

Decriminalization, depenalization, legalization – what's it all about?

DASHA MATYUSHINA-OCHERET

Topics for today

- ▶ The influence of the understanding of the roots of drug use on drug policy
- ▶ Economics of crime
- ▶ Models of addiction and their influence on drug policy
- ▶ Type of decriminalization
- ▶ Legalization

Economic of crime and punishment

- ▶ Neoinstitutional theory, Garry Becker, 1968
- ▶ Crime is rational: the majority of criminals try to maximise the benefits in resource-limited circumstances
- ▶ Crime is a sort of high-risk business
- ▶ The probability of committing a crime depends on whether the utility of the crime is higher than the utility of a legal activity, probability of sanctions, penalties and attitude to risk)

$$EU = (1 - p) \times U(Y) + p \times U(Y - f) = U(Y - p \times f)$$

- ▶ Often applied to theft, tax evasion and drug markets

Sentences and fines

Рекомендуемая Г. Беккером дифференцированная политика наказаний

Характеристики нарушителей	Типы нарушителей	
	Лица с низким человеческим капиталом	Лица с высоким человеческим капиталом
Редкий для них ресурс	Деньги	Время
Типы совершаемых ими правонарушений	Связаны с затратами времени	Связаны с затратами денег
Рекомендуемые для них наказания	Выплата денежных штрафов	Тюремное заключение

Conclusions of neoinstitutionalism with regard to drugs

- ▶ Law enforcement leads to the increase of the costs of drug production and distribution, which leads to the increase of drug prices, and this should result in demand reduction
- ▶ But empiric evidence shows that demand for heroin is not sensitive to price increase
- ▶ «The system under which drug can be legally purchased from medical sources will give the desired effect, because the price decreases and criminal activity goes down» Koch J. V., Grupp S.E (1980)
- ▶ Recommendations: full legalization of cannabis and «controlled partial legalization” of other drugs

Fundamental question

- ▶ What is the 'utility' of drug-related crime, when drugs are purchased and possessed for personal use?
- ▶ **What is the motivation of people who use drugs to commit this crime? Benefits of 'being high' or 'disease'?**
- ▶ If the criminalization doesn't work, are people who use drug pathological/'monsters'?

Criminals or ill (=monstors)?

Criminalization

Demonization

Recreational
use

Involvement in
other crime

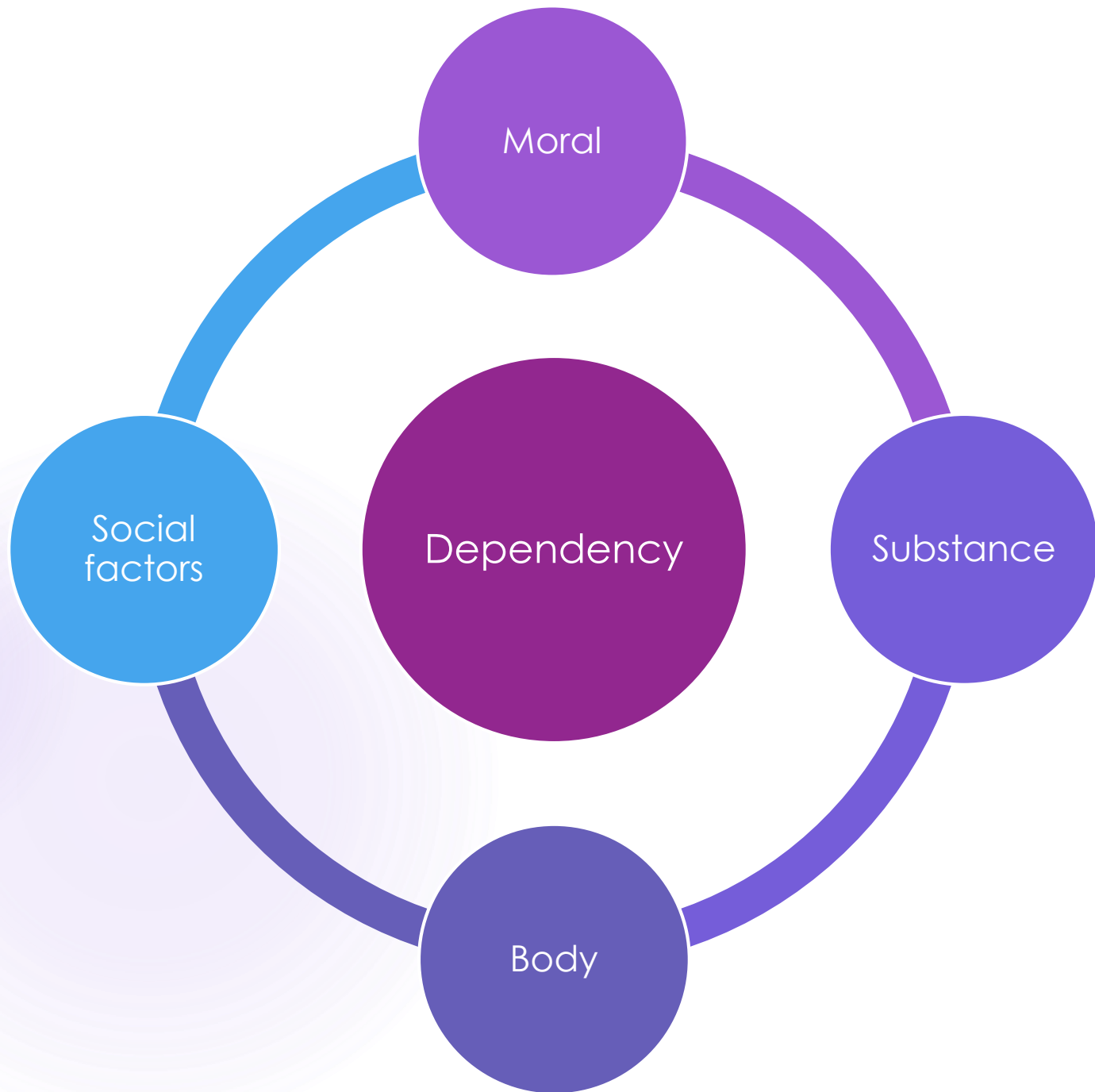
The focus on
the dependent

Recidivism

Psychiatric
comorbidity

In any case, a person who uses drugs deserves

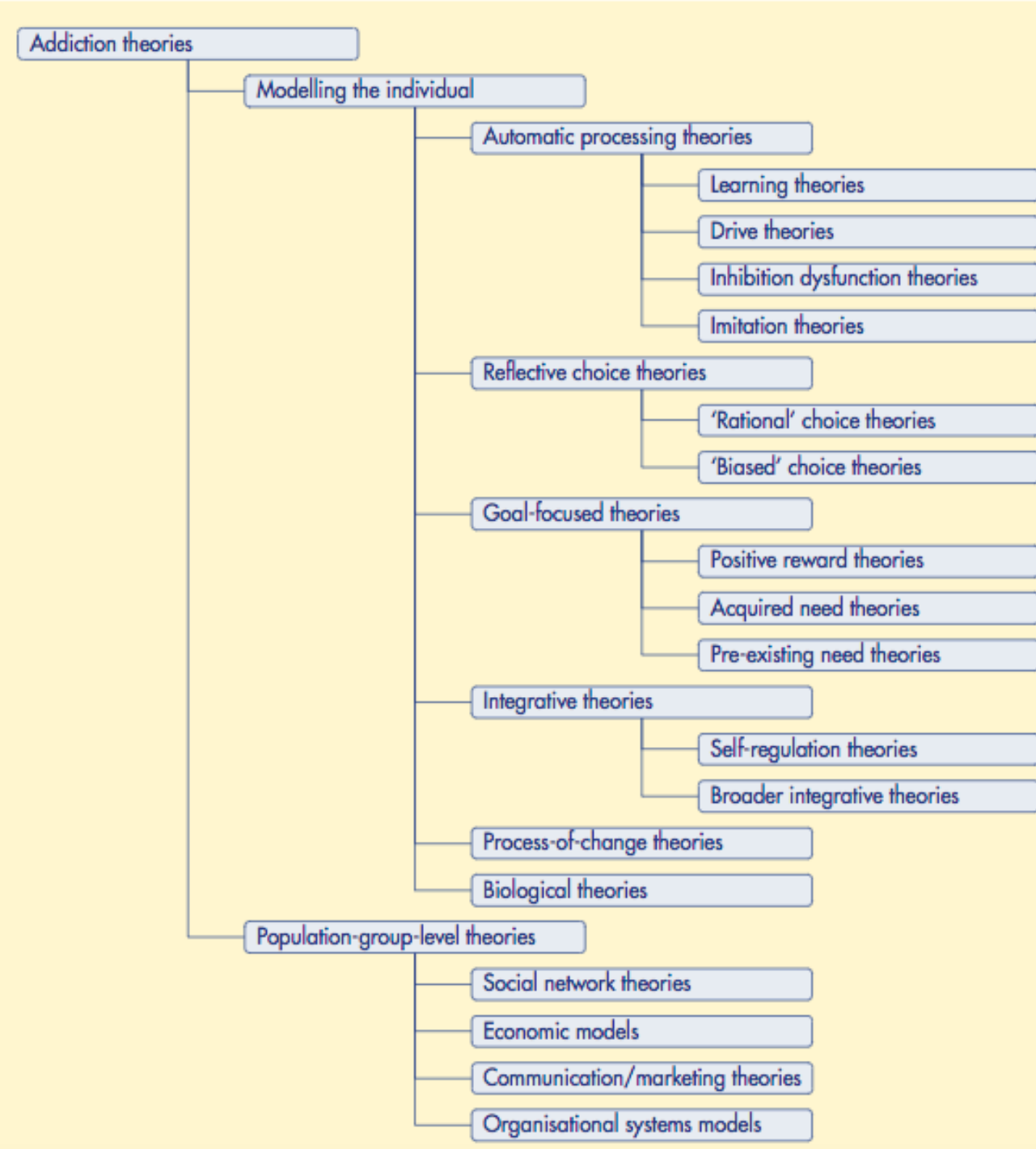
- Detection
- Isolation
- Surveillance
- Limitation in rights



The main idea of the 20th century drug policy is to eliminate drug use.

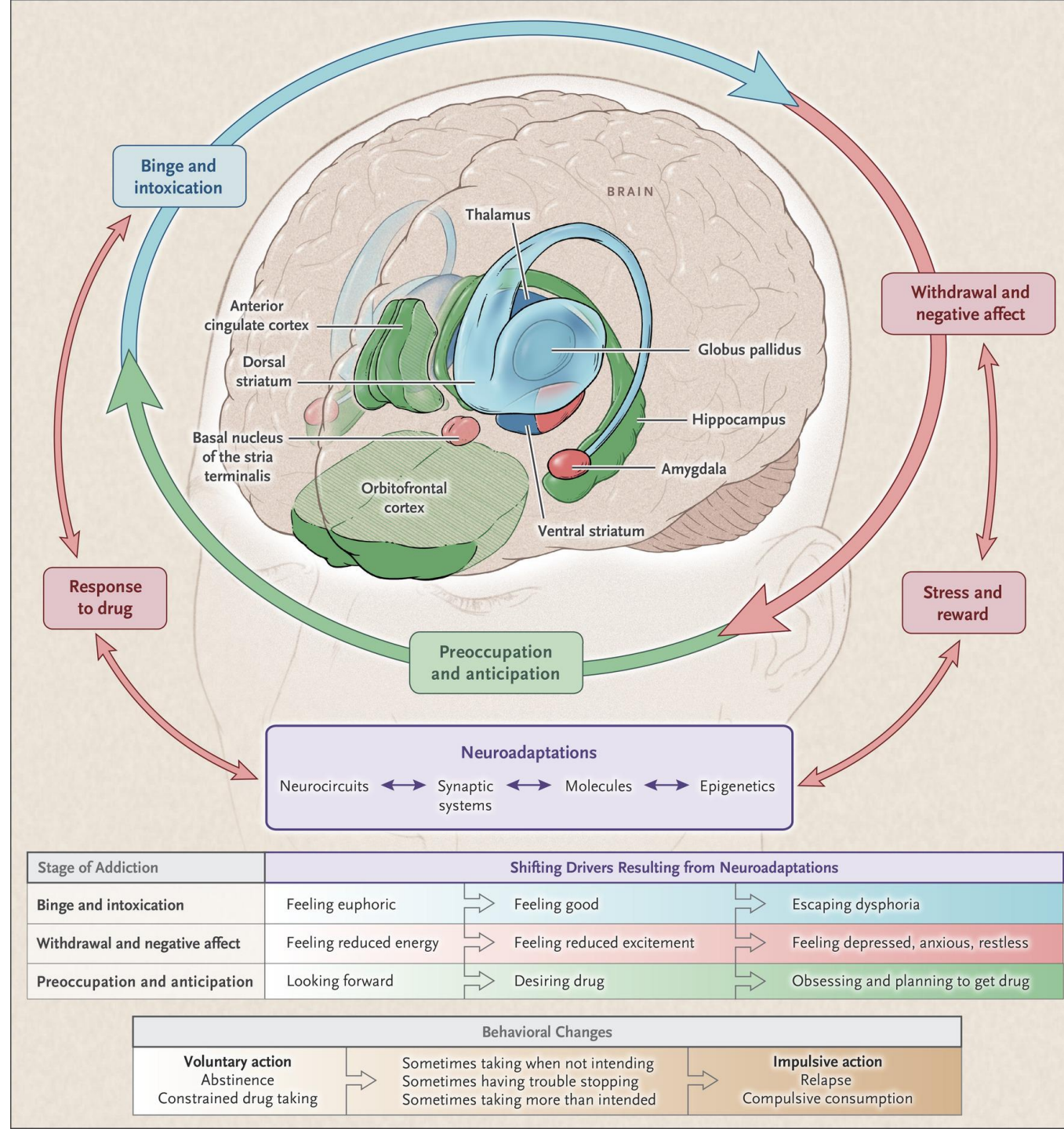
But what should be the target for it?

- ▶ There a lot of models and theories of addiction
- ▶ No consensus
- ▶ Not a single one is true, but many are partially correct



Brain disease

- ▶ NIDA, US
- ▶ The drug-induced release of dopamine triggers systematic changes in communication between neurons in various parts of the brain responsible for remuneration
- ▶ Less than 10% of PWUD become addicted
- ▶ Genetic, environmental and social factors
- ▶ Family – both as genetic factor, and settings
- ▶ Agonist treatment with Naltrexone



Stigma

Moral

Social factors

Dependency

Substance

Body

Case management

Supply reduction

Medically assisted treatment

Definitions

- ▶ Decriminalization
- ▶ Depenalization
- ▶ Legalization

- ▶ Depenalization and decriminalization can mean different things in different languages
- ▶ Better use the term 'decriminalization'

Depenalization

(EMCDDA 2005)

- ▶ Relaxation of the penal sanction provided for by law, generally signifies the elimination of custodial penalties
- ▶ Prohibition remains the rule, but imprisonment is no longer provided for, even if other penal sanctions may be retained (fines, establishment of a police record, or other penal sanctions)

Decriminalization

(EMCDDA 2005)

- ▶ Removal of a conduct or activity from the sphere of criminal law
- ▶ Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law
- ▶ Confiscation, warning, fine or referral

Types of decriminalization

- ▶ De facto – the sanction is in the law, but it's not applied; a person can be diverted from the criminal justice system
- ▶ De jura – the law provides no punishment for drug use/possession



Legalization

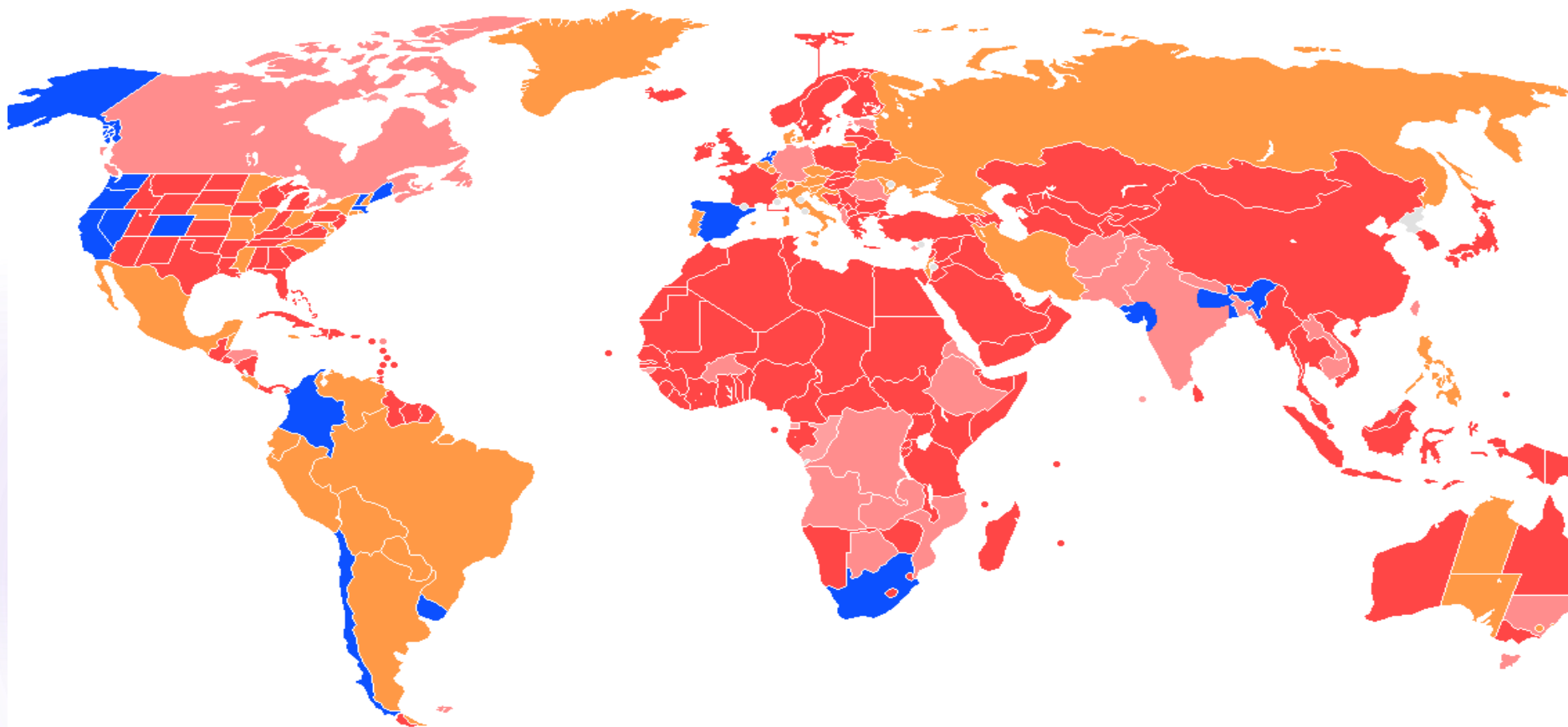
- ▶ Removing legal prohibition, no criminal or administrative sanctions at all
- ▶ BUT: not necessarily commercialisation / liberalisation – market regulation
- ▶ Selling, possession and use can be regulated, and violation of such regulations can lead to criminal; or administrative sanctions
 - ▶ Alcohol
 - ▶ Tobacco
 - ▶ Cannabis

Type of legalization

(EMCDDA 2016; 2017)

- ▶ Medical legalization
- ▶ Industrial legalization
- ▶ Policy of toleration: Netherlands – no formal legalization, but police tolerates coffee shops
- ▶ «Social clubs» (Spain)

Legality of cannabis in the world



World laws on possession of small amounts of **cannabis** for personal use

Blue	Legal or essentially legal	Orange	Illegal but decriminalized	Light red	Illegal but often unenforced	Red	Illegal	Grey	No information
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Alternatives to Coercive Sanctions

(EU Council Conclusions 8 March 2018 – based on Rand report)

- ▶ 5 forms of ACS: 1) Education, 2) (Suspension of sentence with) treatment, 3) Suspension of investigation or prosecution, 4) Rehabilitation and recovery, and 5) Aftercare and social reintegration
- ▶ 13 types of ACS: 1. Caution/warning/no action 2. Diversionary measure 3. Drug Addiction Dissuasion Committees 4. Suspension of investigation/prosecution with a treatment element 5. Suspension of court proceedings with a treatment element 6. Suspension of sentence with a treatment element 7. Drug Court 8. Drug treatment 9. Probation with a treatment element 10. Community work with a treatment element 11. Restriction of liberty with a treatment element 12. Intermittent custody/release with a treatment element 13. Parole/early release with a treatment element

Acknowledgement

- ▶ Peter Sarosi, Rights Reporters Foundation
- ▶ IDPC
- ▶ EMCDDA
- ▶ Yuri Latov
 - ▶ Ю. Латов (2001) Экономика вне закона: Очерки по теории и истории теневой экономики
 - ▶ Глава 1. Экономика преступлений и наказаний: взгляд с высоты