principles often underpin commitments to social justice and equity that characterize 'progressive' politics as commonly understood.

Debates on drug policy occur in an array of political contexts, from highly authoritarian regimes to constitutional democracies. This paper focuses on the latter, on the principle that in broadly liberal, constitutional settings, drug policy

debates are likely to hinge on ideas rooted in liberal philosophy—even if, as Curchin et al. (2024) have shown, the application of those principles ‘in the wild’ of actual political debate is often distorted. However, this focus on liberal settings does not imply that these principles are not relevant in more authoritarian contexts, so the arguments discussed here may have broader applicability.

MacCoun and Reuter (2001, p. 399) have noted that ‘attitudes toward public policy ... are symbolic expressions of core values’ and that drugs, like many other social issues, ‘bring core values into conflict.’ A central argument of this paper is that such value conflicts not only exist *between* advocates for reform and supporters of the status quo but also *among* those who agree on the failings of the drug war and who campaign for change. Shared positions on drug policy can emerge from different philosophical starting points, often reflecting intersections between ethical and political trajectories that lead to different visions of society. One of the most evident distinctions is between what can be described, following Giddens (1991)’s analysis of emancipatory politics, as ‘liberal’ and ‘radical’ trajectories in drug policy reform. The liberal trajectory seeks a society where substance use is regulated more equitably but through conventional disciplinary mechanisms established and enforced by the state. In contrast, the radical trajectory views drug policy reform as one facet of a wider challenge to state power, and the ‘carceral logic’ that legitimizes *any* form of policing or regulation backed by force (Robinson, 2020). As I will discuss, arguments for both decriminalization and harm reduction can orient toward either liberal or radical end points. However, arguments for legal regulation—despite often being perceived as the most radical position in drug policy—are inherently aligned with liberal goals, as they rely, by definition, on the exercise of state power.

Beneath this broad distinction, however, lie a range of potentially conflicting ethical principles. Analysing these through the lens of liberal philosophy is not to suggest that reform arguments are simply liberalism applied to drug policy; nor that ‘liberalism is by far the most defensible position for countering the injustice of drug prohibition’ (Hathaway, 2002, p. 400). Rather, it is hoped that this approach enables useful clarifications and helps shine a light on conceptual divergences that may otherwise remain hidden.

This is important because debates around drug policy are fundamentally debates about values (Kleinig, 2008; Lerikkanen & Storbjörk, 2023; Ritter, 2022; Stevens, 2024; Zampini, 2018). To build consensus for change, underpinning ethico-political arguments need to be surfaced, and need to win the day. As Ritter (2022, p. 117) puts it: ‘if we are committed to drug policy change, then a values-led policy dialogue is not only inevitable but may also create opportunities for policy change that have heretofore been unsuccessful.’ However, it is also important—despite the potential challenges this poses for coalition-building and collaboration—for differences in political trajectories to be surfaced and discussed. Agreement on specific policy solutions does not necessarily imply agreement on all underlying principles, nor should such agreement be assumed. This paper seeks to identify areas where such differences may exist and could benefit from further discussion.

In what follows, then, I discuss three key areas of drug policy reform (legal regulation, decriminalization, and harm reduction) through the lens of three key elements of liberal philosophy (positive and negative freedom, rational autonomy, and social contract). I begin by briefly describing the three concepts, before considering how they play out in reform arguments. Importantly, these concepts are not applied normatively. That is, I do not argue they *should* be applied in drug policy debates, be used in particular ways, or lead to specific conclusions. Rather, they are used analytically to help unpack ethical and political alignments and divergences that might otherwise be obscured.

## Three elements of liberal philosophy

### *Positive and negative freedom*

In his influential 1958 lecture *Two Concepts of Liberty*, the liberal philosopher Isaiah Berlin distinguished between two ideas of liberty: ‘negative’ and ‘positive’ freedom. According to Berlin, ‘negative’ freedom is concerned with the extent to which individuals ‘should be left to do what [they are] able to do or be, without interference from other persons.’ Positive freedom, by contrast, is concerned with ‘the source[s] of control or interference that can determine what someone can do, or be.’ (Berlin, 2002, p. 169). Put differently, negative conceptions of freedom focus on the extent to which individuals should be free to pursue their own path to self-realization without external influence. Positive conceptions of freedom, by contrast, focus on the extent to which the state should control external factors that threaten to undermine an individual’s capacity to act freely, or use its power to ‘protect people from themselves.’

This distinction is often thought of as the difference between ‘libertarianism’ and ‘paternalism’ (though MacCoun and Reuter (2001) describe it as the difference between ‘soft’ and ‘hard’ paternalism). Politics is often about determining where to draw the line between these two approaches in specific contexts. Importantly, arguments for negative freedom broadly assume that individuals, as rational moral agents, should not have their private behaviors—such as drug consumption—restricted by the state, except where those behaviors clearly harm others. By contrast, arguments for positive freedom assume that individuals are always already constrained by social and cultural factors that may limit their ability to realize their full potential. Paternalism, in this sense, is not about reducing freedom because particular behaviors (such as drug consumption) are morally wrong in an abstract sense (such as may be targeted by the ‘strong’ paternalism identified by Dworkin, 2020 and further discussed in relation to drug policy by Curchin et al., 2024). Rather, it is about protecting individuals from social factors that limit their capacity to act rationally in their own best interests. Arguments for negative freedom assume that maximizing personal liberty enables the state to ‘sustain the conditions for autonomous agency, rather than trying to make people autonomous’ (Radoilska, 2009, p. 142). Conversely, arguments for positive liberty assume the state can, and often should, use coercion to “hinder hindrances” to moral autonomy’ (Bellamy, 1992, p. 41).

The application of these frameworks to the issues of substance use, and how states should respond, has a long history. In 1859, John Stuart Mill, a leading proponent of negative conceptions of freedom, described the temperance movement, and particularly the growing campaign for alcohol prohibition, as resting on a ‘monstrous’ theory of social rights (Mill, 1980, p. 158) because it promoted the state’s use of precautionary coercion to protect individuals from themselves. However, many of his contemporary liberal thinkers (such as T.H. Green) strongly supported prohibition on ‘positive’ grounds; arguing that because alcohol undermined rational autonomy, the state had a duty to protect citizens from alcohol supply using coercive means (Nicholls, 2009, pp. 116–120; Nicholson, 1985). These principles played a significant role in shaping ideas that later led to the development of drug prohibition, and they continue to influence drug policy debates today (Berridge, 2013; Curchin et al., 2024; Davenport-Hines, 2002; Husak, 2003).

### **Rational autonomy**

In most forms of liberal philosophy, the human ability to use reason is closely tied to both moral responsibility and associated social and political rights. People are held responsible for their actions because, and only when, they have the capacity to rationally understand their consequences. Substance use has long posed critical problems for liberal philosophy because it speaks directly to this relationship between rationality, autonomy, and moral responsibility (Berridge, 2013; Courtwright, 2001; Nicholls, 2008, 2009; O’Brien, 2018). If true freedom is understood to depend on the ability to be rational, then intoxication (and, by extension, addiction) place limits on that freedom. However, if freedom is defined as the right to discover your own way of being—and to make your own mistakes along the way—then the state has no right to interfere with the substances an individual chooses to consume. Furthermore, if rationality is considered necessary for moral responsibility, then to what extent is an intoxicated person morally responsible for their actions? Legal scholars including Rabin (2005), Husak (1999, 2012) and Bogg and Herring (2013) have extensively detailed historical debates over the relationship between intoxication and culpability in law. The development of disease models of addiction, dating back to the eighteenth century, has often been motivated by attempts to determine whether ‘loss of control’ over substance use implies a loss of rational autonomy (Levine, 1978; Nicholls, 2008). Consequently, disease models of addiction have, at different times, been used both to reduce the moral condemnation of people who use drugs (including alcohol) and to justify coercive restrictions on their freedoms (Fisher, 2022; Hall, 2006; Heather et al., 2022; Humphreys, 2023).

The claim that substance use undermines rational autonomy is, therefore, a foundational justification for coercive drug control. However, this justification can be challenged in several ways. It may be argued that it is not empirically true: i.e. that people using drugs are, in fact, fully rational agents. It may be

claimed that conventional notions of rational autonomy rest on narrow, often colonial, definitions of rationality that are themselves partial and historically situated. It has also often been noted that the ‘war on drugs’ has historically weaponized liberal beliefs in rational autonomy to oppress specific populations by associating their purported drug use with dangerous irrationality (see, e.g. MacGregor & Thom, 2020).

### **Social contract**

The liberal notion of the social contract, at its core, posits that members of any organized society implicitly agree to a set of mutual principles, some governed by laws and institutions, that protect individual rights while maintaining social cohesion (Cudd & Eftekhari, 2021). By definition, this involves the exchange of some freedoms in the interest of wider social stability and justice. Various interpretations of social contract theory have emerged within the liberal philosophical tradition. These include the influential work of John Rawls, whose theory of justice is partly based on a thought experiment that imagines how an idealized, rational community, stripped of vested or selfish interests (in what he calls the ‘original position’), might formulate a social contract. However, even as a thought experiment, Rawls’ ‘original position’ has been critiqued for failing to account for the fact that subjectivity is inescapably socially determined, and the fact that we cannot—even in theory—escape relationships of power (Kukathas & Pettit, 1992). A key criticism of classical liberalism is that it often assumes a model of humans as free and ‘unencumbered selves’ (Radoilska, 2009, p. 136) which overlooks the structural factors (including class, gender, and ethnicity) that shape both choice and outcomes and which over-determine the nature of contractual relationships (Mills, 1997; Pateman, 1988).

Nevertheless, principles of ‘contractualism’ remain deeply ingrained in political discourse, including around drug policy. In this sense, the ‘social contract’ is less an idealized set of rules to which members of a given society agree and more the broad sense that society functions best when its members engage in a reasonable degree of give and take. It is the view that fairness is rooted in reciprocity, and that reciprocity is (and should be) embedded in the social and political structures by which we agree to live. In terms of social policy, this often translates into the expectation that the provision of social services comes with certain conditions, or ‘behavioral conditionality’ (Ritter, 2022, p. 116). This means that the social costs of service provision are accepted collectively on the understanding that those receiving the services demonstrate some level of behavioral change. Curchin et al. (2024) have recently shown how debates on welfare conditionality are often motivated by a paternalistic assumption that the state knows what is best for individuals regarding their drug use. However, I argue below that in the context of services aimed at reducing drug-related harms, contractual intuitions (that is, a basic sense of give-and-take regardless of moral assumptions about behavior), rather than paternalistic judgments, may play a more significant role.

## Moral underpinnings of drug policy reform: three key areas

### Legal regulation

While some models of legalized drug supply, such as grow-and-share, permit mostly informal exchange, the legal regulation of drugs, particularly if it involves any type of sale, can be understood as the management of drug markets through licensing systems. For instance, the ‘five models of regulation’ proposed by Transform Drug Policy Foundation are, essentially, five licensing regimes (e.g. Transform Drug Policy Foundation, 2009, 2020, 2022). Similarly, the recent legalization of cannabis in the United States and Canada has primarily entailed the establishment of various licensing systems (Seddon & Floodgate, 2020). Licensing the production and retail of commodities generally involves implementing national legal frameworks through local agencies and authorities, and it enables the regulation of behaviors through controls on retail practices, consumption spaces, pricing, product strength, and so forth (Valverde, 2003a, 2003b). In this sense, licensing is a conventional technique of liberal governance aimed at ‘getting drugs under control’ (Transform Drug Policy Foundation, 2024).

As Seddon (2020) observes, legalization involves the creation of regulatory structures that dynamically shape markets to mitigate externalities. The development of these structures is ‘ultimately a matter of political values’ (p. 324). Legal regulation, therefore, represents a constructive market intervention, incorporating a broader range of drugs into the kind of regulated markets long established for alcohol. It also accepts that the state has a right to impose and enforce such regulations, based on an evaluation of which outcomes are best avoided for the greater social good, and what level of coercive constraint is justified to protect individuals from the risks posed by unrestricted market forces. In this respect, legal regulation aligns with key tenets of ‘positive’ conceptions of freedom: it affirms the legitimacy of the state to determine certain social goods; accepts that the law can legitimately constrain individual freedoms in defense of those goods; and it uses market regulation as a primary tool for achieving this.

Partly for this reason, it has been argued that legal regulation risks creating ‘prohibition 2.0’, since it relies on state enforcement of licensing laws and the suppression of illicit supply (Buchanan, 2018). This is a valid critique from a radical perspective: if the ‘positive’ exercise of state power is rejected in principle, then any state-based regulation of supply is inherently coercive. However, it is hard to see how *any* form of regulation can avoid this charge since all licensing is a modality of state power. Regulation without enforcement is a contradiction in terms, as is the notion of a licensing regime that allows an unregulated parallel market to coexist.

For proponents of legal regulation, therefore, the critical issue is not *whether* states should impose controls over the supply (and, by extension, consumption) of drugs, but where the legitimate boundaries of that control should lie. Key questions include: How should the supply of different drugs be licensed? Who should be permitted to sell, and under what conditions? How should licensing laws be policed and

enforced? Which state agencies (local councils, courts, specialist authorities) should be empowered to manage the system? While the practical challenges here are significant, these are not radical questions *vis a vis* liberal modes of governance. The radicalism of legal regulation, such as it is, lies in its inclusion of previously excluded commodities into existing systems of control, rather than in any attempt to fundamentally overhaul the system itself.

### Decriminalization

In a recent paper Stevens et al. (2024) describe drug decriminalization as a ‘modest proposal’ compared to the more radical idea of legal regulation, advocating for it on ‘negative’ liberal principles, such as the right to privacy, freedom of conscience, and bodily autonomy. These are the same principles on which John Stuart Mill opposed the prohibition of alcohol in *On Liberty*. Liberal models of decriminalization seek to expand the domain of individual freedom to include the possession and use of currently controlled drugs through ‘the removal of all sanctions for drug use and related activities including possession, acquisition, purchase, cultivation and possession of drug use paraphernalia’ (International Drug Policy Consortium, 2024). However, these models do not fundamentally challenge the principle that states can legitimately use their power to regulate supply (Husak, 2002; Stevens et al., 2022). In this respect, while legal regulation is often seen as the more radical approach, both liberal decriminalization and legal regulation sit on the same fundamental political axis: one which accepts the right of states to impose some constraints on individual freedom/bodily autonomy concerning intoxicants, while also viewing prohibition as ineffective, unjust and over-reaching. Both seek to enhance personal autonomy regarding drugs within the broad parameters of existing state structures while acknowledging the need for some level of coercive protection against unrestricted supply.

However, Stevens et al. (2024) note that liberal arguments for decriminalization are contested by a radical abolitionist perspective, which views ‘the carceral state as inherently violent, particularly in respect of marginalized and racialized communities’ (p.7); and so rejects any response to drug supply that involves, or enhances the power of, policing and penalty. This more radical version of decriminalization sits on a political trajectory that is distinct from, and (*vis a vis* conventional liberal politics) more radical than *either* liberal decriminalization or legal regulation. Radical decriminalization rejects the principle that state power can be legitimately exercised in the domain of drug supply or use—adopting the libertarian position that ‘it’s your body and should be your choice what you ingest, without threat, criminalization, punishment or imprisonment from the state’ (Buchanan, 2018). Furthermore, it posits that drug control is just one facet of a wider system of carceral violence that uses prohibitions and other legal instruments to control and oppress marginalized populations (Robinson, 2020).

Arguments for both liberal decriminalization and legal regulation imply that prohibition and criminalization are bugs in an otherwise legitimate mode of governance and that these

can be corrected through reforms within the existing system. It is for this reason that liberal decriminalization is often viewed a 'stepping stone' (Xavier et al., 2024), 'imperfect compromise' (Dalgarno et al., 2021), 'partial cure' (Scher et al., 2023), or 'step in the right direction' (Holland, 2020) relative to legal regulation. In contrast, radical or abolitionist decriminalization views drug laws as core features of a system of violence that upholds power and perpetuates inequalities. Systems that rely on policing, such as licensing, fall, by definition, within this logic of power.

In the liberal decriminalization model, the continued criminalization of suppliers is justified partly on the assumption that they are rational, responsible actors; and that many, especially those higher up the supply chain, exploit the demand for drugs to a degree that risks undermining the health and wellbeing of their customers as well as their capacity to act as rational, free agents themselves (see Drug Policy Alliance, 2019 for a critique of this assumption). From this perspective drugs, like alcohol, are not 'ordinary commodities,' and without controls, their supply will attract exploitative actors. Legal regulation seeks to address this problem by licensing supply, but in doing so inevitably runs up against the challenge of how to prevent legal, commercial entities from engaging in similar (or more) exploitative practices. This is a challenge that alcohol control advocates have struggled with for decades, and one that many proponents of liberal decriminalization (as an end in itself, rather than a stepping stone) argue is insurmountable (e.g. Caulkins & Reuter, 2021).

But while supporters of legal regulation need to develop licensing models that can effectively constrain exploitative profit-seeking in a legal commercial environment, supporters of radical decriminalization need to demonstrate how the complete removal of state powers would prevent similar exploitation. Interestingly, Xavier et al. (2024) found that people who use drugs in Vancouver were highly skeptical of decriminalization, often because it failed to offer the kinds of controls and protections implied by licensing. Similarly, Greer and Ritter (2020) found strong support for the protections afforded by state regulation of supply among people who use drugs in Sydney, although this was tempered by concerns around excessive paternalism and corruption. There was no evidence, or reported experience, that without formal controls a just and equitable social contract between suppliers and their customers naturally emerged. Ultimately, while the violence and injustice of current drug markets are undeniably tied to prohibition, and while licensing risks enabling commercial exploitation, there is little historical or contemporary evidence that simply *deregulating* the supply of commodities leads to more altruistic behaviors or greater protections for consumers.

### Harm reduction

The principles underlying harm reduction have been extensively examined from both theoretical and political perspectives. Its emergence as a social justice-oriented, and in some formations anarchist, response to a treatment and policy

paradigm that linked abstinence and punitive policing in the pursuit of a drug-free world has been well-documented (e.g. Friedman et al., 2001; Smith, 2012). So too has its grounding in identifiably 'liberal moral attitudes toward the individual' (Zampini, 2018, p. 6). Stevens (2024) argues that harm reduction is 'a morally flexible concept [that] can express a libertarian concern for the freedom of people who use drugs, as well as the paternalist idea that people need protecting from themselves' (p. 71).

There has also been ongoing debate regarding whether harm reduction is, or should strategically position itself as, value-neutral regarding the ethics of drug consumption (Fry et al., 2005; Irwin & Fry, 2007; Keane, 2003; Khoshnood, 2008; Kleinig, 2008; Pauly, 2008). These debates highlight the extent to which harm reduction intersects with multiple ethico-political trajectories: support for harm reduction does not necessarily imply agreement on the role of the state in controlling drug-related behaviors, nor on the relationship between drug consumption and rational autonomy. For instance, the view that harm reduction should be grounded in the strongly 'negative' principles of 'the rights to self-determination over one's own body, decision-making, and consciousness' (INPUD, 2020, p. 15) differs significantly from the perspective that harm reduction serves as a temporary protective measure on a path toward reduction or cessation of use.

It is sometimes argued that advocacy for harm reduction need not appeal to value-based arguments because the empirical evidence shows that it *works* (Wodak, 2007). However, this claim doesn't resolve the question of what it works *for*, and how the relative value of different outcomes is assessed (Kleinig, 2008). Undoubtedly, harm reduction works in mitigating acute, often tragic, outcomes—and this clearly aligns with compassionate moral intuitions. However, if one believes that a society without drugs is the ultimate long-term goal then that longer-term outcome takes precedence. The evidence that seat belts save lives is overwhelming but if your long-term goal is the elimination of car use then that fact alone doesn't win the argument. I would, therefore, disagree with Wodak (2007) and Christie et al. (2008) who argue that the demonstrated reduction in mortality and associated harms from harm reduction precludes consequentialist arguments against it. This would only be the case if there was universal agreement on what the ideal outcomes of drug interventions should be, which is clearly not the case. The concern that harm reduction risks entrenching drug use, even while achieving positive short-term goals, is often rooted in a long-termist utilitarian position that a less tolerant approach could ultimately serve the greater good (see Blunt, 2023 for a discussion of the tensions between contemporary utilitarian 'long-termism' and the kind of day-to-day altruism that many people see as the practical definition of compassion).

Adapting Corrigan (2018)'s analysis of mental health advocacy, divergent views on the ethics of harm reduction can be characterized as orienting toward a 'service' vs. a 'rights' perspective. That is, between a consequentialist, 'service'-based position that justifies harm reduction on the utility of its *outcomes* (such as reduced long-term social costs, or the facilitation of treatment and eventual cessation of drug use) and a

deontological ‘rights’-based position that makes the claim for services as a fundamental matter of rights, regardless of outcomes (Bunn, 2019; INPUD & 3D Research, 2023). In contrast to arguments appealing to rights, service-based arguments appeal to reciprocity. Furthermore, rights-based arguments, particularly those that claim drug use can be a positive good (e.g. Duff, 2004; Peele, 2020) or that ‘problems are caused by the drug war and not by drug use itself’ (INPUD, 2020, p. 18) conflict with the contractual view that the shared costs of harm reduction services should be accepted precisely *because* they address a deficit (otherwise, why is a service needed?). From a service perspective, assuming as it does that services by definition address a deficit, any argument that drug consumption isn’t intrinsically problematic is an argument against the need for harm reduction.

The problem of contractual obligation in regard to harm reduction has been addressed by various scholars. Porter (2020) describes a common ‘lay’ argument for rejecting harm reduction based on an intuitive notion of ‘moral deserts.’ This, according to Porter, asserts that ‘since PWUD create and maintain the circumstances that put them in harm’s way via their own bad actions, we (we society, we taxpayers, we health professionals, and other service providers) are under no obligation to aid them in avoiding harm. More so, justice demands that we not do so.’ (p. 363). However, Porter goes on to argue that even from this ‘moral deserts’ perspective harm reduction should logically be supported because, even if drug consumption is viewed as deontologically immoral, the additional and disproportionate social harms caused by prohibition (e.g. the impacts of criminalization on life-chances, the wider health impacts of contaminated supply) are such that service provision is justified. Stevens (2011) approaches this issue from an autonomy perspective, arguing that if addiction is seen as a disability of agency, there should be no expectation of contractual reciprocity where the provision of services aims to improve that capacity for agency. Bunn (2019), however, counters this with a rights-based argument, warning that any deficit model of addiction risks ‘simultaneously pathologiz[ing] and stigmatiz[ing] those labeled as having an addiction’ (p. 60). Ezard (2001), by contrast, proposes a rights-based argument for harm reduction provision based on the ‘positive’ principles that states have an obligation to reduce vulnerability and intervene directly to protect people from self-harming behaviors (cited in Keane, 2003).

Arguing from a radical perspective, Robinson (2020) states that the logical conclusion of harm reduction is abolitionism, as it implies a wholesale rejection of the liberal notion that individual behaviors should be subject to disciplinary power. By contrast, INPUD’s core principles (2020, p. 11) emphasize liberal values of individual rights and freedoms, though they challenge the conventional liberal assumption that these rights are predicated on rational autonomy, insofar as rationality is defined as sobriety and non-dependence. This does not entail a complete rejection of liberal conceptions of citizenship, but rather an expansion of these conceptions to include people who use drugs (INPUD, 2020, p. 14).

Harm reduction emerged as a practical critique of narrowly pathologizing, highly medicalized, and quasi-disciplinary conceptions of addiction, and the framing of ‘people labeled

as “addicted” ... as criminal, pathological and suffering from a disease’ (Boyd & Norton, 2019, p. 277). Instead, it emphasizes the capacity of people who use drugs for self-care and rational decision-making in their own best interests. Some critics, however, warn that harm reduction advocacy goes too far in reframing people who use drugs as distinctively ‘neoliberal’ subjects: ‘entrepreneurial, self-governing, autonomous actor[s] ... solely responsible (and thus blameworthy) for their own healthcare’ (Bunn, 2019, p. 60; see also Campbell & Shaw, 2008; Kammesgaard, 2019). However, this raises the question: what is actually *wrong* with ‘responsibilization’ and a turn toward people who use drugs being viewed as ‘ethical subjects’ or ‘agents of their own government’ (Bunton, 2001, p. 225; Campbell & Shaw, 2008, p. 697)? Dea (2020) and Keane (2003) argue that, insofar as harm reduction is *only* about reducing harm at the individual level, it risks reinforcing (or failing to challenge) the systemic factors that exacerbate drug harms. However, Moore and Fraser (2006), argue that while emphasizing rational autonomy can abstract personal responsibility from structural determinants (and this is a significant problem), ‘it is also important to recognize that claiming neo-liberal subjecthood is also potentially empowering for drug users,’ and they make the case for ‘acknowledging the strategic value of adopting the status of neo-liberal subject while remaining skeptical of it’ (p. 3045).

## Discussion

From a lay perspective, the various aspects of drug policy reform advocacy may seem largely indistinguishable. Indeed, legalization and decriminalization are frequently conflated in both media coverage and public discussions on drug policy. To those who rarely engage with these issues (which, as advocates sometimes forget, is most people, most of the time) arguing over these underlying philosophies may well look like the ‘narcissism of small differences.’ However, I agree with those who argue that it is crucial to discuss the political and moral principles underpinning these debates, not only for the sake of conceptual clarity but because drug policy debates are inherently about values, political goals, and perspectives on what defines a good society.

Engaging in ‘moral sidesteps’ (Stevens, 2019)—that is, responding to claims based on evidence with appeals to moral principles—is not unique to opponents of reform. Nor is it an illegitimate move, if we accept that policy positions are essentially grounded in values. A recent guide for advocates promoting decriminalization advised that ‘advocates should note that it can be a major challenge to respond to a narrative that opposes decriminalization because the conversation is not always ruled by rational, evidence-based arguments, but by beliefs, values, and emotions.’ (Keane et al., 2021). However, I would argue that this is true on all sides, and is precisely why advocates should explicitly acknowledge the beliefs, values, and emotions that motivate their own positions. This necessitates a closer examination of the moral foundations of policy positions. For instance, Ritter (2022) recently found that in debates on drug testing, reformers appealed to ‘negative’ rights-based and utilitarian

arguments but underplayed arguments for contractual reciprocity. This is worth reflecting on, as it suggests that while drug policy reform advocacy is often strongly committed to communitarian politics and the goals of social justice, it also often applies classically liberal (even libertarian) notions of individual freedom/bodily autonomy in ways that communitarian or contractualist liberals may find troubling. Underplaying contractualism—for example, by framing reciprocal expectations and behavioral conditionality as either representing narrow ‘abstinence-based values’ or as inherently stigmatizing—risks overlooking the fact that contractualism resonates with widely-held ethical intuitions, and thus carries significant political weight.

For drug policy reform advocates, there is clear strategic value in smoothing over ethico-political differences for the purposes of coalition building. Furthermore, most supporters of drug policy reform agree on the basic position that an interdiction-and-punishment approach has produced damaging social outcomes. However, recognizing the sometimes significant differences in the values and political principles that underpin calls for change is equally important. This matters in respect of coalition-building because it is important to clarify whether the case for reform is being made in defense of liberal political values or as part of a project to radically overhaul that system of beliefs. Abolitionist arguments for decriminalization are, in important respects, incompatible with the view that it is a ‘stepping stone’ to regulation. Likewise, the case for legal regulation cannot be made coherently without accepting the principle of enforcement—even if social justice demands that such enforcement is equitable. Rights-based arguments that may mobilize support for grassroots provision of harm reduction may not persuade funders operating within a social contract framework, where resources are allocated with reciprocal expectations, or to address specific, identifiable deficits.

This paper is not a call for these divergences to be resolved in any specific direction. Rather, it aims to contribute to the ongoing discussion of the moral foundations of drug policy debates. As these debates become more prominent and politically salient, it is vital to examine not only the moral arguments of those who oppose change but also those advocating for reform. Inevitably, this highlights divergences and disagreements; however, doing so is a necessary aspect of establishing the terms of advocacy coalitions, and further clarifying what the fundamental principles, and goals, of reform should be.

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## References

- Bellamy, R. (1992). *Liberalism and modern society*. Penn State University Press.
- Berlin, I. (2002). Two concepts of liberty. In H. Hardy (Ed.), *Liberty* (pp. 166–217). Oxford University Press.
- Berridge, V. (2013). *Demons: Our changing attitudes to alcohol, tobacco and drugs*. Oxford University Press.
- Blunt, G. D. (2023). Effective altruism, longtermism, and the problem of arbitrary power. *The Philosopher*, 111(2), 85–91. <https://www.thephilosopher1923.org/post/a-mirror-for-tech-bros#:~:text=Whereas%20effective%20altruism%20extends%20the,these%20obligations%20to%20future%20people>
- Bogg, A., & Herring, J. (2013). Addiction and responsibility. In J. Herring, C. Regan, D. Weinberg, & P. Withington (Eds.), *Intoxication and society: Problematic pleasures of drugs and alcohol* (pp. 247–63). Palgrave Macmillan.
- Boyd, S., & Norton, A. (2019). Addiction and heroin-assisted treatment: Legal discourse and drug reform. *Contemporary Drug Problems*, 46(3), 265–281. <https://doi.org/10.1177/0091450919856635>
- Buchanan, J. (2018). The bifurcation of drugs: A misguided love-hate relationship? *Medium*. <https://julianbuchanan.medium.com/with-a-n-evidence-based-human-rights-approach-we-can-end-this-crazy-drug-war-once-and-for-all-66dfcdd23f14>
- Bunn, R. (2019). Conceptualizing addiction as disability in discrimination law: A situated comparison. *Contemporary Drug Problems*, 46(1), 58–77. <https://doi.org/10.1177/0091450918819519>
- Bunton, R. (2001). Knowledge, embodiment and neo-liberal drug policy. *Contemporary Drug Problems*, 28(2), 221–243. <https://doi.org/10.1177/009145090102800204>
- Campbell, S. D., & Shaw, S. J. (2008). Incitements to discourse: Illicit drugs, harm reduction, and the production of ethnographic subjects. *Cultural Anthropology*, 23(4), 688–717. <https://doi.org/10.1111/j.1548-1360.2008.00023.x>
- Caulkins, J. P., & Reuter, P. (2021). Ending the war on drugs need not, and should not, involve legalizing supply by a for-profit industry. *The American Journal of Bioethics*, 21(4), 31–35. <https://doi.org/10.1080/15265161.2021.1893064>
- Christie, T., Groarke, L., & Sweet, W. (2008). Virtue ethics as an alternative to deontological and consequential reasoning in the harm reduction debate. *The International Journal on Drug Policy*, 19(1), 52–58. <https://doi.org/10.1016/j.drugpo.2007.11.020>
- Corrigan, P. W. (2018). *The stigma effect: Unintended consequences of mental health campaigns*. Columbia University Press.
- Courtland, S. D., Gaus, D., & Schmidtz, D. (2022). Liberalism. The Stanford Encyclopedia of Philosophy. Retrieved July 24, 2024, from <https://plato.stanford.edu/entries/liberalism/>
- Courtwright, D. (2001). *Forces of habit: Drugs and the making of the modern world*. Harvard University Press.
- Cudd, A., & Eftekhari, S. (2021). Contractarianism. The Stanford Encyclopedia of Philosophy. <https://plato.stanford.edu/entries/contractarianism/>
- Curchin, K., Weight, T., & Ritter, A. (2021). Moral framings in the Australian parliamentary debate on drug testing of welfare recipients. *Social Policy and Administration*, 56, 409–22.
- Curchin, K., Weight, T., & Ritter, A. (2024). Paternalism in Australian parliamentary debate: The case of drug testing social security recipients. *Journal of Social Policy*, 1–15. <https://doi.org/10.1017/S0047279423000661>
- Dalgarno, P., O’Rawe, S., & Hammersley, R. (2021). Illegal drugs in the UK: Is it time for considered legalisation to improve public health? *Drug Science, Policy and Law*, 7, 1–9. <https://doi.org/10.1177/20503245211005351>
- Davenport-Hines, R. (2002). *The pursuit of oblivion: A social history of drugs*. Phoenix Press.
- Dea, S. (2020). Toward a philosophy of harm reduction. *Health Care Analysis*, 28(4), 302–313. <https://doi.org/10.1007/s10728-020-00405-x>
- Drug Policy Alliance (2019). *Rethinking the drug dealer*. Author.
- Duff, C. (2004). Drug use as a ‘practice of the self’: Is there any place for an ‘ethics of moderation’ in contemporary drug policy? *International Journal of Drug Policy*, 15(5–6), 385–393. <https://doi.org/10.1016/j.drugpo.2004.06.010>



- Dworkin, G. (2020). Paternalism. The Stanford Encyclopedia of Philosophy. <https://plato.stanford.edu/archives/fall2020/entries/paternalism/>
- Ezard, N. (2001). Public health, human rights and the harm reduction paradigm: from risk reduction to vulnerability reduction. *International Journal of Drug Policy*, 12, 207–19.
- Fisher, C. E. (2022). *The urge: Our history of addiction*. Scribe.
- Friedman, S. R., Southwell, M., Bueno, R., Paone, D., Byrne, J., & Crofts, N. (2001). Harm reduction—A historical view from the left. *The International Journal on Drug Policy*, 12(1), 3–14. [https://doi.org/10.1016/S0955-3959\(01\)00063-9](https://doi.org/10.1016/S0955-3959(01)00063-9)
- Fry, C. L., Treloar, C., & Maher, L. (2005). Ethical challenges and responses in harm reduction research: Promoting applied communitarian ethics. *Drug and Alcohol Review*, 24(5), 449–459. <https://doi.org/10.1080/09595230500263905>
- Giddens, A. (1991). *Modernity and self-identity*. Stanford University Press.
- Greer, A., & Ritter, J. (2020). The legal regulation of drug and the role of government: Perspectives from people who use drugs. *Drug and Alcohol Dependence*, 206, 107737. <https://doi.org/10.1016/j.drugalcdep.2019.107737>
- Hall, W. (2006). Avoiding potential misuses of addiction brain science. *Addiction*, 101(11), 1529–1532. <https://doi.org/10.1111/j.1360-0443.2006.01604.x>
- Harris, S. (2021). Possessing drugs, possessing rights: Harm reduction and drug policy reform in Argentina. *Contemporary Drug Problems*, 48(3), 260–275. <https://doi.org/10.1177/00914509211034006>
- Hathaway, A. (2002). From harm reduction to human rights: Bringing liberalism back into drug reform debates. *Drug and Alcohol Review*, 21(4), 397–404. <https://doi.org/10.1080/0959523021000023270>
- Heather, N., Field, M., Moss, T., & Satel, S. (Eds.). (2022). *Evaluating the brain disease model of addiction*. Routledge.
- Holland, A. (2020). An ethical analysis of UK drug policy as an example of a criminal justice approach to drugs: A commentary on the short film *Putting UK Drug Policy into Focus*. *Harm Reduction Journal*, 17(1), 97. <https://doi.org/10.1186/s12954-020-00434-8>
- Humphreys, K. (2023). *Addiction: A very short introduction*. Oxford University Press.
- Husak, D. (2002). *Legalize this! The case for decriminalizing drugs*. Verso.
- Husak, D. N. (1999). Addiction and criminal liability. *Law and Philosophy*, 18, 655–684.
- Husak, D. N. (2003). Four points about decriminalisation. *Criminal Justice Ethics*, 22(1), 21–29. <https://doi.org/10.1080/0731129X.2003.9992137>
- Husak, D. N. (2012). Intoxication and culpability. *Criminal Law and Philosophy*, 6(3), 363–379. <https://doi.org/10.1007/s11572-012-9176-7>
- INPUD (2020). *Taking back what's ours! A documented history of the movement of people who use drugs*. Author.
- INPUD and 3D Research (2023). *Harm reduction: Best and worst practice. Peer-informed policy and program recommendations in the time of COVID-19*. INPUD.
- International Drug Policy Consortium (2024). The gold standard of decriminalisation. Retrieved August 9, 2024, from <https://cdn.sanity.io/files/6u5teakk/production/920a87fb6f6634e6db17f84d9eefed13c6aa54a.pdf>
- Irwin, K. S., & Fry, C. L. (2007). Strengthening drug policy and practice through ethics engagement: An old challenge for a new harm reduction. *International Journal of Drug Policy*, 18(2), 75–83. <https://doi.org/10.1016/j.drugpo.2006.12.002>
- Kammesgaard, T. (2019). Harm reduction policing: From drug law enforcement to protection. *Contemporary Drug Problems*, 46(4), 345–362. <https://doi.org/10.1177/0091450919871313>
- Keane, C. (2003). Critiques of harm reduction, morality and the promise of human rights. *International Journal of Drug Policy*, 14(3), 227–232. [https://doi.org/10.1016/S0955-3959\(02\)00151-2](https://doi.org/10.1016/S0955-3959(02)00151-2)
- Keane, M., Dąbkowska, M., Duffin, T., & Scharwey, M. (2021). *Decriminalisation: Insights for advocates*. Ana Liffey Drug Project.
- Khoshnood, K. (2008). Harm reduction ethics: Acknowledging the values and beliefs behind our actions. *The International Journal on Drug Policy*, 19(1), 1–3. <https://doi.org/10.1016/j.drugpo.2007.12.001>
- Klein, A. (2020). Harm reduction works: Evidence and inclusion in drug policy and advocacy. *Health Care Analysis*, 28(4), 404–414. <https://doi.org/10.1007/s10728-020-00406-w>
- Kleining, J. (2008). The ethics of harm reduction. *Substance Use & Misuse*, 43(1), 1–16. <https://doi.org/10.1080/10826080701690680>
- Kukathas, C., & Pettit, P. (1992). *Rawls: A theory of justice and its critics*. Polity Press.
- Lerikkanen, T., & Storbjörk, J. (2023). Debating the drug policy in Sweden: Stakeholders' moral justifications in media 2015–2021. *Contemporary Drug Problems*, 50(2), 269–293. <https://doi.org/10.1177/00914509231159394>
- Levine, H. G. (1978). The discovery of addiction: Changing conceptions of habitual drunkenness in America. *Journal of Studies on Alcohol*, 39(1), 143–174. <https://doi.org/10.15288/jsa.1978.39.143>
- MacCoun, R. J., & Reuter, P. (2001). *Drug war heresies: Learning from other vices, times and places*. Cambridge University Press.
- MacGregor, S., & Thom, B. (Eds.). (2020). *Risk and substance use: Framing dangerous people and dangerous places*. Routledge.
- Mill, J. S. (1980). *On liberty*. Penguin.
- Mills, C. W. (1997). *The racial contract*. Cornell University Press.
- Moore, D., & Fraser, S. (2006). Putting at risk what we know: Reflecting on the drug-using subject in harm reduction and its political implications. *Social Science & Medicine*, 62(12), 3035–3047. <https://doi.org/10.1016/j.socscimed.2005.11.067>
- Nicholls, J. (2008). Vinum Britannicum: The 'drink question' in early modern England. *Social History of Alcohol and Drugs*, 22(2), 6–25.
- Nicholls, J. (2009). *The politics of alcohol: A history of the drink question in England*. Manchester University Press.
- Nicholson, P. (1985). T.H. Green and state action: liquor legislation. *History of Political Thought*, 6(3), 517–550.
- O'Brien, J. (2018). *States of intoxication: The place of alcohol in civilisation*. Routledge.
- Pateman, C. (1988). *The sexual contract*. Polity Press.
- Pauly, B. (2008). Harm reduction through a social justice lens. *The International Journal on Drug Policy*, 19(1), 4–10. <https://doi.org/10.1016/j.drugpo.2007.11.005>
- Peele, S. (2020). Beyond harm reduction: encouraging positive drug use. *Filter*. <https://filtermag.org/positive-drug-use/>
- Porter, L. B. (2020). Harm reduction and moral desert in the context of drug policy. *Health Care Analysis*, 28(4), 362–371. <https://doi.org/10.1007/s10728-020-00411-z>
- Rabin, D. Y. (2005). Drunkenness and responsibility for crime in the eighteenth century. *Journal of British Studies*, 44(3), 457–477. <https://doi.org/10.1086/429705>
- Radoilska, L. (2009). Public health ethics and liberalism. *Public Health Ethics*, 2(2), 135–145. <https://doi.org/10.1093/phe/php010>
- Ritter, A. (2022). *Drug policy*. Routledge.
- Robinson, I. (2020). Towards an abolitionist drug policy reform. In J. Buxton, G. Margo, & L. Burger, (Eds.), *The impact of global drug policy on women: Shifting the needle* (pp. 259–69). Emerald Insights.
- Scher, B. D., Neufeld, S. D., Butler, A., Bonn, M., Zakimi, N., Farrell, F., & Greer, A. (2023). "Criminalization causes the stigma": Perspectives from people who use drugs. *Contemporary Drug Problems*, 50(3), 402–425. <https://doi.org/10.1177/00914509231179226>
- Seddon, T. (2020). Markets, regulation and drug law reform: Towards a constitutive approach. *Social & Legal Studies*, 29(3), 313–333. <https://doi.org/10.1177/0964663919868756>
- Seddon, T., & Floodgate, W. (2020). *Regulating cannabis: A global review and future directions*. Springer.
- Smith, C. B. R. (2012). Harm reduction as anarchist practice: A user's guide to capitalism and addiction in North America. *Critical Public Health*, 22(2), 209–221. <https://doi.org/10.1080/09581596.2011.611487>
- Stevens, A. (2011). Drug policy, harm and human rights: A rationalist approach. *The International Journal on Drug Policy*, 22(3), 233–238. <https://doi.org/10.1016/j.drugpo.2011.02.003>
- Stevens, A. (2019). 'Being human' and the 'moral sidestep' in drug policy: Explaining T government inaction on opioid-related deaths in the UK.

- Addictive Behaviours*, 19, 444–450. <https://doi.org/10.1016/j.add-beh.2018.08.036>
- Stevens, A. (2024). *Drug policy constellations: The role of power and morality in the making of drug policy in the UK*. Bristol University Press.
- Stevens, A., Eastwood, N., & Douse, K. (2024). In defence of the decriminalisation of drug possession in the UK. *Drug Science, Policy and Law*, 10, 1–10. <https://doi.org/10.1177/20503245241239200>
- Stevens, A., Hughes, C. E., Hulme, S., & Cassidy, R. (2022). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29–54. <https://doi.org/10.1177/1477370819887514>
- Transform Drug Policy Foundation (2009). *After the war on drugs: Blueprint for regulation*. Transform.
- Transform Drug Policy Foundation (2020). *How to regulate stimulants: A practical guide*. Transform.
- Transform Drug Policy Foundation (2022). *How to regulate cannabis: A practical guide* (3rd ed.). Transform.
- Transform Drug Policy Foundation (2024). Retrieved August 9, 2024, from <https://transformdrugs.org/>
- Valverde, M. (2003a). Police science, British style: Pub licensing and knowledges of urban disorder. *Economy and Society*, 32(2), 234–252. <https://doi.org/10.1080/0308514032000073419>
- Valverde, M. (2003b). *Law's dream of a common knowledge*. Princeton University Press.
- Weatherburn, D. (2009). Dilemmas in harm reduction. *Addiction*, 104(3), 335–339. <https://doi.org/10.1111/j.1360-0443.2008.02336.x>
- Wodak, A. (2007). Ethics and drug policy. *Psychiatry*, 6(2), 59–62. <https://doi.org/10.1016/j.mppsy.2007.01.001>
- Xavier, J. C., McDermid, J., Buxton, J., Henderson, I., Streukens, A., Lamb, J., & Greer, A. (2024). People who use drugs' prioritization of regulation amid decriminalization reforms in British Columbia, Canada: A qualitative study. *The International Journal on Drug Policy*, 125, 104354. <https://doi.org/10.1016/j.drug-po.2024.104354>
- Zampini, G. (2018). Evidence and morality in harm-reduction debates: Can we use value-neutral arguments to achieve value-driven goals? *Palgrave Communications*, 4(1), 1–10. <https://doi.org/10.1057/s41599-018-0119-3>