The Legalization Debate

To legalize psychoactive drugs or not? That is the question I am often asked at the very end of my presentation on psychoactive drugs and workplace safety. Like most incredibly complex questions, it is deceptively simple at the outset, begging a yes or no answer. The more one works at it, the more one becomes aware that it is a ball of yarn! Tugging at what seems like a simple issue brings with it more and more side issues until things become a tangled mess. In an effort to answer this in a more thoughtful way, and avoid cop out by shrugging my shoulders and saying better minds than mine have struggled with this and come up with nothing, I am doing this essay, and placing it on my website, so I may refer people to it when asked about my views.

The argument in favor of legalization goes something like this. Psychoactive drug use is already widespread, encompassing more than half the population of younger Canadians if one looks simply at marijuana, and there is no doubt in anyone's mind that obtaining "illegal" drugs is incredibly easy, even for relatively young or naïve users. Add to this the fact that legal penalties or incarceration seem to do absolutely nothing, while choking our jails and creating criminals out of people who otherwise are neither antisocial nor engaged in other forms of criminal activities. Proponents refer to the fascinating social experiment in the first half of the 20th century in North America with alcohol prohibition, and the fact that it was a resounding failure and gave rise to some criminal organizations that are still with us. Rounding out the arguments are observations that the single most dangerous psychoactive drug in terms of illness and trauma, alcohol, is "legal" while other drugs which are generally viewed as less harmful, are not. A robust, if not very factual, belief system has also sprung up around marijuana in particular, marketing the drug as a medicinal herb and attributing to it miraculous healing properties for a wide variety of diseases. This belief system is largely based on anecdotal evidence and few, if any, of these claims have been subjected to double-blind crossover controlled studies. Nonetheless, there exists, particularly in parts of United States of America, a widely held belief that "medical" marijuana is essential to the well-being of many individuals, and their voices are often in the forefront of legalization arguments.

The arguments against legalization tend along the following lines. While acknowledging that psychoactive drug use is widespread, the argument goes that it would be even more widespread, penetrating vigorously into youth and children if the drugs were legalized. While acknowledging that alcohol is dangerous, and contributes to a huge social burden, why would anyone want to add further psychoactive substances to what is already a disastrous situation? Examples of negative outcomes such as overdose, brain damage and addiction are used to indicate just how dangerous these substances are, and why they must be eradicatd from our society. The classic example of the fact that regulatory authorities were "asleep at the switch" as cigarettes were introduced at the start of the 20th century, and have become our single greatest public health burden in terms of death and disease today, is used as illustrative of Pandora's box. Once the substance is in widespread circulation, and marketed with profits at every level, eradicating it becomes virtually impossible, as it is impossible to get rid of smoking today, even when cigarettes are acknowledged as a class one carcinogen. Whether one believes in medical marijuana, or not, is viewed as an irrelevant side argument, and, argue the opponents of legalization, a special case could be made for marijuana if it were scientifically demonstrated to be useful. Lastly, in terms of law and order or criminal activity, it is pointed out that narco-dollars fuel much of today's crime and that
simply legalizing the product is not going to wipe out criminal drug profits, quite the contrary, counterfeiting and trafficking will become easier than ever. They point to such failed experiments as Amsterdam, and some parts of California where grow ops and drug production and consumption have taken over society, squeezing out all others who are not interested in participating. There are those too who argue along moral or spiritual lines, equating psychoactive drug use with idolatry, and pointing out that the moral fabric of society is deteriorating, and does not need any help with the introduction of more abusable substances.

As well as religious, this debate seems to be divided along political boundaries, with those to the left of center favoring legalization and a permissive approach toward psychoactive drugs, and those to the right of center viewing laws prohibiting psychoactive drugs as an essential plank in any "law and order" platform. As with most debates that are ideologically based, they constitute more of a belief system than a rational discussion of the issues, and the conflict rapidly descends into a shouting match with neither side actively listening to the points of the other, and propagandistic emotional arguments substituting for data. Consequently, if one approaches this issue from a standpoint of neutrality, simply looking to make the best recommendation, things get difficult. Fast!

In looking at the issue my first temptation as an addiction physician was to examine the psychoactive drugs themselves, why people use them, and why we are having this debate about them, but we are not debating the "legalization" or widespread availability of penicillin for instance. However, the more one examines the driving factors behind the debate, the more one becomes aware of how interconnected it is to many fundamental human social issues. With that in mind, I attempted to go as far back as the ball of yarn took me, and start there, to provide a basis for discussion, and also show what my assumptions were in reaching the decisions I did, so they might be challenged at their base.

Firstly, why do we have laws governing personal behavior at all? Obviously legal prohibitions against assault, robbery or murder make sense but why do we need to regulate personal conduct, particularly, if as many claim with drug use, we are regulating a victimless crime? As with many facets of this complex issue, erroneous assumptions are made at the outset, and things fall apart from there. It is erroneous to assume that we have a legal code, or codes of conduct, merely to prevent grievous personal loss, or protect the individual. In the lost art of civics, which used to be taught in every high school, it was learned that a civil and criminal legal code is necessary for harmonious coexistence, as well as the achievement of the greatest freedom for both groups of people as well as individuals. Absent a fair and effective code of law, we return to a feudal style of government where might makes right, and a crazy quilt of expectations exists across the country, if it could be called a country at all. The only way to stop somebody doing something you did not agree with, would be to assault them or threaten them. There are numerous human behaviors which fall far short of grievous bodily harm which are still objectionable, and any kind of reasonable society wants them stopped or at least controlled. Examples might be somebody publicly defecating on your front lawn, placing a large billboard of a couple engaged in sexual intercourse in front of a public school, or your next-door neighbor operating a home-based slaughterhouse out of their garage. While the law is full of much absurdity (the often quoted Dickens’ Mr. Bumble from Oliver Twist comes to mind “the law is a ass - a idiot”) it has proven, thus far, to be superior to every other form of social order that has been tried. Consequently, it is an
untenable argument, in my opinion, to state that there should be no legal proscription on personal behavior. (In the next two paragraphs I will discuss why this argument is increasingly popular, albeit in less drastic form). If we agree that a society is composed of individuals who, although they hold widely varying personal beliefs, and behaviors, agree on some basic tenets of civilized human behavior, and what it means to be a member of that society, then there need to be laws to deal with those individuals who threaten such social order through their own behavior. If we cannot agree on that, then the rest of this discussion is moot.

The next philosophical issue concerns the role of the individual in society. While this is a massive topic about which many textbooks have been written, and does not have to be addressed in detail here, it is not an unreasonable thesis to state that society has expectations of the individuals that make it up. The most simple, but articulate expression of this philosophy was the late President John F. Kennedy who said "ask not what your country can do for you, but what you can do for your country." If one conducts oneself in a manner such as to render oneself useless to society, it is a loss for all of the rest of us. It is assumed that a healthy functioning society requires many different skill sets from many different types of people, and the wholesale loss of significant groups of individuals has a highly negative effect on society, quite outside the additional burden they place on that society which is then forced to care for them. As such, behaviors that tend to negate an individual's ability to contribute to society on some level, tend to be viewed negatively, if not actively prohibited. The ultimate expression of society's investment in the individual is the prohibition of suicide, and this is another controversial issue which is currently being debated.

Going from the general, to the specific, it is my thesis that we live in a socially dyslexic society. If we look at North America over the last 100 years, there has been a steady evolution towards primacy of the individual, and decreased social conscience. I would argue that this started with the 1950s boomer generation as teens, the first generation where teenagers were set apart as being a special social strata, and their needs were catered to as had not previously occurred. As this generation moved into their 20s, discovering that their social idealism often came at a personal cost, they became one of the most avaricious on record, spawning the yuppie phenomenon of the 70s and 80s. Interestingly, this generation was the first in which widespread psychoactive drug use was a cornerstone of their identity. Since that time, individualization has proceeded at an ever quickening pace, particularly with the Internet and its focus on fracturing society into myriads of special interest groups. Personal electronic entertainment equipment has allowed retreat into a world of one's own making. While some would argue this makes for greater choice, and greater expression of individual creativity, it also means that we share fewer and fewer things together, and reaching consensus is more difficult than it ever was. Social networking sites, for instance, are not so much about the greater good, or the whole, rather than an obsessive preoccupation with self. Coincident with this has come a civicly illiterate society who is, for the most part, disengaged in the political process and overtly suspicious of all forms of government. Oddly, this suspicion expresses itself in either ends of the political spectrum, varying between antigovernment anarchy driven by an "enlightened" elite, and far right wing authoritarian fascism, also driven by an "enlightened" elite! Nazis and eco-terrorists seem to differ only in their haircuts. Increasingly, it is the obsession with small groups, (or. for our American brethren - "family") which has taken the place of one's investment in a larger society. This, paradoxically, harkens back to a much earlier age where family or clan organization substituted for democratic government. As such, it is again my thesis that
arguments concerning the greater good, or societal contribution tend to fall on deaf ears, as they are so badly out of step with our current worldview. Bringing this around to psychoactive drugs, some of the arguments have to do with the effect that a substantial minority of impaired individuals may have on the greater social good. These types of arguments seem almost quaint to today's Internet attuned ear. One of the cornerstones of the arguments in favor of drug laws is the greater social good, as well as protection of non-drug taking individuals from the behavior of those under the influence of the psychoactive drug. The most drastic example which is commonly understood, and agreed upon, would be drunk driving. Aside from the safety issue, and the operation of dangerous equipment, there is the issue of disruptive behavior itself. Most jurisdictions around the world have prohibitions on "drunk and disorderly" types of behavior, quite aside from the immediate physical harm that such individuals pose if operating equipment. Analogously, those under the influence of psychoactive drugs whose reality testing is so impaired that their behavior resembles that of psychosis, are of concern, although there is certainly room for debate as to what is, and is not tolerable, and why.

Further, if we look specifically at the introduction of new, pleasure-causing pastimes (if you will permit me to characterize psychoactive drug use that way), we have only to look at cell phone technology, and how the users have proven oblivious to public safety/intrusion in their adoption of this new technology. We are faced with having to make laws prohibiting texting and driving, cell phone use in movie theatres etc. A significant minority of individuals have shown a disappointing lack of social awareness when faced with a desirable new activity which may adversely impact those around them. Forced to choose between their own pleasure and the rights of others, they tend overwhelmingly to select themselves. They also demonstrate the phenomenon that it doesn't take many individuals acting in a self-centered way, to cause a disturbance to the rest. How many people talking loudly on their cell phones in a movie theatre would it take to disrupt the viewing experience for others?

Switching gears to a different topic, it is interesting to review historically the legal codes relating to pleasurable human behavior. Since recorded time, from the days of the earliest laws or regulations, often promulgated by a king or dictator, pleasurable human behavior has been regulated. In any society advanced enough to have rules, sexual behavior for instance, has been controlled by regulation or cultural norm. Additionally, if we look at other behaviors which are known to activate the human limbic system, or pleasure system, they have usually attracted some form of regulatory control. Interestingly, after life and liberty, American society has chosen to enshrine "and the pursuit of pleasure" as being one of its most fundamental freedoms. Bluntly, pleasure matters. Historically, gambling, psychoactive drugs, and even such things as chocolate or certain foodstuffs were often reserved for over-classes or controlled in some other fashion. Why? If we restrict our discussion to psychoactive drugs, and agree that the major reason for humans seeking them out, and continuing to use them is pleasure, or more specifically activation of dopaminergic neural pathways which are experienced as highly rewarding, we begin to understand why these drugs are socially important, as penicillin is not. We know if a drug or activity is intensely rewarding, it will be repeated. If it is sufficiently rewarding, the individual will do nothing but seek out the drug, abandoning even self-care, let alone whatever roles they have in society. Concordantly, those that control the drug, tend to control the individual. Obviously, not everyone who uses a psychoactive drug becomes a drooling zombie -there is a spectrum of behaviors ranging from casual, occasional use all the way to severe addiction. At some point along this continuum, the individual loses control, and actually surrenders that which is
essential to one's personal identity. As one travels along this continuum, (and
hearkening back to our earlier discussion about social order), the other issue becomes
continuing to obtain supplies of the drugs as one's ability to earn a living is progressively
impaired. Traditionally, we see involvement with increasingly marginal or antisocial
activities in order to earn drug income. This is true whether the drug is legal, as in the
case of alcohol, or illegal, as in the case of other psychoactive street drugs. Critical to
this argument is an estimation of how many individuals will succumb to this level of
psychoactive drug use, if allowed free access. Estimates range from approximately 10%
in terms of alcohol or marijuana, to 30% for cocaine (higher for smokable crack cocaine)
to even higher for methamphetamine, in the 40 to 50% range. What makes such
numbers very "soft" is the fact that, first of all we are studying an illegal behavior and
therefore it is very difficult to do rigorously controlled scientific studies, relying instead on
epidemiologic or small population surveys. Secondly, our experience with cigarettes has
taught us that human behavior is highly variable around addictive substances, and that
seemingly minor alterations in terms of drug presentation, such as concealing cigarette
packages behind blank walls in stores, has a measurable effect on consumption. As
such, it is difficult to predict the addictive burden of psychoactive drugs, were they to
become widely and freely available without legal penalty.

The sum total of the foregoing paragraph is that virtually every society in the world has,
after initially allowing a psychoactive drug to be freely available, enacted various legal
controls all the way to complete prohibition once the effects of the psychoactive drug
were fully appreciated. As a sidebar, it should also be noted that many societies,
historically, have viewed a variety of psychoactive drugs as being "medicines" and most
psychoactive drugs seem to go through this pseudo-respectability at some stage in their
use. In the late 1800s cocaine was widely consumed, albeit often orally, and viewed as
an extremely useful therapeutic agent, administered for a wide variety of ailments,
including those of children. Heroin and amphetamine have also had their pseudo-
medical day. As recently as the 1980s, Alberta physicians were still empowered to write
"medicinal brandy" prescriptions for senior citizens to the tune of one 26 ounce bottle per
month. This led to the bizarre spectacle of waiting rooms crammed with senior citizens,
many who brought their abstaining friends, all seeking to obtain their medicinal brandy
(personal observation). In reality, most psychoactive drugs popularly abused today have
very little, if any, therapeutic value. The latest to enjoy pseudo-respectability is
marijuana, and a scientific debate about the actual usefulness of this drug is an issue for
another essay elsewhere.

This brings us to the next area of vigorous debate, which is also fraught with
propaganda. Do we have any social models, anywhere in the world, to examine and
help us answer the question of the net effect of drug legalization? We do, but the
problem is that, as with most other things involving deeply held belief systems, the truth
seems to be in the eye of the beholder. Those in favor of psychoactive drug legalization,
particularly marijuana, point to the marijuana cafés of Amsterdam or the Netherlands as
models of enlightened drug policy. They state that this legalization has not been
accompanied by soaring rates of addiction, traffic accidents or social mayhem.
Unfortunately, those in favor of drug legislation use exactly the same societies, differing
wildly in their reports of negative social outcomes, to state that officials in the
Netherlands profoundly regret ever legalizing marijuana and are actively taking steps to
reverse what was obviously a legal mistake, based on social decay and corruption.
Dispassionate and fact-oriented analyses seem to be largely lacking in the Netherlands
experiment. The same arguments rage around medical grow operations in California
...and safe injection sites in Canada. Even physicians get into the fray, commonly dividing into addiction treatment physicians who oppose further availability of psychoactive drugs, and "harm reductionists" who take a pragmatic view and would rather tolerate the addiction/abuse while mitigating some of its effects.

So, we have meandered through a wild variety of issues from why human societies have laws at all, and specifically why they have laws governing personal human behavior, to the role of the individual and society, and why society might seek to regulate behaviors it viewed as self-destructive, or threatening to social fabric, and why that might not be a very popular argument with today's Internet generation. We moved through the historical view of psychoactive drugs as being threatening, because they hijack the human motivational system, and tend to lead individuals involved with them into compromising behaviors in order to obtain or continue using. Lastly, we touched on the issues of the projected effect of legalization, which nobody seems to have very good data on, although everyone seems to have an opinion. Where does that leave us?

Firstly, the idea that we are not going to have any kind of legislative control over psychoactive drugs whatsoever is foolish, and ignores millennia of human history. The question is not so much whether a psychoactive drug is "legal" or "illegal" as what constraints or checks and balances will exist around its sale and consumption. Let's look at alcohol as an example. A closer look at alcohol shows that it is anything but unfettered by law. There is strict legislation governing the production, sale and taxation, advertising, consumption, and activities while under the influence of alcohol. Its sale is prohibited to individuals below a certain age. Its sale is prohibited to individuals whose judgment already appears impaired by the use of the substance itself. Increasingly there is tort law bearing on damages which will accrue against individuals who serve persons alcohol, if these persons then go out and cause harm to another. Indeed, in America, there is an entire department devoted to nothing but tobacco, alcohol and firearms. There are constraints on personal freedom allowing police officers to obtain blood or breath samples in order to ascertain the level of the drug in the person's body. Engaging in hazardous tasks such as driving a vehicle, or flying an aircraft, while under the influence of the drug carries with it severe penalty. Indeed, it is even illegal to stroll down the street casually drinking a bottle of beer, although that will not result in a prison term, it will result in a fine. Thus, even if psychoactive drugs were legalized, there would need to be a legislative framework around them analogous to that that exists for alcohol, and for the same reasons eg. there does not appear to be any social support for repealing drunk driving laws or encouraging the sale of alcohol to children.

In my opinion, the answer to the question is contextual - and context is the first thing to go out the window in an emotional belief system style debate between clashing propagandists. Yes, I think society needs to work towards a better legal framework in which to place psychoactive drugs, and that is not blanket legalization, nor is it "sweep the problem under the rug" decriminalization. I also violently disagree with pseudomedicalization of psychoactive drugs attempting to justify their use on putative medical grounds, which then evaporate under closer scientific scrutiny, and turn doctors into drug dealers. People use psychoactive drugs for pleasure, let's just admit that. Arguments favouring legalization of psychoactive drugs based on dubious therapeutic qualities are disingenuous at best, and outright dishonest at worst. I think the pro-drug lobby's argument that psychoactive drugs are widely available and that virtually anyone can obtain them, virtually anywhere, have a great deal of factual support based on any of the law enforcement/conviction studies. The argument that legalization would result in a
sudden explosion of use is incomplete, as it is not the legalization that is the problem but the legal framework. So what about this framework?

Let's look at a variety of addictive substances that are already in social use. Just because alcohol is legal, and pleasurable for the vast majority of consumers, does not mean that the streets are filled with every second person consuming. The vast majority of alcohol consumers do so without undue harm to themselves or others. Unfortunately, the minority who abuse, or become addicted, are highly visible and generally completely mismanaged by society. Analogously, legalization of other psychoactive drugs such as marijuana, heroin or cocaine would have exactly the same effect, and we could reasonably expect the addictive burden to rise as more susceptible individuals are exposed, who might not have otherwise sought out the drug if it were not legally available through government stores. Since we cannot deal with the disease of addiction in one drug, it is essential that society put into place effective measures for addiction treatment before adding to the addictive burden still further by increasing dissemination of psychoactive drugs. The restriction of sale of tobacco to minors is generally viewed, in our society, as a joke. Children are seen on the street smoking every day, and amongst adolescent females in particular, smoking rates are still highly problematic. We have seen the results of toothless and ineffective tobacco sale laws, and that must not be permitted to occur in terms of other psychoactive drug sales. The restriction of alcohol to licensed dealers, and high taxation rates to ensure that enforcement authorities maintain a high level of control over sales, seems to have worked fairly well in our society. The same model will have to be followed in any psychoactive drug legalization framework. It also needs to be recognized that disadvantaged societies, in which early childhood trauma is prevalent, will have the burden of addiction fall unequally heavily on their shoulders, as we know that trauma is an important etiologic factor in addiction. Special treatment interventions will have to be designed for them – and our past history of doing this is not good – witness the state of health of many First Nations people.

Strict rules around consumption have also been helpful in preventing the spread of social disorder in most, but obviously not all settings. The most problematic is the prohibition of individuals impaired from psychoactive drug use in accessing safety sensitive environments. Under the guise of "civil liberties" we have continued to allow alcohol-based carnage on our roads, although various legislative proposals are advancing to free police in gathering impairment related evidence. It is a well understood civics principle that with freedom comes cost/responsibility, and the cost of being free to consume psychoactive drugs in a safe environment, such as one's home, is agreeing to curtailing civil liberties regarding search and seizure outside the home, in the environments of worksite and roadways. An individual's freedom to consume should not impose a burden on the safety of other individuals to work or drive or fly safely. Turning to our American cousins, the order of freedoms in the Bill of Rights is life, liberty and the pursuit of happiness. There is reason to this order, and none of us are willing to sacrifice our lives or our personal integrity (liberty) to someone else's pursuit of happiness.

Lastly, as we've seen with alcohol and abused prescription drugs, with psychoactive drugs comes an inherent loss of personal control for some susceptible individuals, including engaging in criminal behaviors. We know from our justice system that traditional incarceration or monetary penalties are largely ineffective in addressing these antisocial behaviors. The only thing that will address the problem is abstinence from psychoactive drugs, and a drug court type of judicial system to ensure appropriate
behavior change. Accordingly, the criminal code is going to have to also change and acknowledge the disease of drug dependency in any scheme that would see legalization of drugs. Drug courts will have to be the norm for behaviors that were mediated by psychoactive drug addiction, as these behaviors will likely increase.

So there you have it. Go ahead and legalize, thus depriving criminal enterprises of a vast source of profit, and making a huge dent in property crime and all the other associated criminal activities that go with drug production and trafficking. Free up the police, the courts, and the penal system to deal with the vast array of other challenges they face. Tax the substances heavily, as is now done with alcohol, but instead of using the money for general revenue, as is distressingly been the case in the past, governments will need to divert funds to addiction treatment, which will be an inevitable and predictable side effect of any legalization move. Additionally there will need to be massive changes in legal frameworks to encompass the other issues mentioned above, in particular the civil liberties issue around impaired driving or operation of safety sensitive equipment. Are we likely to see any of this? No. In my opinion our society has no stomach for addressing the issues head-on and dealing with the negative social fallout of the monster that is already on our doorstep. Judging by our abysmal response to the problem of gambling and alcohol, adding in psychoactive drugs is highly unlikely to be managed appropriately. Nonetheless, in my opinion, the solutions are there for those who are willing to work for them.