

The End of Policing

Updated Edition

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The War on Drugs

The War on Drugs is the most damaging and ineffective form of policing facing us. Whether we date this war from the 1914 Harrison Act, President Reagan's famous all-out offensive, or President Clinton's massive expansion of federal drug crimes in the 1990s, there is no evidence that our country's drug problems have been improved by driving millions into prison. Since 1982, drugs have become cheaper, higher quality, and more widely available than ever before. Millions of Americans have tried them; high-school students have easy access to them. While ending the War on Drugs by itself won't transform policing, it would be a major positive step toward radically redefining the role of police in society and improving racial justice.

Illegal (and legal) drugs produce significant harm, no question about it. Thousands die from overdoses, many more become unable to work, and even more suffer from addictions that impede their personal and family lives. Illegal drug use in its current forms is also a source of property crime and violence, and a factor in the spread of diseases like HIV and hepatitis C. But there is a mountain of evidence that shows that most users suffer no significant harm, and that most harms that do occur could be reduced by ending, not expanding, the War on Drugs. Unfortunately, police and political leaders continue to embrace a politics of prohibition that flies in the face of decades of evidence and common sense.

The reality is that no amount of police intervention will ever stamp out drug use. People are deeply committed to it. In 2014, 27 million Americans said they had used illegal drugs

in the last month.¹ When we include legal mind-altering drugs the number reaches 70 million; when we include regular use of alcohol, it reaches 130 million—or about half the adult population.

The rise of two currently popular drugs shows the counterproductive nature of the drug war in improving public health. As early as the 1930s, amphetamines were legal, easy to obtain, and popular among everyone from depressed housewives and overnight truck drivers to dieters. The US and other militaries distributed amphetamines during World War II to boost the performance of soldiers in combat. In the 1960s, employers and moral crusaders raised concerns about their recreational use and restrictions were put in place, requiring a prescription and limiting medical usage. As a result, a huge black market has emerged for methamphetamine, which is totally unregulated in terms of purity or potency. Methamphetamine has more side effects, which can be more pronounced than those of amphetamines. Its illegal, unregulated production creates dangerous byproducts that have led to poisonings, house fires, and explosions.²

The current increase in heroin use, especially overdoses, is directly tied to prohibitionist policies and the deregulation of the pharmaceutical industry. In 1995, the Food and Drug Administration (FDA) approved a prescription opioid called OxyContin, kicking off a boom in the use of prescription opioids. Sales of OxyContin grew from \$45 million in 1996 to \$3.1 *billion* in 2010. The manufacturer, Purdue Pharmaceuticals, told doctors that this new opioid formulation was less likely to be addictive and that they should prescribe it aggressively to reduce pain.³ Unfortunately, many patients became addicted and a huge black market in the pills developed. Eventually the Drug Enforcement Agency (DEA) and Food and Drug Administration (FDA) realized this and took steps to tightly control the availability of the drug. Millions of people who were now dependent on it could no

longer get it legally. Instead, they had to pay very high prices on the black market, or switch to heroin, which is much less expensive and much more dangerous. People who were taking medically regulated pills shifted to totally unregulated street heroin, which can vary in strength and contain impurities and additives—which is what produces the vast number of overdoses. Indeed, Oxy overdoses only began to spike after the pills became harder to obtain. In addition, heroin is more likely to be injected, leading to the spread of disease, abscesses, and other complications. It has also been suggested that the ongoing prohibition of marijuana has contributed to this crisis. There is growing evidence that marijuana is effective in some forms of chronic pain management.⁴ Prohibitionist policies, including restrictions on research, have led doctors to rely on opioids in circumstances where marijuana might be used, thus eliminating the risks of addiction and overdose posed by opioids.

The prohibition efforts of the twentieth century were not about improving public health; they were about political opportunism and managing “suspect populations.” The first major prohibitionist measure was the Harrison Act of 1914, which created legal restrictions on opium, heroin, and cocaine, all of which had been widely available in patent medicines and other forms. Arguments in favor of restricting these drugs had a profoundly racial character. Opium, which was associated with laborers from China, was largely ignored until it became popular with upper- and middle-class white women, who were obtaining it in “shady” Chinatown opium dens. Racial purists and xenophobes were alarmed by white women mixing with Chinese opium users and sellers, fearing a breakdown in the social distance between them. During this period, Chinese workers had no legal rights in the US court system and were subject to extreme exploitation and racial hatred. The prohibition of opium gave police a tool to justify constant harassment and tight social regulation of this “suspect” population.⁵

Similarly, those who railed against cocaine did so in anti-black terms. Plantation foremen had given it to enslaved workers to stimulate work and reduce hunger. Now cocaine was vilified because black people were taking it of their own accord. Prohibitionists raised the specter of drug-induced attacks on white women, and many accusations of rape and concomitant lynchings were tied to the drug. There was also a widespread fear in the South that blacks on cocaine had superhuman strength and couldn't be stopped with .32-caliber bullets, then the standard police issue, prompting the widespread adoption of .38 caliber bullets.

Marijuana had been used along the Mexican border for many decades without much concern. However, there was a significant upsurge in migration following the Mexican Revolution of the early twentieth century. States passed anti-marijuana laws, giving police a legal pretext to search and question migrants and create a climate of fear. In the North, marijuana was criminalized after becoming more popular among African Americans in the big cities. Its close association with jazz and black culture led to a moral panic. These twin forces came together nationally with federal prohibition in 1937.

Intensive drug prohibitionism was tied to conservative nativist politics. Johann Hari describes the exploits of the nation's first drug czar, Harry Anslinger, who from 1930 to 1962 waged a never-ending battle focused primarily on immigrants and people of color.⁶ He was personally involved in arresting and harassing jazz legend Billie Holiday and may have directly contributed to her death in police custody in 1959. Using junk science and political intimidation, he forced doctors and officials to embrace prohibitionism despite robust medical evidence to the contrary. He also helped drive the adoption of international treaties that allowed for a greater federal role in drug control and spread the prohibitionist ideology internationally.⁷

The modern War on Drugs really began with Richard Nixon, who saw it as a way of inserting the federal government more forcefully into local law enforcement. This was part of his “Southern Strategy” to win over historically Democratic Southern whites in the wake of desegregation and the civil rights movement.⁸ Rather than refighting a lost battle, Nixon appealed to white Southerners by using the language of law and order to indicate his desire to keep blacks in check through expanded law enforcement powers. Since most criminal law is handled at the state level, Nixon settled on drug enforcement as his avenue. He could justify federal involvement in what had been primarily a state matter because drugs often cross international borders and state lines and because the United States is a signatory to international drug prohibition treaties. In addition, he knew that racial fear and animus had always played a central role in drug enforcement. Nixon’s chief of staff, H. R. “Bob” Haldeman, infamously wrote in his diary about the way President Nixon “emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”⁹ Nixon’s chief domestic policy advisor, John Ehrlichman, also said in an interview with Dan Baum that the War on Drugs was a political lie:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? ... We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.¹⁰

Health officials in the Nixon administration had favored a decriminalization approach and the use of methadone and other harm-reduction strategies, until Nixon overruled them with his politically motivated expansion of intolerance, prohibition, and criminalization.

Ronald Reagan expanded Nixon's framework ideologically and practically. His wife Nancy led the ideological charge with her "Just Say No" campaign, which applied the naive idea that people just needed a helpful reminder to summon the willpower to resist drugs. This head-in-the-sand approach to the problem was suitably ridiculed. Its effects, however, were more substantial. The Reagan ideology was that drugs were a problem of poor willpower and the absence of suitable role models and parental supervision, undermining calls for treatment and decriminalization. President Reagan oversaw congressional actions that dramatically expanded the federal government's role in local crime control and increased the number and seriousness of drug offenses at the federal and state levels. He expanded the role of the military in drug interdiction efforts, as well as those of the DEA and other federal law enforcement agencies.¹¹

Many people tend to end the story of the emergence of the War on Drugs there, but in fact Bill Clinton played a major role in expanding the drug war. His crime bills increased the number of death penalty offenses for drug trafficking, created three-strikes provisions, dramatically expanded funding for the DEA, and allocated \$8 billion to construct federal and state prisons. He also set aside more than \$8 billion to hire police. Drug incarcerations didn't really start to spike until 1992, and almost all of that increase was for possession rather than distributing or manufacturing drugs.¹²

Today, half of all federal prisoners are incarcerated for drug crimes, as are about a third of all state prisoners. We now spend upwards of \$50 billion a year fighting the War on Drugs.¹³ In addition, the drug war has transformed policing:

the explosion in SWAT teams and other militarized forms of policing, asset forfeiture abuse, racial profiling and racist enforcement patterns, expanded powers to search people's homes, persons, and automobiles without warrants, the criminalization of young people of color, police corruption, and the development of a warrior mindset among police. While some of these changes are part of larger trends, they have been accelerated, reinforced, and exacerbated by the drug war.

While most scholars point to the drug war's erosion of the Fourth Amendment's protections against unreasonable searches and seizures, journalist Radley Balko discusses the role of the Third Amendment, which prohibits the quartering of troops in people's homes.¹⁴ That amendment symbolizes the limits of the powers of the state to encroach into the privacy of people's homes. Balko describes case after case where SWAT teams have used "no-knock" warrants to stage large-scale armed invasions of people's homes on flimsy evidence, in search of mostly low-level drug dealers and users. These raids have killed suspects, police, and totally innocent people mistakenly targeted by police. Raids have been conducted based on erroneous information from confidential informants, who are motivated by cash payouts from police. In addition, Balko shows how SWAT teams physically and mentally abuse people, destroy their property, and kill their pets. SWAT teams and similar paramilitary units are also used in large-scale drug sweeps of neighborhoods and housing projects and even random patrols of "high-crime" neighborhoods.

One of the ways these teams have been financed in recent years is through asset forfeiture laws, which typically allow police forces to keep assets they seize in drug raids and investigations.¹⁵ This gives departments a strong financial incentive to pursue the drug war aggressively and allows for the almost completely unchecked and unregulated expansion of paramilitary units. These laws are also pernicious because of the

huge potential for abuse. Asset forfeiture laws allow for civil proceedings as opposed to criminal ones, which means the burden of proof is much lower and the legal action is against the property in question, not the individual. In most cases there is a clear presumption of guilt. There is also a problem of disproportionality: even small quantities of drugs for personal use can lead to the loss of a car or home.

Many police forces have become so entranced by this easy money that they undertake a wide array of drug “fishing expeditions” in hopes of finding valuables to seize. There have been numerous cases of traffic stops in which people are searched and the presence of cash above a few hundred dollars is by itself taken as evidence of drug involvement—leading to the cash being confiscated on the spot, even if no drugs are found and no criminal charges brought against the owner of the money. The owner’s only recourse is to prove in court that the money was not drug-related, a Kafkaesque perversion of justice.

Not only has money been criminalized, so has anything that could be perceived as drug-related, opening the door to corruption and racial injustice. Broad laws against “paraphernalia” target pipes, scales, and other materials that have other uses but *could* be used for drug distribution or consumption. In Philadelphia there is a law prohibiting retailers from selling small plastic baggies if there is reason to believe they might be used for drug distribution. Narcotics officers then have a pretext to raid corner markets in communities of color.¹⁶ The mostly minority store owners were often arrested and in some cases had their businesses seized or were so burdened with fines that they went bankrupt. Eventually, owners came forward with videotapes showing that police conducting raids were also emptying cash registers into their own pockets and carting off loads of merchandise, some of which ended up in the hands of informants.

Corruption

It is impossible to fully catalog the abuses of authority, thefts, bribes, and drug sales committed by US police every day in the War on Drugs. The extremely profitable black market ensures that there will always be a strong incentive for dealers to bribe the police to look the other way, and for police to protect, steal from, or become drug dealers.

Most of the major police scandals of the last fifty years have had their roots in the prohibition of drugs. The Rampart Scandal in Los Angeles involved officers abusing their authority and engaging in brutality toward drug dealers in Los Angeles and eventually involved the stealing of drugs from evidence rooms and selling it on the streets. The book and movie *Prince of the City* detail the corruption of narcotics detectives in New York who traffic in drugs to get information from informants, take bribes, and steal money and drugs from dealers.¹⁷ Similar practices were uncovered in the late 1990s by the Mollen Commission and its investigation of the “Dirty Thirty” precinct in Harlem.¹⁸

More recently, drug scandals have emerged in numerous police agencies, including the DEA. For example, in March 2015 alone:

- The Fresno (California) Police Department’s second in command was arrested by FBI and ATF agents for dealing oxycodone, marijuana, and heroin.¹⁹
- In Scott County, Tennessee, a deputy sheriff was arrested for burglarizing drugs from the police evidence room.²⁰
- An NYPD officer was arrested in Florida after he was caught in a drug sting attempting to buy \$200,000 worth of cocaine.²¹
- A Miami-Dade police lieutenant pled guilty to aiding cocaine smugglers and planning the execution of rival dealers.²²

- A Winston County, Alabama, deputy was sentenced to more than three years in prison for extorting a local woman into cooking methamphetamine for him to distribute.²³
- An FBI agent who spent years working on drug enforcement pled guilty to sixty-four counts of stealing heroin from evidence bags for his own use.²⁴
- A police officer from Titusville, Florida, was sentenced to ten years in prison for dealing cocaine.²⁵
- The DEA released a report detailing how agents assigned to Colombia had for years been having sex parties paid for by local drug cartels.²⁶

The arrest of officers is so common that the organization StoptheDrugWar.org publishes weekly reports of police arrested on drug charges.²⁷

Racial Impacts

Racialized patterns of enforcement are at the core of a great deal of drug war policing. While there is clear evidence that drug use and dealing are evenly distributed across race lines, most drug enforcement happens in communities of color and poor, white rural areas.²⁸ When a white person is caught with drugs, they are much more likely to receive probation or get diverted into treatment than nonwhite defendants. One of the best-publicized examples of racialized enforcement is the controversy around “driving while black,” which led to court battles and reform efforts in New Jersey and other states in the 1990s. Repeated complaints from black motorists that they were being stopped on state highways for no reason and pressured into consenting to searches led to complaints and eventually lawsuits from the NAACP, ACLU, and other groups, forcing a federal investigation and a consent decree

in which the police promised reforms. After years of technical reforms, however, many of the same racially disproportionate outcomes persist.²⁹

Drug policing is almost exclusively undertaken in poor mostly nonwhite communities. Across the country the vast majority of people in prison for drug offenses are black or brown: over 90 percent in New York State. In *Hunting for Dirtbags*, Lori Beth Way and Ryan Patten spent hundreds of hours riding with regular patrol officers in one East Coast and one West Coast city. In both cities, officers from all different parts of each city spent a significant part of their workday looking for easy drug arrests in poor minority neighborhoods, even if they weren't assigned there. The most ambitious officers were the worst offenders, since they felt they needed high arrest numbers to help them get more desirable placements in specialized units.

Most street-level drug policing is discriminatory and ineffective.³⁰ For example, Baltimore police must contend with major drug markets but are largely unable to make any dent in dealing or use. Instead, they have been reduced to managing the symptoms in counterproductive ways. Former Baltimore police officer Peter Moskos writes that the typical procedure is to ignore it unless there is a specific complaint. If someone is at the location of the complaint when police arrive, the officers tell them to "move along." Usually no arrest is attempted, because police know that the person standing there is a facilitator who doesn't have drugs on them. The person generally just walks around the block and then returns to business as usual. Moskos reports that in his experience, even in major concerted drug raids involving specialized units and extended investigations, no one was ever prevented from getting drugs for more than a couple of hours. A staggering 10 percent of Baltimore residents have used an illicit drug in the past year, and nearly a third of all arrests in the city are for drug crimes.³¹ This realization led former Baltimore mayor Kurt

Schmoke to come out strongly against the drug war at the 1988 US Conference of Mayors. He continues to argue that we should treat drug use as a problem of health rather than criminal justice.³² He's not alone. Across the country, law enforcement officials are calling for an end to the drug war. There's even a new organization, Law Enforcement Against Prohibition (LEAP), made up of current and former police and prosecutors who have seen firsthand the ineffectiveness and harm of the drug war.³³

Rural policing is not exempt from this dynamic. Take the case of Tulia, Texas, a town of five thousand where a sheriff brought in a hired informant to orchestrate a series of drug raids in 1999.³⁴ Based solely on the word of a paid informant, the sheriff made several arrests. Almost no drugs were found, but he used the threat of long mandatory sentences to get people to incriminate others. Additional raids resulted in the arrests of forty-six people, forty of whom were black; the other six had close ties to the small local black community. Most pleaded guilty to low-level charges, despite having no drugs found on them or in their homes. Fortunately, some persisted in claiming their innocence. Their lawyers found that the hired informant had been responsible for false arrests in other jurisdictions, that the descriptions of the alleged dealers did not match those arrested, and that some defendants had clear alibis for the times when alleged drug transactions were said to have occurred. Eventually, the charges were dropped against almost all the defendants, including several who were already imprisoned. The city ended up paying out \$6 million in legal settlements and the paid informant was convicted of perjury. The white sheriff who orchestrated the whole affair and the local prosecutor who won the convictions remained in office.

Right to Privacy

The Fourth Amendment was originally conceived to prevent the state from engaging in gross and indiscriminate invasions of people's homes and privacy. The insatiable drive to "find the drugs," however, has given rise to a range of judicial rulings and legislative inventions that have eroded that right. Federal courts have consistently expanded the powers of the police to randomly stop people, search their possessions, spy on their homes, tap their phones, go through their garbage, and investigate their personal finances.

In March of 2016, the *Washington Post* reported on the use of warrants based on "officer training and experience" to justify searches.³⁵ In most of the cases this was based on the police obtaining an address off an old arrest for drugs and then raiding the house in hopes of finding more. They found that 14 percent of all warrants served in DC had this quality and that 99 percent of them were served on African Americans. Of those, 40 percent yielded nothing; in many cases the person listed on the warrant no longer lived there. Of the others, almost all of them found only drugs for personal consumption.

A variety of "good intention" provisions have undermined the exclusionary rule, giving police a great deal of latitude. The fact that most of these home invasions produce only small amounts of drugs, and in many cases none, seems of small concern to a judiciary obsessed with expanding police power. This is the ideological victory of the drug warriors, who have succeeded in their effort to portray drug dealers as the root of all evil. No penalty is too harsh and no method too extreme if it means getting another dealer off the streets.

In one tragic example, an NYPD officer killed Bronx teenager Ramarley Graham in his home because he was suspected of marijuana possession. The police wanted to question Ramarley and when he fled, officers pursued him into his

home by battering down the door. Once inside, an officer fired on him while he was attempting to flush marijuana down his toilet. The officer had no warrant and no objective reason to suspect that Graham was dangerous. But the War on Drugs has normalized such actions to the degree that neither local nor federal prosecutors brought charges against the officer.³⁶ Clearly, Graham's life and his right to be free from police intrusion into his home *did not matter*.

Michelle Alexander argues in *The New Jim Crow* that the War on Drugs, more than any other single development, has led to the mass criminalization and incarceration of young people of color.³⁷ While men have borne the greatest burden of this, black women are the fastest-growing segment of the prison population, and this is tied primarily to drug enforcement. Furthermore, most people caught up in the drug war are low-level offenders arrested for possession in street-level "buy-and-bust" operations (pursuant to a search of sometimes questionable legality), and are targeted as part of a growing system of paid informants, or are implicated by others facing draconian mandatory minimum sentences.³⁸ Our prisons are not filled with drug kingpins, nor are they filled with saints. Mostly they are filled with people enmeshed in a massive black market that provides jobs and incomes for millions who have little access to the formal economy.

Because it is an underground market, it is at times violent. Most drug-related crime is not about people on drugs committing crimes because of their altered state of mind. Instead, it takes two primary forms: property crime to fund drug habits, and business disputes. In an illegal market, you can't go to court: if someone cheats you, your options are to accept the loss or resort to violence. In addition, the large amounts of cash on hand make drug buyers and dealers inviting targets for thieves, who know that their victims will rarely complain to the police.

Health Effects

The drug warriors always justify their expanding power with tales of the lives lost to drugs, but prohibition actually undermines health outcomes for drug users. Since drugs are illegal, there can be no regulation of their purity or potency. Dangerous additives and unpredictable dosages lead to overdoses, infections, abscesses, and poisonings. Heroin overdoses now claim the lives of more than ten thousand people a year, a 500 percent increase since 2001.³⁹ When heroin of consistent quality is available by prescription, as was the case in much of the United States in the late 1910s and early 1920s and in the United Kingdom up until the 1960s, overdoses fell to almost zero. Doctors saw opioid addiction as a medical problem that responded best to medical treatment, which typically led to a reduction in use and the elimination of infections and overdoses. It was only zealous drug war politics that led to the rejection of this approach.

Criminalization makes it hard for drug users to complain about adulterated products or even share information with other users and interferes with access to treatment. Most heavy drug users who are arrested receive no real drug treatment and are expected to go clean on their own while incarcerated, leading to adverse health effects and even death. Prohibition also forces people to share needles and other drug paraphernalia; the second most prevalent method of HIV transmission in the US today is injection drug users sharing needles. (The situation is even worse in Russia, where overdoses and HIV infection rates have skyrocketed thanks to punitive drug policies.⁴⁰) This is also a major cause of hepatitis C transmission. While a few needle-exchange programs have found support, police typically look on them with disdain and frequently target participants for surveillance and harassment. Most states, however, continue to restrict access to clean needles in the misguided belief that this will somehow reduce drug use.

International Effects

The US government typically supports the draconian drug policies of other countries. It is the driving player in maintaining international treaties that criminalize drugs and prevent countries from even experimenting with legalization regimes.⁴¹ The most dramatic effects of this policy can be seen in Mexico, where drug cartels are fighting a brutal battle for control of the lucrative domestic and North American drug markets.⁴² Major cities like Tijuana and Ciudad Juárez have been turned into gruesome battlefields, with daily body counts feeding into a national total of more than seventy thousand deaths since Mexican president Felipe Calderon launched his own drug war in 2006. Police across the country are now in the direct employ of the cartels, transporting drugs, weapons, and cash. Journalists, politicians, or residents who speak out against the violence and corruption are routinely killed and their mutilated bodies left in public places as a warning to others.

The Hollywood film *Sicario* lays out a frightening scenario in which the CIA takes an active role in managing the players in Mexican drug cartels to reduce violence along the border, through targeted executions and collusion with different factions. While this is a fictional account, the CIA has a long history of involvement with drug dealing to advance other interests, such as the Vietnam War counterinsurgency, the dirty wars of Central America in the 1980s, and the “weapons for hostages” Iran-Contra deal. Historian Alfred McCoy details this sordid history in his book *The Politics of Heroin: CIA Complicity in the Global Drug Trade*.⁴³

The US policy of deporting anyone arrested on drug charges has also had a destabilizing effect on several Central American countries. So many young people tied to gangs and drugs in the US have been deported to places like Guatemala and Honduras that these countries have become centers in the international drug trade and are experiencing explosive

growth in their own violent drug gangs. The consequent violence has given rise to right-wing politicians promising a range of get-tough *mano dura* strategies, as documented in Oscar Martinez's book *A History of Violence: Living and Dying in Central America*.⁴⁴ This explosion of violence and repression has served to escalate migration to the US, most tragically by unescorted minors fleeing the violence of home only to be preyed upon by thieves, human smugglers, and ultimately the US immigration enforcement system.

Reforms

There is a growing awareness that we cannot incarcerate our way out of the problems associated with drug use. A 2015 report from the Pew Charitable Trusts found that the harsh drug laws of the 1980s and 1990s did nothing to reduce drug use rates or even recidivism.⁴⁵ As a result, there have been an increasing number of experiments with alternatives to conventional strategies of punishment and incarceration. Some have involved reducing the penalties through changes in laws and enforcement practices. Others have embraced alternative sentencing regimes that attempt to divert people into various treatment approaches. Unfortunately, what most of these approaches share is a reliance on police as gatekeepers. Drug courts, diversion programs, and various forms of decriminalization all place police in a central role that usually involves deciding who gets jail and who gets treatment, while maintaining a fundamentally punitive and moralizing approach to drugs.

Drug Courts

At their best, drug courts take a therapeutic approach, relying on the threat of punishment to drive people into treatment.

Typically, a defendant is asked to plead guilty to an offense and then, instead of being incarcerated, is given a recovery plan that the court oversees. The court makes direct referrals to specific treatment programs and then metes out punishments for failure to comply with the treatment regime. This can involve short-term “shock incarcerations” of a week or more to get people to “take their treatment seriously,” or longer sentences based on the original charges. Some people spend years cycling between stints in jail and in treatment.

Outcomes for those who successfully complete a program from the court are somewhat better in terms of recidivism and relapses than for those in the regular criminal justice system, leading the Center for Court Innovation and other boosters to declare them an evidence-based success story.⁴⁶ The real picture, however, is more complicated and less positive. When we look at the overall population of people initially assigned to drug courts—a more accurate grouping—the results are not good. As many as 70 percent of people assigned to these courts do not in fact complete their programs. And for that 70 percent, the outcomes are actually much worse than for those in the regular criminal justice system because they have higher relapse and incarceration rates.⁴⁷ In one study of New York Drug Courts 64 percent of those who failed to complete the program were rearrested within 3 years.⁴⁸

It also turns out that the courts don’t save taxpayers any money. They are much more expensive to operate than other courts, and while a few people are successfully diverted, many more end up spending more time in jail.⁴⁹ There is also a net-widening effect: drug courts meld together punitive and therapeutic approaches in very counterproductive ways that extend rather than reduce the role of the criminal justice system in the lives of drug users, creating what sociologist Rebecca Tiger calls an “outpatient incarceration” effect.⁵⁰

A medical approach to heroin, as discussed above, allows for some normality. People on these treatments can go back

to work, live with their families, and generally experience a gradual reduction in usage. It also keeps them off the streets and reduces the need for theft, removing them entirely from the criminal justice system. Instead, most judges order immediate abstinence, often in jails, with no medical treatment for the intense symptoms of withdrawal.⁵¹ This is usually followed up with an outpatient treatment program. In many cases, the person immediately returns to the streets and begins using again. This dangerous cycle increases the likelihood of overdosing and, in a few cases, has resulted in deaths that might have been avoided.⁵² This may also be a violation of the Americans with Disabilities Act, which specifically lists addiction as a disability; courts should not be denying people access to medically proven treatments for their conditions.

The treatment programs themselves are also problematic. Some are little more than court-mandated twelve-step programs, suffused with an ethos of moral reform and punishment in which people are berated, harassed, and threatened for violating any of a host of minor rules.⁵³ Often this is driven by a mindset that people will only get off drugs if they “hit bottom,” are confronted with their failures, and then experience a moral reawakening. Medically driven strategies with track records of success are derided as enabling addiction. The research, however, shows that coerced treatment, humiliation, and belittlement are incredibly counterproductive in ending addiction.

Even when these courts do offer useful services, access to them is driven by engagement with police: to access court-ordered services one first has to be arrested. Second, as noted above, the resources that the courts rely on are not new ones; people who end up in court are merely moved to the front of the line, displacing others. In New Jersey, there is a severe shortage of drug treatment beds and, increasingly, the only way to access one is by being arrested and sent to a drug court. According to state senator Joseph Vitale (no relation to

the author), “if you are arrested you can get drug court, you can get into the system. If you don’t commit a crime, in many cases, you can’t get access to inpatient care.”⁵⁴ Finally, these courts only serve people with “drug problems,” which means they exclude the large number of people arrested on drug charges who are not themselves drug users. They go straight to prison—one reason why drug courts have had little impact on overall imprisonment rates.

In the end, these courts have few resources to help addicts. The Drug Policy Alliance⁵⁵ and the Justice Policy Institute⁵⁶ have called for us to rethink our reliance on these courts to deal with drug problems, arguing instead that the criminal-justice model should be replaced with a robust public-health and harm-reduction response.

Decriminalization

Many states and localities have tried to reduce the burden of drug enforcement by decriminalizing one or more drugs.⁵⁷ In the 1970s, eleven states eliminated criminal penalties for personal marijuana possession. The hope was that this would prevent police from getting involved in a mostly innocuous activity. In New York, the law was changed in 1977 to make marijuana possession a “violation,” which is similar to a traffic ticket. There may be a fine and court appearance, but no arrest. For many years this policy was effective in dramatically reducing the number of low-level marijuana arrests. However, the law left public use or display of marijuana as a crime and this proved to be a crucial weakness by the 1990s. As New York embraced broken-windows policing, the NYPD re-prioritized marijuana arrests as part of a strategy of asserting strict control over the public lives of young people of color. In conjunction with the widespread use of “stop, question, and frisk” practices, the police were stopping a growing number of young people and in many cases asking them to “empty their

pockets.” While this is not technically a lawful order, police used various forms of coercion to pressure people to comply. If the person produced marijuana and showed it to the officer, they were arrested for public display of the drug, a misdemeanor. As a result, marijuana possession arrests jumped from almost nothing to fifty thousand a year, resulting in the incarceration of hundreds of thousands of people.⁵⁸

Fortunately, after years of public pressure, the NYPD has mostly stopped this practice. However, they still issue “summons,” which require an appearance in court and often a fine. This means many people have to miss work or school and pay fines they can often ill afford. Too often, people fail to appear and a warrant is issued for their arrest, meaning the prospect of incarceration. Decriminalization programs that leave open the role of police in making discretionary decisions or that otherwise tie people up with the criminal justice system still create a heavy burden on individuals and communities, primarily of color.

More extensive and systematic decriminalization programs have shown more positive results. In 2001, Portugal decriminalized all drugs and dramatically shifted its enforcement practices to a harm-reduction model. The results have been mostly very favorable. Most drug use is now treated as a health problem. Doctors can prescribe drugs, personal possession is no longer a crime, and police are no longer involved in trying to stop low-level dealing. Needle exchange is available and opioid addicts are offered replacement drugs such as methadone. Studies have found significant reductions in heroin addiction, overdoses, and disease transmission.⁵⁹ In 1999, Portugal had the highest rate of HIV infection among injecting drug users in the European Union; by 2009, the number of newly diagnosed HIV cases among drug users had decreased substantially. There is some indication of a minor increase in lifetime usage rates, though this may be due to more truthfulness in reporting as social and legal stigmas

decline. In addition, the problems of excessive use of incarceration, police corruption, and harassment of addicts has declined. What remains, though, is the illegal importation of drugs, which is tied to international organized crime. Police continue to pursue interdiction efforts, seizing large quantities of drugs, which keeps the door to police corruption open. In 2020 voters in Oregon passed a ballot measure to decriminalize low-level possession of all drugs and increase public health interventions. This is an important step in the right direction.

Alternatives

The use of police to wage a war on drugs has been a total nightmare. Not only have they failed to reduce drug use and the harm it produces, they have actually worsened those harms and destroyed the lives of millions of Americans through pointless criminalization. Ultimately, we must create robust public health programs and economic development strategies to reduce demand and help people manage their drug problems in ways that reduce harm—while keeping in mind that most drug users are not addicts. We also need to look at the economic dynamics that drive the black market and the economic and social misery that drive the most harmful patterns of drug use. Harm-reduction, public-health, and legalization strategies, combined with robust economic development of poor communities could dramatically reduce the negative impact of drugs on society without relying on police, courts, and prisons.

Harm Reduction

One of the best-known harm-reduction strategies is needle exchanges. These programs allow IV drug users to bring in used needles and exchange them for clean ones. This has

proven to be an incredibly successful strategy in reducing the transmission of disease. When needles are scarce, people share them, which increases the risk of transmission of HIV, hepatitis C, and other serious infections. Arguments that needle exchanges enable users have no factual basis. People with heroin addictions are not going to quit overnight because they can't get needles, nor is the availability of needles going to encourage a non-user to start using drugs. These are spurious arguments driven by a moral absolutism that is completely divorced from reality.

Another harm-reduction strategy is supervised injection. Supervised injection facilities give addicts a place to inject drugs where medical personnel are on staff who can administer lifesaving treatments such as Naloxone quickly if needed. These facilities can also help people access treatment for existing medical conditions as well as addiction, and reduce the presence of discarded needles in public places. Such centers exist in several European countries and Canada and are being explored in several parts of the United States.⁶⁰

Drug treatment on demand is another strategy. Right now, most drug users face long waits for medically supervised inpatient drug treatment. They are expected to deal with their addictions alone for weeks, months, or years after requesting help. Too often users are no longer interested in treatment when it becomes available, or die in the meantime. Making treatment available when people are ready for it would reduce the burden of addiction on families and communities.

Finally, we should look to public education and public health messaging that relies on peer-to-peer outreach whenever possible. Grassroots efforts in areas hit hard by opioids have shown good results but need institutional support.⁶¹ Unfortunately, the bulk of public education efforts occur within a punitive and moralizing framework. The most popular program, DARE, is run by police and has never been shown to have any positive effect in youth drug-use rates.⁶²

Newer programs are often for profit and rely heavily on drug-testing regimes in which they or others have a financial stake. Public-health messaging must acknowledge the obvious and pervasive appeal that drugs have for young people and explain the real risks. Telling kids to “just say no” doesn’t work. Many will try and even regularly use drugs; we should make that use as safe and temporary as possible. Driving them into the shadows encourages riskier behavior, isolates them from help, and entangles them in a criminal justice system that will only terrorize, stigmatize, and demonize them.

Legalization

Legalization and regulation can take several forms; the benefits include eliminating dangerous black markets, providing purer and safer drugs to those who use them, and collecting taxes that can be used to strengthen communities and individuals to reduce the demand for drugs and black-market employment.

The US has begun experimenting with the legalization of marijuana and, so far, the results look promising. Colorado has implemented its system without incurring a breakdown in civilization. Crime has not taken hold and usage rates seem largely unchanged. Even minor upticks in crime or usage would be a small price for ending prohibition. Most likely, they would reflect a sorting-out period rather than a long-term trajectory. It’s also worth noting that the benefits of marijuana legalization may in fact be much less than those of legalizing other drugs, since marijuana usage poses so few health hazards.

There are many potential methods for legalization. One is to follow the example of Colorado, in which possession for personal use and even low-level sharing are legal and sales are regulated and taxed. This could be done for all drugs, with controls on purity and restrictions on sales to minors.

A less regulated form or legalization might be one in which people can buy drugs on an open and unregulated market or go to a doctor and request a prescription for maintenance doses, which would be especially important for opioid users. This would avoid the problem of criminalizing black-market transactions outside the regulated market as has occurred in Denver.⁶³ Any system, however, would have to accommodate recreational use that comes with medical risks. Yes, people would be able to go and buy cocaine or ecstasy on a Friday night before going to a party or a club. And yes, some of them may suffer negative consequences for that, just as they currently do from consuming alcohol and tobacco. The reality is that the system we have in place now does nothing positive about these harms.

People will be concerned about public intoxication, disorderly behavior, and driving under the influence of drugs. Those can be real harms and police have tools to sanction such behavior. But, as Michael Reznicek points out, legalization opens the door to the possibility of reasserting informal social controls on problem behavior.⁶⁴ By bringing drug use out of the shadows, families, friends, and others will be in a stronger position to set limits on the behavior of users. Social norms are always more powerful and effective than formal, punitive ones. Look at the alcohol abuse rates and problem behavior in places like Italy and France. Public drinking there is widespread and almost completely unregulated, even for minors, but public intoxication and alcoholism are mostly absent.

Economic Development

Many people involved in the drug industry don't really have a drug problem; they have a job problem. Many others have drug problems that directly stem from the economic conditions they struggle with. There is no way to reduce the

widespread use of drugs without dealing with profound economic inequality and a growing sense of hopelessness.

African American and Latino neighborhoods have suffered devastating declines in employment levels and overall economic wellbeing. Private-sector employment has largely dried up and what remains is low-paying and contingent, with little chance for advancement. At the same time, austerity has undermined the public-sector employment and social programs that constitute the few remaining avenues for stability in these communities. Buying power for the jobs that remain is declining as employee contracts fail to keep pace with inflation.

Rural white areas are also under considerable stress. Here, too, living standards are headed straight down as manufacturing jobs are mechanized or move overseas and wages and social programs stagnate or decline. For too long, the only economic assistance many in these areas could hope for was the opening of a new prison. Even when private-sector employment becomes available, low, nonunion wages have become typical, combined with dangerous and demeaning working conditions. These conditions have fueled the rise of methamphetamine use and dealing. Researchers like William Garriott have shown that use and dealing are concentrated among the under- and unemployed and those working in dirty, dangerous, and repetitious jobs with low pay and poor working conditions.⁶⁵ Strict enforcement, forced treatment, and police-driven public education campaigns have been a total failure, because people's underlying economic circumstances remain unaddressed. Until we do something about entrenched rural poverty, this trend will continue. Unemployment and bleak prospects drive people into black markets, which become the employers of last resort.

We need to invest in developing the human capital of people in these areas and find meaningful employment in developing infrastructure and improving the environment. We also need

to take a tough look at how multinational agribusinesses have transformed the rural landscape in ways that degrade the quality of the food we eat, the livelihoods of rural people, and the natural environment.

Groups like Black Youth Project 100 in Chicago are working to develop economic strategies to improve the economic wellbeing of poor communities of color, so that they are not dependent on black markets. They demand increased public-sector hiring, a livable minimum wage, and real social supports, especially for children and families. The issue of reparations must also figure into this conversation. As Ta-Nehisi Coates points out, the history of American wealth generation is a history of the exploitation of black people—from slavery to the present.⁶⁶ That past cannot be ignored in any effort to come to terms with inequality. Some of the resources for overcoming that legacy could come from the billions we now spend on fighting the drug war and the taxes we could collect from legalized drugs.

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