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WHAT CAN WE LEARN FROM THE PORTUGUESE DECRIMINALIZATION OF ILLICIT DRUGS?

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The issue of decriminalizing illicit drugs is hotly debated, but is rarely subject to evidence-based analysis. This paper examines the case of Portugal, a nation that decriminalized the use and possession of all illicit drugs on 1 July 2001. Drawing upon independent evaluations and interviews conducted with 13 key stakeholders in 2007 and 2009, it critically analyses the criminal justice and health impacts against trends from neighbouring Spain and Italy. It concludes that contrary to predictions, the Portuguese decriminalization did not lead to major increases in drug use. Indeed, evidence indicates reductions in problematic use, drug-related harms and criminal justice overcrowding. The article discusses these developments in the context of drug law debates and criminological discussions on late modern governance.

Keywords: decriminalization, Portugal, drug, policy, legislation

Introduction

Efforts to improve criminal justice policy responses to drug use and distribution have led to frequent and often heated discussions around the necessity of applying criminal penalties and the merits of a number of alternate legislative approaches (see, e.g. discussions in Australia, the United Kingdom and the United States), including legalization, decriminalization and depenalization. These terms are often used erroneously and interchangeably. For the purposes of the current article, we define each as the following: legalization is defined as the complete removal of sanctions, making a certain behaviour legal and applying no criminal or administrative penalty; decriminalization is defined as the removal of sanctions under the criminal law, with optional use of administrative sanctions (e.g. provision of civil fines or court-ordered therapeutic responses); and depenalization is the decision in practice not to criminally penalize offenders, such as non-prosecution or non-arrest. These forms of regulation of currently illicit substances are often discussed, but are rarely tested in practice.

Political reluctance to reform drug laws has been clearly demonstrated in recent years in the United Kingdom. Despite international evidence that rates of drug use are not directly affected by harsher punishment of drug users (Reuter and Stevens 2007; Degenhardt *et al.* 2008) (and pressure from multiple advocates), the British Government has firmly opposed any move towards decriminalization. Politicians have warned that decriminalization of cannabis would 'send the wrong message' (Home Affairs Committee Inquiry into Drug Policy 2002: para. 74). Some researchers (McKeganey 2007; Inciardi 2008; Singer 2008) have supported this argument, arguing that removing

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criminal penalties would lead to increased drug use, with harms falling hardest on the deprived communities that are already the most damaged by drug-related problems. However, most public arguments are based on speculation rather than the available evidence on effects.

The predominance of speculation over evidence can be attributed to a number of factors. First, the United Nations conventions on illicit drugs require that nation states prohibit illicit drug cultivation, manufacturing, sale and possession. They therefore limit the possibility of experimentation with alternative modes of regulation. There is some 'room for manoeuvre' (Dorn and Jamieson 2001), as shown by the use of various forms of decriminalization and depenalization in the United States, Italy, Spain, the Czech Republic, Germany, Australia and the Netherlands. A second limit to the use of evidence in debates over drug regulation is the limited and variable evidence surrounding the impacts of these existing forms of liberalization. Where reforms that have been studied, different methods and approaches have been used (Model 1993; Donnelly *et al.* 1995; McDonald and Atkinson 1995; Sutton and McMillan 1998; Lenton *et al.* 1999; Single *et al.* 2000; Solivetti 2001; Kilmer 2002; Korf 2002; Pacula *et al.* 2004; Williams 2004; Featherston and Lenton 2007; Domrongplasit *et al.* 2010; Reinarman 2009). To date, the major focus of analysis has been whether decriminalization leads to increases in the prevalence of drug use. Most studies have found there are no significant increases in use (e.g. Donnelly *et al.* 1995; 1999; Featherston and Lenton 2007). Others have found a slight increase (e.g. Williams 2004; Zhao and Harris 2004; Damrongplasit *et al.* 2010). Still others have shown how difficult it is to make any certain judgment on the effects of decriminalization on drug use, given the absence of adequate comparators (Pacula *et al.* 2004; Hughes 2009).

Social and criminal justice impacts have also been mixed. One of the best studied reforms has been the South Australian cannabis expiation notice scheme introduced in 1987. Evaluators found that 'decriminalization' led to increased employment prospects and increased trust of police (Lenton *et al.* 1999). Yet, it also led to net-widening. More people received formal contact with the criminal justice system than prior to the reform (Sutton and McMillan 1998). In fact, there was a 280 per cent increase in expiable cannabis offences, which meant there was an overall increase in the burden on the criminal justice system (Christie and Ali 2000).

The most comprehensive synthetic review of the impacts of the decriminalization of illicit drugs has been conducted by MacCoun and Reuter (2001*a*), using data from the Netherlands, United States, Australia and Italy. They concluded that the removal of criminal penalties appeared to produce positive but slight impacts. The primary impact was reducing the burden and cost in the criminal justice system. This also reduced the intrusiveness of criminal justice responses to users. The removal of criminal penalties alone had little or no impact on the prevalence of drug use or drug-related health harms. The extent of additional use depended rather on the extent to which there was commercial promotion. They used the example of the Netherlands, where the rise in cannabis use did not immediately follow its depenalization, but coincided with the development of 'coffee shops' that openly promoted their illicit wares (MacCoun and Reuter 2001*b*).

Their analysis came too early to include the Portuguese move towards decriminalization, which entered into force on 1 July 2001. The Portuguese reform warrants particular

attention, as it is a comprehensive form of decriminalization, with the possession of *all* drugs, when deemed for personal use,[1] now considered to be an administrative rather than a criminal offence. Equally importantly, one key rationale for the reform was to provide a more health-oriented response, including the possibility to refer people who are dependent on drugs into treatment. Many of the reforms in other countries simply seek, in contrast, to avoid criminal penalties for drug users.

The Portuguese reform has now been in force for almost nine years—time enough to measure the effects. There have since been two studies published by thinktanks on the impacts of the Portuguese policy (Hughes and Stevens 2007; Greenwald 2009), but so far, no reports on it have appeared in English peer-reviewed journals. The authors of this current paper have both had the good fortune to be involved in examining this reform for a number of years. In this article, we aim:

(1) to describe the Portuguese reform;
(2) to provide an overview of the health and criminal justice impacts;
(3) to discuss the contribution of this reform and this research to the existing state of knowledge on decriminalization.

The Portuguese Decriminalization and Drug Action Plan

Portugal's location on the south-western border of Europe makes it a gateway for drug trafficking. It is a transit nation for trafficking of cocaine from Brazil and Mexico, heroin from Spain, hashish from Morocco and liamba (the local word for herbal cannabis) from Southern Africa. Across drug types, it is estimated that 77 per cent of drugs seized in Portugal are destined for the external market (i.e. other European countries) (Institute for Drugs and Drug Addiction 2008). The two biggest challenges are cocaine and hashish. For example, the United Nations Office on Drugs and Crime (2008) noted that during 2006, Portugal was responsible for 35 per cent of all cocaine seizures in Europe, making it second in seizures only to Spain.

Lifetime prevalence of illicit drugs has historically been low in Portugal. In 2001, only 7.8 per cent of 15–64-year-olds in Portugal had ever used an illicit drug (Balsa *et al.* 2004). In contrast, the British Crime Survey reported that in 2001/02, 34 per cent of 16–59-year-olds in the United Kingdom had used an illicit drug (Aust *et al.* 2002). However, there was in the late 1980s and 1990s a significant population of intravenous heroin users, who obtained their drugs through open-air drug markets that became notorious. Rates of infectious diseases including HIV, AIDS, Tuberculosis, Hepatitis B and C soared. For example, between 1990 and 1997, the number of known drug users living with AIDS increased from 47 to 590 (Instituto da Droga e da Toxicodependência 2004*b*). By 1999, Portugal had the highest rate of drug-related AIDS in the European Union and the second highest prevalence of HIV amongst injecting drug users (EMCDDA 2000). Drug-related deaths had increased in Portugal to a peak of 369 in 1999 (an increase of 57 per cent since 1997) (Instituto Português da Droga e da Toxicodependência 2000). There was also growing concern over the social exclusion and marginalization of drug users, and a perception from many areas of society including the law enforcement

[1]Possession for the purposes of supply remains a criminal offence.

and health sectors that the criminalization of drug use was increasingly part of the problem, not the solution (Hughes 2006).

It was within this context[2] that a government-appointed expert commission proposed to decriminalize illicit drugs for personal use and to introduce Portugal's first national drug strategy, which had the explicit goal of providing a more comprehensive and evidence-informed approach to drug use (Comissão para a Estratégia Nacional de Combate à Droga 1998). The legislative reform and new national drug strategy were seen as critically linked: the decriminalization sought to provide a more humane legal framework, and by expanding policies and resources across the areas of prevention, harm reduction, treatment, social reintegration and supply reduction, the strategy sought to open up new ways for the field to respond, such as through channelling minor drug offenders through to the drug treatment system. Both sets of recommendations were adopted almost in full (for full details, see Hughes 2006) and Portugal commenced their ambitious reform by rolling out the national strategy and expanded resources in May 1999. Subsequently, on 1 July 2001, the decriminalization entered into force.

Prior to the 2001 reform, drug possession, acquisition and cultivation when for personal use were criminal offences punishable with up to 1 year's imprisonment (Decreto-Lei no.° 15/93, de 22 de janeiro 1993).[3] But with the introduction of Law 30/2000, drug possession and acquisition became a public order or administrative offence (Lei n.° 30/2000, de 29 de novembro 2000). The new offences are sanctioned through specially devised Commissions for the Dissuasion of Drug Addiction (CDTs).

The CDTs are regional panels made up of three people, including lawyers, social workers and medical professionals. Alleged offenders are referred by the police to the CDTs, who then discuss with the offender the motivations for and circumstances surrounding their offence and are able to provide a range of sanctions, including community service, fines, suspensions on professional licenses and bans on attending designated places. However, their primary aim is to dissuade drug use and to encourage dependent drug users into treatment. Towards this end, they determine whether individuals are dependent or not. For dependent users, they can recommend that a person enters a treatment or education programme instead of receiving a sanction. For non-dependent users, they can order a provisional suspension of proceedings, attendance at a police station, psychological or educational service, or impose a fine. The panel members of the CDTs are supported by staff employed by the Instituto da Droga e da Toxicodependência (IDT, the Institute for Drugs and Drug Addiction), the central government agency on drugs.

The new law applies to use/possession of all illicit drugs—including cannabis, heroin and cocaine—but it is restricted to use/possession of up to ten days' worth of a drug. This amounts in practice to 0.1 g heroin, 0.1 g ecstasy, 0.1 g amphetamines, 0.2 g cocaine or 2.5 g cannabis (Decreto-Lei n.° 15/93, de 22 de janeiro 1993; Portaria n.° 94/96, de 26 de Março 1996). Individuals found with more than this quantity will be charged and referred to the courts, where they may face charges for trafficking or trafficking/consumption (where the offender is found in possession of more than the consumer amount, but deemed to have obtained plants, substances or preparations for personal use only) (Decreto-Lei n.° 15/93, de 22 de janeiro 1993).

[2]The process of reform is inevitably complex. A full description of the context, drivers and initial impressions can be found in Hughes (2006).

[3]In practice, it was rare that people were imprisoned for drug use/possession alone, but criminal convictions were the norm.

Following internal and external evaluations in 2004 (Instituto da Droga e da Toxicodependência 2004*a*; Instituto Nacional de Administração 2004), the decriminalization and the strategy have been extended. The current strategy, entitled 'A National Plan Against Drugs and Drug Addiction', is set to continue until 2012 (Instituto da Droga e da Toxicodependência 2005).

Methods

For this analysis of the effects of the Portuguese policy, we have carried out a thorough review of all the available Portuguese evaluative documents, including the annual national reports of the IDT from 1998 to 2008 and the internal and external evaluations that they have carried out and commissioned. To supplement these data, we carried out interviews with 13 key informants in late 2007 and late 2009. The key informants were sampled purposively in order to canvass the key areas of health and criminal justice as well as politicians, bureaucrats from the IDT and non-government advocates. The final sample included the head of the Institute for Drugs and Drug Addiction, IDT members involved in research and overseeing the CDTs, plus representatives of the non-governmental AIDS and drug-user organizations, politicians from the left and right wings (Populist Party and Social Democratic Party), academics and representatives of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). While no member of the criminal justice system was willing/able to take part, one stakeholder was a former police officer and another an overseer of CDT implementation; both were able to comment on criminal justice-related issues. Semi-structured interviews were conducted with key informants in English or Portuguese (with the aid of a fluent translator). Interviews lasted 45–90 minutes and covered the health, social and criminal justice impacts from the reform and perceived strengths and failings from the reform.

Analysis of policies and their impacts in foreign countries pose a number of unique challenges for authors in obtaining access to data and subjects and in the interpretation of the results. For example, Nelken (2009) has argued that one particular risk is of ethnocentrism over definitions of key terms and policy rationales. This work built on prior research into the process and impacts of the Portuguese decriminalization that was carried out by Hughes (2006) between 2002 and 2006. During this process, the primary author had become proficient in reading and speaking Portuguese and collaborated with the IDT. Research for the existing research also utilized the support and feedback from those based in the IDT. These measures should reduce the risk of external bias.

There are several limitations to these methods. The most important for any evaluation of national drug policy is the absence of a control comparison; there is no counterfactual Portugal, which did not decriminalize drugs in 2001. One way of countering this is by comparing trends from the chosen nation (Portugal) with that of nations that did not undertake the reform. We have therefore used annual data reported to the EMCDDA to analyse Portuguese trends in light of trends from neighbouring Spain and/or Italy, subject to data availability. The comparators fall into the same geographic region, thereby allowing for the detection of regional trends. Moreover, while Italy and Spain have adopted similar drug policies, namely by introducing administrative sanctions for drug use in 1990 and 1992, respectively (for an overview, see EMCDDA 2005), neither country implemented any radical overhauls during the period of study (Reitox National Focal Point 2008; EMCDDA 2009*a*).

Further limitations were that the impacts of decriminalization—particularly the actions of the CDTs—were also contingent upon the operation of a number of other organizations, including the police and drug treatment services. Moreover, implementation of the national plan and decriminalization has not been constant. While this was attributable in part to learning and adaptation, unforeseen issues also arose. For key informants, the biggest challenge in understanding the long-term effects of the reform has been a series of decisions to not replace core CDT staff if they retired. This meant that at times between 2005 and 2008, up to 38 per cent of the CDTs, including the most frequented CDT in Lisbon, were non-operational.[4]

There are additional challenges relating to data availability and interpretation. Drug use, market changes and drug-related crime is notoriously hard to measure by any means. Our qualitative research also has limitations. The sample size was not large enough to reach data saturation and neither were we able to interview police or criminal justice representatives. Our intention is not to present the interview data as reflecting the full range of public, professional and political opinion, but to use it to supplement and interrogate the data collected from the national documentation.

All these challenges make it impossible to attribute any changes in drug use or related harm directly to the fact or form of the Portuguese decriminalization. However, we can test the hypotheses from some politicians and academics (cited above) that decriminalization necessarily leads to increases in drug use and related harms.

Implementation of the Decriminalization

Since 2002, the CDTs have initiated about 6,000 administrative processes against drug users per year, with the number trending upwards to 6,543 processes in 2008 (Instituto da Droga e da Toxicodependência 2009). Based on estimates of current demand (see latter sections), this represents approximately 2.5 per cent drug users in Portugal.[5] Most of the referred drug users are male (94 per cent) and between the ages of 16–24 (47 per cent) and 25–34 (31 per cent).

The number of processes that have been decided upon or 'finalized' decreased between 2003 and 2006, which meant there was an overall decline in the proportion of cases in which drug users received an administrative sanction from the CDTs (from 75 per cent in 2003 to 48 per cent in 2006). While this trend has been reversed in recent years, it has decreased the capacity to sanction or refer drug users to treatment. The decline in finalized processes was linked to the reduction in operational CDTs (Instituto da Droga e da Toxicodependência 2009). As of mid 2008, all CDTs, with the exception of Vila Real, were back in operation.

Since 2001, most cases have involved only use—acquisition or possession of cannabis or heroin. The proportion involving heroin decreased from 33 per cent in 2001 to 14 per cent in 2006 (and remains at 13 per cent in 2008) (Instituto da Droga e da Toxicodependência 2009). Conversely, the proportion involving cannabis increased from 53 per

[4]There are differences of opinion as to what caused this process, including political motivations and a recession, but the end result is that many offenders received no 'formal' action, whether by way of sanction or referral for treatment.

[5]The 2007 data estimated 3.7 per cent population aged 15–64 used any illicit drug in the last year (Balsa *et al.* 2007) = approximately 261,968 people. This estimate is similar to other estimates of CJS intervention, which vary between 1 and 3 per cent (see, e.g. Lenton 2000).

cent in 2001 to 70 per cent in 2006, decreasing to 64 per cent in 2008. These reflect trends in drug use, particularly a decline in heroin use (see below). The major sanction used by the CDTs has been the provisional suspension of proceedings for individuals who are deemed non-dependent on illicit drugs. These have been used in 59–68 per cent of cases per year. Perhaps due to the decline in offenders being seen for heroin, the use of provisional sanctions with treatment (for dependent individuals) has decreased since the first full year of operation (31 per cent in 2002) and made up only 18 per cent of sanctions in 2008. Conversely, the use of punitive sanctions such as warnings, bans on attending designated places or requirements to visit the CDTs has increased (from 3 per cent in 2002 to 15 per cent in 2008). This has been attributed in part to the lack of appropriate treatment options in Portugal to which to refer non-heroin dependent drug users.[6]

According to the stakeholders that we interviewed, the CDTs provided a number of advantages, including: earlier intervention for drug users by a specialist panel of experts; the provision of a broader range of responses; increased emphasis on prevention for occasional users; and increased provision of treatment and harm-reduction services for experienced and dependent users. While these advantages were often dependent upon the conjoint increase in collaboration and expansion of treatment places, decriminalization was deemed to have played a vital role. But, due to the problems cited above, namely the lack of full staff in all CDTs and the lack of appropriate interventions to which to refer young and occasional drug users, stakeholders said the full potential of the reform had not been reached.

There are few data on which to assess the long-term impacts of the CDT process. For example, while it is known that only 5–6 per cent of offenders have been referred to a CDT twice in any one year, figures have not yet been collected on prior or subsequent offending and drug use amongst those referred through the CDTs. The IDT reported in September 2009 that it now plans to start collecting such data. Other data can nevertheless be used to test health, criminal justice and social impacts on the broader population.

Trends Associated with the Decriminalization

Reported drug use in general population and specific sub-groups

The most controversial impact of the Portuguese decriminalization has been in regards to drug use. Key stakeholders in Portugal were in general agreement that there has been small to moderate increases in overall reported drug use among adults. Yet, there were differences as opinion regarding three issues, namely whether the reported increase is: real, significant/concerning and attributable to the reform.

Critics have argued that the decriminalization had led to a perception of acceptability of illicit drug use and *caused* an increase in illicit drug use, particularly cannabis. Yet, supporters have argued that apparent increases are largely spurious. They may reflect increased *reporting* of use due to a reduction in the stigma associated with drug use. They may also reflect broader international or regional trends in drug use and hence not be specifically attributable to the Portuguese reform. The final and most complex part of

[6]Best-practice evidence suggests that the most effective treatment response for cannabis-dependent users is a 'brief intervention' involving six sessions of cognitive behavioural therapy, yet this is not currently provided in Portugal (see, e.g. Copeland *et al.* 2001).

the issue is a value judgment concerning whether any increases in apparently recreational use are significant and whether the decriminalization has led to an overall worsening of the drug problem in Portugal. The absence of general population surveys prior to 2001 makes it difficult to see trends over time in Portugal and in particular to examine the effects of the decriminalization itself. Moreover, we lack data on current or prior likelihood of reporting drug use in Portugal. Nevertheless, we can examine the trends in three relevant sub-populations—the adult population, youth and problematic drug users—and, in so doing, explore which hypothesis has the most support. We judge trends in problematic use to be particularly important, as any apparent increase is potentially much more deadly and costly.

Between 2001 and 2007, lifetime and last-year use was reported to have increased in Portugal for almost all illicit substances (see Tables 1 and 2). The increase was seen in all age groups above 19 (Balsa *et al.* 2004; 2007).

Portuguese trends largely mimicked the trends observed in neighbouring Spain and Italy (see Tables 3 and 4). All three nations reported increases in lifetime prevalence of hashish, amphetamines and cocaine as well as increases in the last year prevalence of cannabis and cocaine use. The congruity with the other data from neighbouring nations provides little evidence that any apparent increases were directly attributable to the decriminalization.

Data from a European drug survey amongst 15–16-year-olds conducted before and after the decriminalization provide additional insight into the likely trends in lifetime use.[7] Amongst Portuguese youth (see Figure 1),[8] reported lifetime use of most illicit drugs increased in the lead-up to and immediately following the decriminalization, but then declined (Hibell *et al.* 2009). This was very similar to the trends observed in Italy and in broader Europe, with the major differences being that the 2003–07 decline in reported use of any illicit substance appears more pronounced in Portugal and the decline in reported cannabis use appears less pronounced in Portugal.

Problematic drug use was the major concern at the commencement of the decriminalization process and national drug strategy. Since the adoption of the reform, the prevalence of problematic drug use (PDU), particularly intravenous drug use, in Portugal is estimated to have declined. Using a multiplier method, based on the number of drug users in treatment,[9] Negreiros and Magalhães (2009) calculated that between 2000 and 2005 the estimated number of problematic drug users in Portugal reduced from 7.6 to 6.8 per 1,000 population aged 15–64 years. That said, the overlap in ranges (from 6.8–8.5 in 2000 to 6.2–7.4 in 2005) means that any decline has not been statistically significant. The more significant finding was a fall in the estimated prevalence of injecting drug use (from a mean of 3.5 to 2.0 injecting drug users per 1,000 population aged 15–64 or a range of 2.3–4.6 to 1.8–2.2).

This trend is notable given that the number of problematic drug users in Italy is thought to have gone in the opposite direction. Indeed, between 2001 and 2007, the estimated number of problematic drug users in Italy increased from 6.0 to 8.6

[7]Unfortunately, data on last-year use, a more relevant indicator of current drug usage patterns, was not collected in the European School survey Project on Alcohol and other Drugs (ESPAD).

[8]The apparent increase in the use of heroin between 2003 and 2007 is within the statistical margin for error of this survey. The trend in Portugal is similar to that observed in Eastern Europe, such as Croatia and Slovenia.

[9]The multiplier method is one of three main methods currently used to derive estimates of problematic drug users in Europe. For an overview of the method, see EMCDDA (2004).

TABLE 1 *Prevalence of lifetime illicit drug use in Portugal amongst individuals aged 15–64, by drug type, 2001 and 2007*

Drug	2001	2007	Change
Any illicit substance	7.6	12.0	+4.4
Hashish	7.6	11.7	+4.1
Cocaine	0.9	1.9	+1.0
Ecstasy	0.7	1.3	+0.6
Amphetamines	0.5	0.9	+0.4
Heroin	0.7	1.1	+0.4

Sources: Balsa *et al.* (2004; 2007).

TABLE 2 *Prevalence of illicit drug use in Portugal in the last 12 months amongst individuals aged 15–64, by drug type, 2001 and 2007*

Drug	2001	2007	Change
Any illicit substance	3.4	3.7	+0.3
Hashish	3.3	3.6	+0.3
Cocaine	0.3	0.6	+0.3
Ecstasy	0.4	0.4	0
Amphetamines	0.1	0.2	+0.1
Heroin	0.2	0.3	+0.1

Sources: Balsa *et al.* (2004; 2007).

TABLE 3 *Prevalence of illicit drug use in Spain in the last 12 months amongst individuals aged 15–64, by drug type, 2001 and 2007*

Drug	2001	2007	Change
Hashish	9.7	10.1	+0.4
Cocaine	2.6	3.1	+0.5
Ecstasy	1.9	1.2	–0.7
Amphetamines	1.2	0.9	–0.3

Source: EMCDDA (2009*b*). NB. Data on use of heroin and any illicit substance were not reported.

TABLE 4 *Prevalence of illicit drug use in Italy in the last 12 months amongst individuals aged 15–64, by drug type, 2001 and 2007*

Drug	2001	2007	Change
Hashish	6.2	14.6	+8.4
Cocaine	1.1	2.2	+1.1
Ecstasy	0.2	0.6	+0.4
Amphetamines	0.1	0.4	+0.3

Source: EMCDDA (2009*b*). NB. Data on use of heroin and any illicit substance were not reported.

per 1,000 population aged 15–64 (calculated using multivariate indicator method) (EMCDDA 2009*b*). Even in Spain, where the number of problem opiate users is estimated to have declined, estimates from 2006 suggest the overall number of problematic

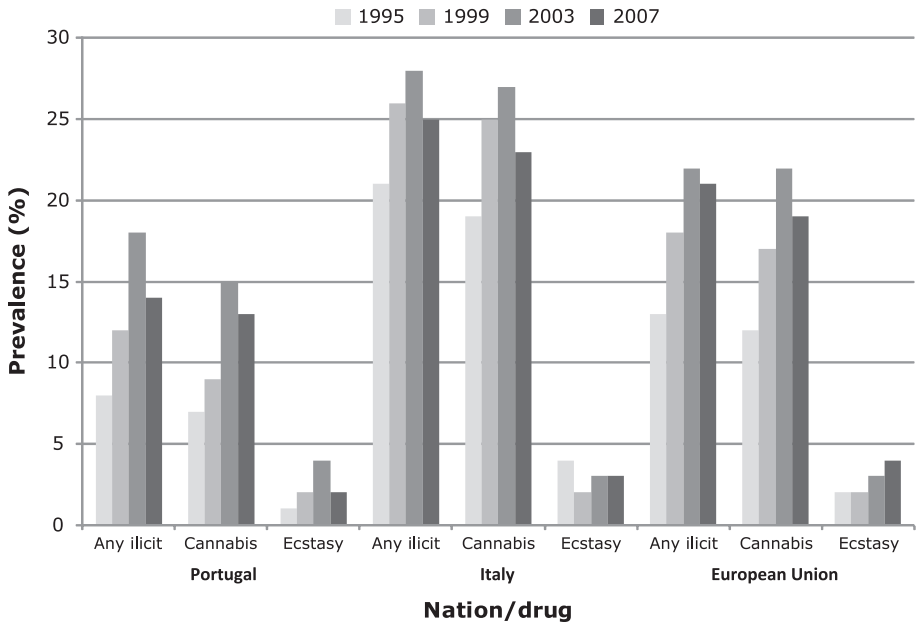

FIG. 1 Lifetime prevalence of illicit drug use amongst school students in Portugal, Italy and the European Union, aged 15–16, 1995–2007, by drug type and country.
Source: Hibell *et al.* (2009).

drug users may also have increased, due to an increase in the number of problematic *cocaine* users (Reitox National Focal Point 2008).

Thus, while general population trends in Portugal suggest slight increases in lifetime and recent illicit drug use, studies of young and problematic drug users suggest that use has declined. The similarity in general population and youth trends in Portugal, Italy and Spain adds support for the argument that reported increases in general population use in Portugal reflect regional trends and thus are not solely attributable to the decriminalization. Moreover, the fact that Portugal is the only of these nations to have exhibited *declines* in PDU provides strong evidence that the Portuguese decriminalization has not increased the most harmful forms of drug use.

Burden on the criminal justice system

Most interviewees were of the view that the decriminalization had reduced the burden on the Portuguese criminal justice system and enabled police to refocus their attention on more serious offences, namely drug trafficking-related offences. Yet, in the early years, there were also concerns of a rise in drug-related crime. We look here at impacts on drug offences and drug-related crime.

Following the decriminalization, there was a substantial reduction in the number of alleged drug offenders being arrested and sent to the criminal courts. Indeed, as shown in Figure 2, the number of people arrested for criminal offences related to drug offences reduced from over 14,000 offenders in 2000 to an average of 5,000–5,500 offenders per

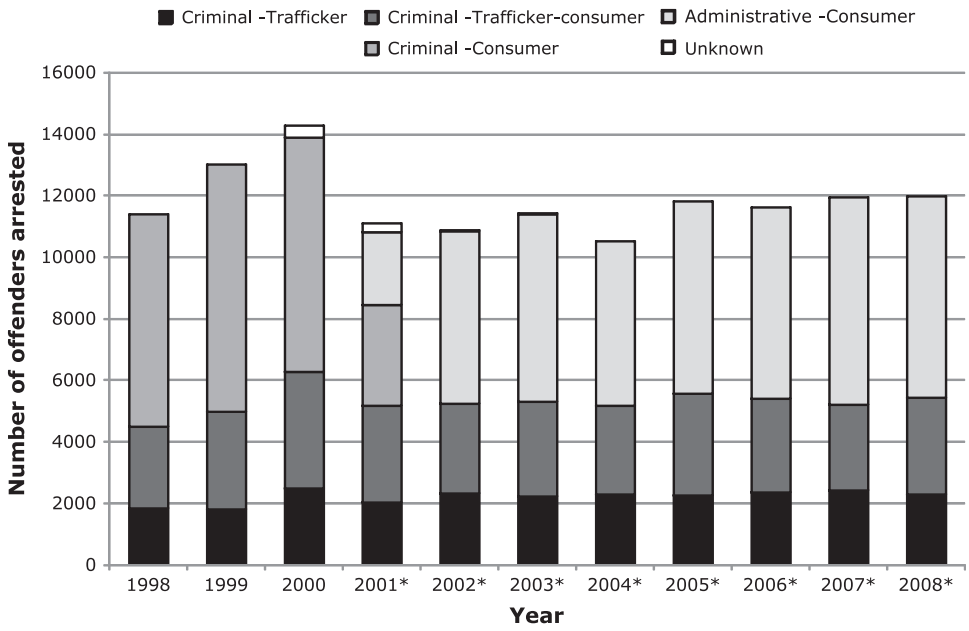

FIG. 2 Number of offenders arrested in Portugal for trafficker, trafficker–consumer and consumer offences by type of offence, 1998–2008
Source: IDT (2009).

year (Instituto da Droga e da Toxicodependência 2009).[10] Equally importantly, the number of people detected under the new law for administrative drug use/possession offences has remained fairly constant at about 6,000 per year, thereby indicating no overall increase in the amount of *formal* contact that drug offenders are having with Portuguese police and so no net-widening.

This is a notable finding in light of the data from Spain (see Figure 3), where the burden on the police has grown as a result of large increases in the number of offenders detected through the administrative system for drug use/possession (since 1998) and smaller increases in detections through the criminal system for drug trafficking (since 2004) (Reitox National Focal Point 2008). The data thus suggest that the Portuguese decriminalization may have increased efficiency of police or court operations as they became less crowded with drug offenders. Detailed studies would be needed to confirm this.[11]

Regarding trends in drug-related crime, it was reported in the 2004 evaluation by the central police agencies (Direcção Central de Investigação do Tráfico de Estupefacientes 2004) that the number of crimes strongly linked to drugs—that is theft, robberies, public assaults and certain types of fraud—increased by 9 per cent between 1995–99 and 2000–04. The most notable increases were street robberies, theft from motor vehicles and theft

[10]As per the reform arrests before July 2001 include the offences for simple possession. After, they do not.

[11]Analysis of the impacts on the Portuguese courts is complicated due to substantial backlogs in court operations. Nevertheless, there was a similar decline in the number of drug offenders convicted.

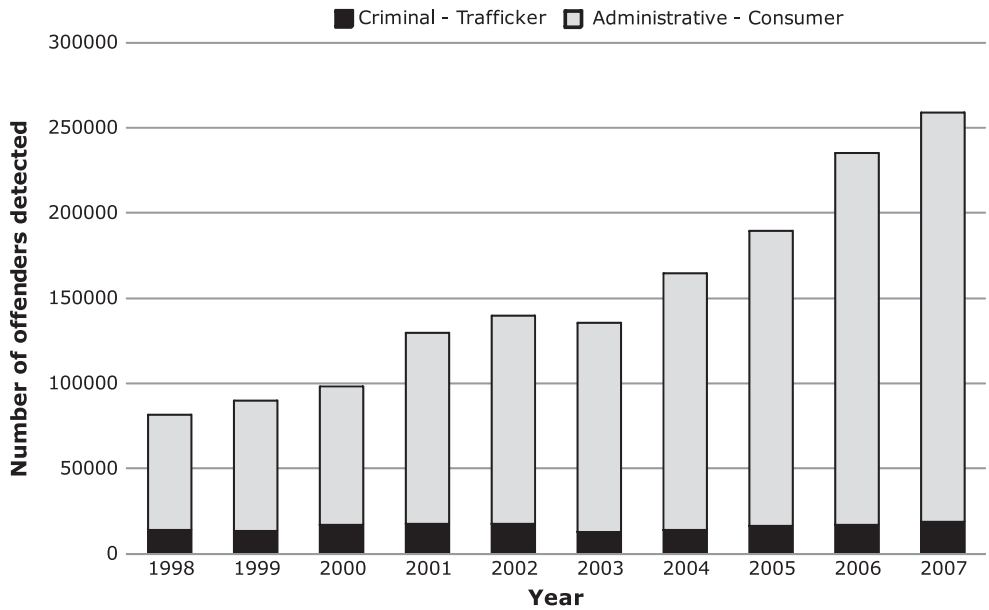

FIG. 3 Number of offenders arrested in Spain for trafficker and consumer offences, by type of offence, 1998–2007

Source: Reitox National Focal Point (2008).

of motor vehicles, which increased by 66, 30 and 15 per cent, respectively. Conversely, other forms of theft such as assaults/robberies from post offices and thefts from homes and businesses (which were deemed strongly linked to drugs) declined by 60, 8 and 10 per cent, respectively. The report by the central police agencies concluded that there had been an increase in more opportunistic crimes but a reduction in crimes that were more complex, pre-mediated and likely to involve threats or use of violence (Direcção Central de Investigação do Tráfico de Estupefacientes 2004). However, it did not attribute any such changes to the decriminalization. Nor did it consider the possibility that police officers spent the time they saved (from not arresting drug users) on boosting reporting and recording other low-level crimes (for an overview of the difficulties in assessing the cause and effects of changes in drug-related crime, see Seddon 2000; da Agra 2002; Stevens 2007). Unfortunately, data on drug-related crime is not routinely collected and hence it is not possible to identify more recent trends or to compare trends in neighbouring Spain or Italy.

The proportion of drug-related offenders in the Portuguese prison population, that is offences committed under the influence of drugs and/or to fund drug consumption, has dropped from 44 per cent in 1999 to 21 per cent in 2008 (Instituto da Droga e da Toxicodependência 2009). This has been very welcome, due to the historic overcrowding of Portuguese prisons. The prison density (prisoners per 100 prison places) of Portuguese prisons fell from 119 in 2001 to 101.5 in 2005 (Council of Europe 2007). A survey of drug use and related problems in prison found that between 2001 and 2007, the numbers of drug users and general rate of drug use within prisons had fallen significantly (Torres 2009). For example, use of heroin prior to prison had fallen from

44 to 30 per cent and use within prisons from 27 to 13 per cent. Rates of intravenous use before and inside prison had also fallen, as had the prevalence of HIV amongst prisoners. Trends from Spain and Italy are not known, but this further suggests that even if there were small increases in drug-related crime immediately following the reform, there have been overall reductions in the burden of drug-related offenders on the criminal justice system.

Drug seizures and prices

One question of interest is whether the decriminalization had a positive, negative or null impact on the Portuguese drug market. Some local interviewees told us that one of the aims of the decriminalization was to enable the police to shift resources from low-level drug users to higher levels of the drug market. Key informants put forward a number of views: first, that it contributed to a growth in the market and, second, that it contributed to increased law enforcement capacity to make a dent in the market. For example, it was suggested that while the police were initially wary that decriminalization would reduce their ability to disrupt the drug market, they have found other apparently successful ways to target drug traffickers. The best indicators that can be used to examine these hypotheses come from data concerning seizures (number and amount of seizures) and retail drug price.

From 1997 to 2008, there was limited change in the number of seizures of illicit drugs in Portugal. The main exception was seizures of heroin, which declined from a peak in 1999 to a steady state in 2004. But there has been an overall increase in the quantity of illicit drugs seized, particularly those destined for external markets. As one of the evaluation reports noted between 1995–99 and 2000–04, the amount of drugs seized increased by 499 per cent: 116 per cent for cocaine, 134 per cent for hashish, 219 per cent for heroin and 1,526 per cent for ecstasy (Direcção Central de Investigação do Tráfico de Estupefacientes 2004).

Annual data from the IDT provide further insight into the nature of the increases. In particular, they reveal that in Portugal, there has not been a linear or constant increase in the amounts seized (Instituto da Droga e da Toxicodependência 2009). Instead, there have been spikes in seizures of a number of different substances with large seizures of ecstasy between 2001 and 2003, hashish between 2003 and 2006, cocaine between 2004 and 2006 and even larger quantities of hashish between 2007 and 2008 (see Figure 4).

This is remarkably different from trends in Spain (see Figure 5), where there has been an almost linear growth in cocaine and hashish seizure amounts (EMCDDA 2009*b*). It is also different from Italy (see Figure 6), where there had been relatively flat trends with no discernable spikes in hashish or ecstasy seizure quantities since 1999/2000.[12] The absence in Portugal of a consistent growth, in one product, and instead seizures of a number of different products is much more in line with evidence of increased law enforcement intervention as opposed to domestic growth in the market (as per the Spanish trends).

Qualitative data from the Portuguese annual reports provide further evidence of high-level law enforcement activities. For example, the Portuguese police have enhanced their international collaborative efforts and introduced more systematic use of

[12]There were gaps in data on seizure quantities of cocaine in Italy between 1999 and 2004.

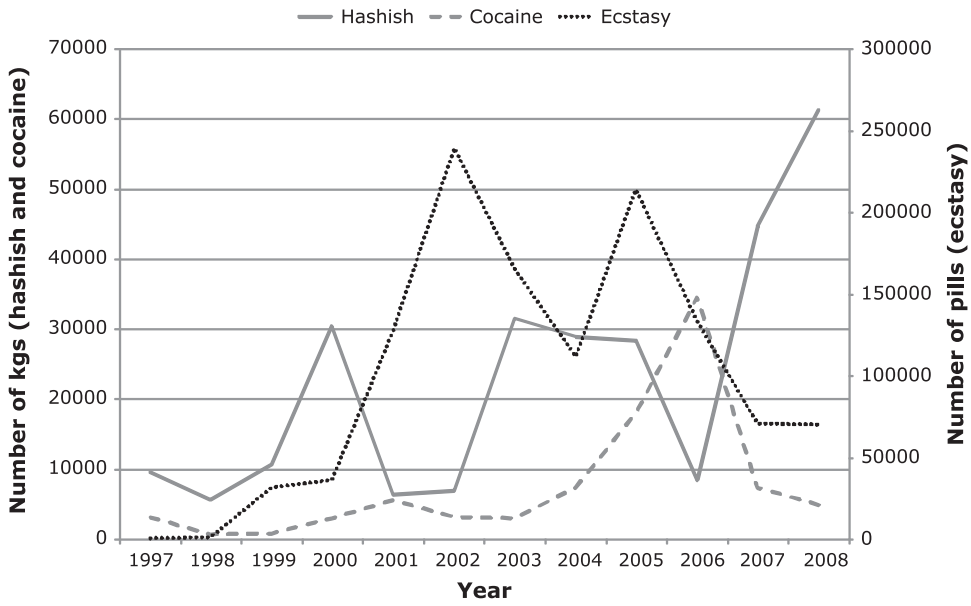

FIG. 4 Number of kilograms or pills seized in Portugal, by drug type, 1997–2008
Source: IDT (2009).

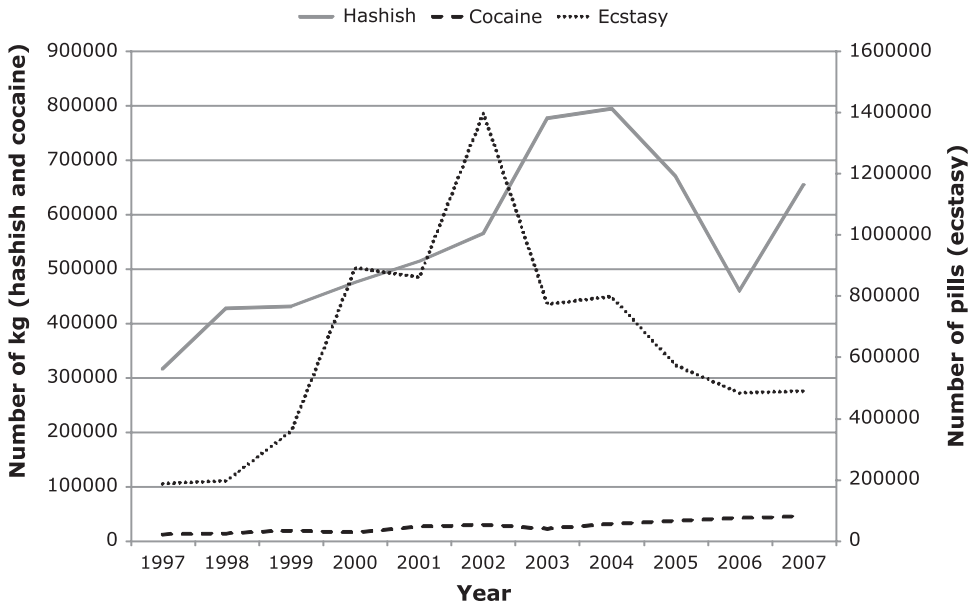

FIG. 5 Number of kilograms or pills seized in Spain, by drug type, 1997–2007
Source: EMCDDA (2009*b*).

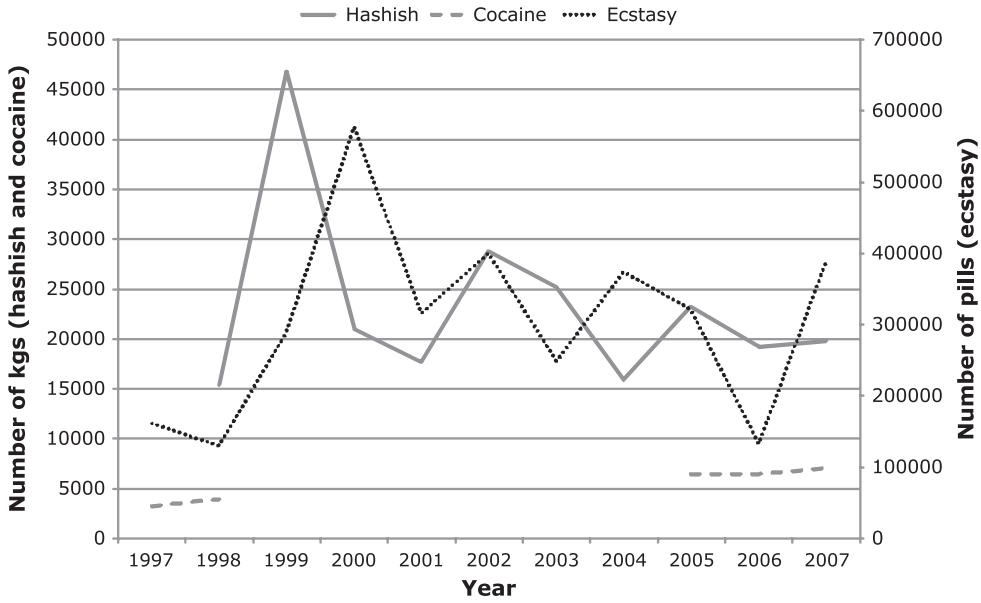

FIG. 6 Number of kilograms or pills seized in Italy, by drug type, 1997–2007
Source: EMCDDA (2009*b*).

investigative techniques, which they argued 'has allowed, over the last three years, to increase the capacity of operational response with regard to drug trafficking by sea, particularly cocaine trafficking originating from South America' (Institute for Drugs and Drug Addiction 2008: 91).

At the same time, there have been reductions in the prices of most substances, particularly from 2001 levels. For example, the reported average price of 1 gram of heroin decreased from $50.27 in 2001 to $33.25 in 2008 and the average price of an ecstasy tablet fell from $6.86 in 2001 to $2.80 in 2008 (see Table 5). It is unclear whether drug purity has also changed over this time.

The reductions in price *may* point to two phenomena: increased supply and reduced demand. There are some indications from the school surveys of reduced use of cannabis, cocaine and ecstasy. The drug price data suggest that this was due to reduced demand rather than the success in seizing drugs (which is supposed to limit drug use by reducing availability and increasing price), but more detailed studies would be needed to confirm this.

The declines in Portugal were somewhat different from neighbouring Spain (see Table 6), where most retail drug prices have been stable. The exception is hash, as retail prices have increased since 2001, which is argued to be in line with increasing demand. Indeed, the lack of increase in the price of cocaine in Spain (and stable purity) is argued to be odd, since other Spanish indicators suggest cocaine demand has been increasing. Spanish experts therefore have suggested the lack of change is due to greater-than-estimated levels of cocaine supply in Spain (Reitox National Focal Point 2008). These indicators indicate that the Portuguese drug market, particularly local use of the drug market, does not appear to have become rampant post decriminalization.

TABLE 5 *Average price for illicit substances in Portugal in Euros, by year and drug type, 1998–2008*[13]

Portugal	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Heroin (g)	38.50	31.33	49.72	50.27	43.78	46.80	46.54	41.01	42.17	37.57	33.25
Cocaine (g)	45.63	40.37	60.31	53.51	38.57	41.40	42.23	45.11	45.73	44.65	45.56
Hash (g)	1.78	1.09	4.13	4.06	2.45	2.49	2.31	2.13	2.18	3.45	3.28
Ecstasy (tablet)	11.70	6.70	5.98	6.86	5.90	5.27	4.50	3.56	3.18	3.20	2.80

Source: IDT (2009).

TABLE 6 *Average price for illicit substances in Spain in Euros, by year and drug type, 2001–2007*

Spain	2001	2002	2003	2004	2005	2006	2007
Heroin (g)	63.96	64.5	66.05	64.15	63.69	62.42	62.69
Cocaine (g)	59.70	58.29	61.90	61.85	60.58	60.66	60.75
Hash (g)	3.92	4.08	4.41	4.39	4.26	4.63	4.52
Ecstasy (tablet)	11.35	11.24	10.28	10.02	9.82	9.79	10.67

Source: Reitox National Focal Point (2008).

Drug-related health harms

The major perceived success of the Portuguese reform has been its contribution to changes in public health problems, with significant referrals—particularly in the early years—by the CDTs of heroin users to treatment. There have been significant reductions in mortality, HIV, HCV and TB. Drug-related deaths are subject to changes in recording as well as changes in underlying rates of drug use. Figure 7 shows that the number of deaths in Portugal recorded as drug-related reduced significantly between 1999 and 2002 (Instituto da Droga e da Toxicodependência 2009).

Looking at neighbouring Italy and Spain, it is clear that trends in drug-related deaths differ between the three nations, which reflect in part different stages of the heroin epidemic (see Figure 7). The peak number of drug-related deaths occurred earlier in Italy, in 1996, whereas both Portugal and Spain did not peak until 1999. That aside, it is clear that since the Portuguese introduction of its drug strategy and the decriminalization, all three nations showed declines in drug-related deaths, but that the declines were more pronounced in Portugal and Italy than in Spain. All three nations showed a plateau in the mid 2000s but Portugal is unique in the recent increase. Nevertheless, the subsequent increase has been attributed by local informants to a shift in measurement practices, namely an increase in the number of toxicological autopsies performed (from 1,166 in 2002 to 2,805 in 2008), which increased the probability that people would be found to have drugs in their bodies at death. The proportion of deaths in which opiates were the main substance in Portugal has continued on an almost steady decline from 95 per cent in 1999 to 59 per cent in 2008 (55 per cent in 2007). Other forms of drug-related deaths, especially due to cocaine, have risen in Spain but not Portugal. For example, in Spain, cocaine has taken over from heroin as the major cause of hospital admission and is the second most likely drug to be associated with death. Portugal would appear to have been largely immune to this, with very low levels of cocaine use, and the decriminalization would not appear to have disturbed this pattern.

[13]Since 1st July 2001 when the decriminalization came into force the Criminal Police no longer collect data on price at street level. Information on price is therefore based on trafficker and trafficker-consumer self-reports.

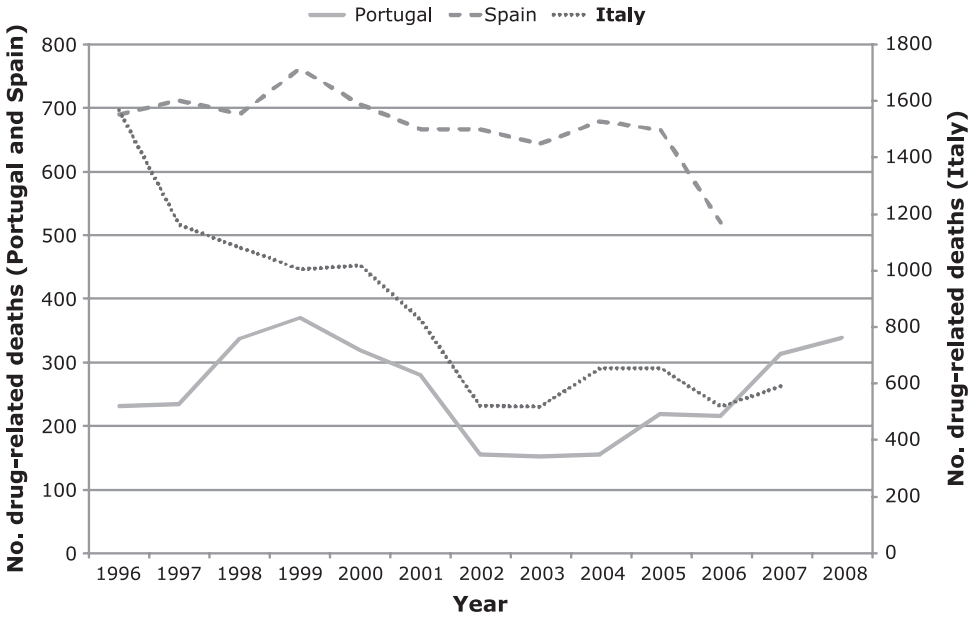

FIG. 7 Number of drug-related deaths recorded in Portugal, Spain and Italy, 1996–2008
Source: IDT (2009) and EMCDDA (2009*b*).

Given that heroin problems were the major driver of the reform, this reduction in overdose and opiate-related death was deemed by key informants as a considerable achievement of both the decriminalization and the broader drug strategy. Reductions in opiate-related deaths are likely to reflect the large increase in the provision and uptake of treatment, particularly low-threshold opiate substitution treatments,[14] and not simply the effect of decriminalization. The overall numbers of drug users in treatment expanded in Portugal from 23,654 to 38,532 between 1998 and 2008 (Instituto da Droga e da Toxicodependência 2009).

The data on treatment clients—outpatient, inpatient and prescribed—all indicate that the population of drug users has aged. For example, in 2000, only 23 per cent of treatment clients admitted for the first time were aged over 34, but this rate has increased steadily to a rate of 46 per cent in 2008 (Instituto da Droga e da Toxicodependência 2009). Together with the data on the decline in the prevalence of problematic drug use, this suggests an encouraging trend of reductions in the number of young people who are becoming dependent on illicit drugs such as heroin.

The number of new drug users who are diagnosed with HIV and AIDS has also declined. For example, between 2000 and 2008, the number of cases of HIV reduced amongst drug users from 907 to 267 and the number of cases of AIDS reduced from 506 to 108 (Instituto da Droga e da Toxicodependência 2009). This is a highly significant

[14]Opiate-substitution treatments can be classified as being high or low-threshold, with the former involving very strict eligibility criteria and treatment regimes that limit access to programmes and create additional demands on treatment providers and drug users. Portugal traditionally only provided high-threshold treatment programmes, but following the 1990 roll-out of low-threshold treatment programmes, they have become the most widely utilized form of treatment in Portugal.

trend that has been attributed primarily to the expansion of harm-reduction services. A reduction in drug-related AIDS cases was also seen in Spain (from 5,085 cases in 1994 to 639 in 2007) following the scaling up of opiate substitution treatment (Brugal *et al.* 2005).

Discussion

In the first decade of this century, it has often been claimed that we are witnessing a general shift towards punitive penal policies and the use of crime policies to legitimate neo-liberal governance (Garland 2001; Simon 2007). The counter-example of Portugal, which has seen both an extension of the welfare state and a reduction in the penalization of vulnerable drug users, supports critics who have argued that such general theorizing underestimates the complexity of developments, both at home and abroad (Hannah-Moffatt 2002; Zedner 2002; Young 2003; Loader and Sparks 2004; Hutchinson 2006). The appeal of the punitive turn in contemporary penality is by no means universal. Indeed, the Portuguese decriminalization stands in stark contrast to it, given its adoption and continuation for reasons of human rights, social solidarity and acknowledgement of the failure of punitive policies.

In the run-up to the 2009 general election, the incumbent Prime Minister gave a speech in Lisbon at the European Monitoring Centre on Drugs and Drug Addiction (Sócrates 2009). He used this opportunity to boast publicly of his decisive role in the introduction of the 2001 reform. He pledged his continuing support for it. Penal populism was evidently not in play here.

Southern-European countries including Portugal, Italy and Spain have followed a different path from the neo-liberal, Anglo-Saxon economies. All had totalitarian regimes in the last century. When emerging from dictatorship, all three nations adapted their constitutions to recognize rights to citizenship and limit interference by the state in the private lives of citizens. And all have undertaken changes within the criminal justice arena to reduce criminalization by the state (Solivetti 2001; Gamella and Jiménez Rodrigo 2004). The need to examine the wider intellectual and political contexts in which crime policy develops should also warn us against the temptation to attribute changes in policy, or their effects, to the simple causal impacts of any particular, one-off legal change. For example, we would dispute Greenwald's (2009) tendency to attribute positive changes in Portugal to decriminalization alone. Many other factors, including expanded treatment services and an ageing population of heroin users, have contributed to the positive results observed.

Yet, the reform provides important evidence for the debate on the impacts of decriminalization. It demonstrates that—contrary to some predictions—decriminalization does not inevitably lead to rises in drug use. It can reduce the burden upon the criminal justice system. It can further contribute to social and health benefits. Moreover, such affects can be observed when decriminalizing all illicit drugs. This is important, as decriminalization is commonly restricted to cannabis alone.

Our research suggests that current theories and assumptions about decriminalization are themselves in need of development. Decriminalization is often discussed as if it is one, simple, unitary concept. But there are several forms of decriminalization in practice internationally (Uitermark 2004; McLaren and Mattick 2007; Babor *et al.* 2010). None of the other models is as explicitly linked to dissuasion, treatment and integration as the

Portuguese approach. Each of the models will have its own sources, costs and benefits, which are in need of further research if we are to understand how they could be transferred across national borders.

Our studies of the Portuguese decriminalization over a number of years have further illustrated the challenges in assessing the impacts from such a reform and the need to recognize the importance of the timing of assessment in relation to implementation. The effects of the Portuguese reforms appeared much less positive during the early years, when implementation was more problematic (Hughes and Stevens 2007). Some difficulties were an inevitable side effect of adopting a new reform. Others were less controllable. These difficulties make it harder to compare impacts at a given time against the potential future impacts of decriminalization. While there are calls in all forms of research for repeated assessments, this is particularly necessary in regards to decriminalization, where the heated debate makes such reforms particularly susceptible to uninformed criticism.

Many reforms are evaluated only early on in their adoption, which may lead to underestimation of their true impacts. One case in point is the South Australian cannabis expiation notice scheme. The Portuguese (and South Australians) have therefore done well to maintain the reform in spite of such difficulties. Other jurisdictions such as Western Australia have not been so fortunate, and are in the process of overturning a hard-fought-for reform (Barrett 2009).

Conclusion

In the Portuguese case, the statistical indicators and key informant interviews that we have reviewed suggest that since decriminalization in July 2001, the following changes have occurred:

- small increases in reported illicit drug use amongst adults;
- reduced illicit drug use among problematic drug users and adolescents, at least since 2003;
- reduced burden of drug offenders on the criminal justice system;
- increased uptake of drug treatment;
- reduction in opiate-related deaths and infectious diseases;
- increases in the amounts of drugs seized by the authorities;
- reductions in the retail prices of drugs.

By comparing the trends in Portugal and neighbouring Spain and Italy, we can say that while some trends clearly reflect regional shifts (e.g. the increase in use amongst adults) and/or the expansion of services throughout Portugal, some effects do appear to be specific to Portugal. Indeed, the reduction in problematic drug users and reduction in burden of drug offenders on the criminal justice system were in direct contrast to those trends observed in neighbouring Spain and Italy. Moreover, there are no signs of mass expansion of the drug market in Portugal. This is in contrast with apparent market expansions in neighbouring Spain.

The problem is that it is impossible to state that any of these changes were the direct result of the decriminalization policy. It also remains unclear whether the observed impacts were influenced more by the policy or its implementation. Could better

implementation of the CDT model have led to better outcomes? This is an argument put forward by many in government, but it is unfortunately untestable.

The information we have presented adds to the current literature on the impacts of decriminalization. It disconfirms the hypothesis that decriminalization necessarily leads to increases in the most harmful forms of drug use. While small increases in drug use were reported by Portuguese adults, the regional context of this trend suggests that they were not produced solely by the 2001 decriminalization. We would argue that they are less important than the major reductions seen in opiate-related deaths and infections, as well as reductions in young people's drug use. The Portuguese evidence suggests that combining the removal of criminal penalties with the use of alternative therapeutic responses to dependent drug users offers several advantages. It can reduce the burden of drug law enforcement on the criminal justice system, while also reducing problematic drug use.

A key implication of this article is the need for more nuanced discussions of decriminalization, with acknowledgement of the different models and approaches that can be adopted and of their various costs and benefits. A further implication is the need for ongoing study of reforms over time. But, ultimately, the choice to decriminalize is not simply a question of the research. It is also an ethical and political choice of how the state should respond to drug use. Internationally, Portugal has gone furthest in emphasizing treatment as an alternative to prosecution. Portuguese political leaders and professionals have by and large determined that they have made the right policy choice and that this is an experiment worth continuing. Portuguese policy makers suggest that adoption of such a reform requires time to develop the infrastructure and the necessary collaboration between the criminal justice and health systems. They contend that such reform, while not a swift or total solution, holds numerous benefits, principally of increased opportunity to integrate drug users and to address the causes and damages of drug use.

As this paper has shown, decriminalization of illicit drug use and possession does not appear to lead automatically to an increase in drug-related harms. Nor does it eliminate all drug-related problems. But it may offer a model for other nations that wish to provide less punitive, more integrated and effective responses to drug use.

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