

Failure Institutionalized: The Folly, Costs and Consequences of the War on Drugs

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INTRODUCTION

The prohibition of mind-altering substances in the United States has a long and complex history, one characterized by political conflict, special interests, misinformation and a genuine concern for personal and societal wellbeing. From the country's first anti-drug law passed in San Francisco in 1875 to outlaw opium, throughout the following 140 years of legislation to address the ever-present voluntary use of officially denounced substances, the motivations and successes of these laws have been varied and highly arguable.¹

As early as 350 B.C., Aristotle wrote in *The Politics* that “law is order and good law is good order” and that “the law is reason, unaffected by desire.” Even then, he had arrived at the conclusion that “true forms of government will of necessity have just laws” which uphold just principles, and that “even when laws have been written down, they ought not to remain unaltered” and should be modified as a result of objective analysis.^{2,3} Nearing a century and a half of prohibition history in America, there is more than sufficient objective evidence to determine that this approach to dealing with mind-altering substances has not only been generally ineffectual, but frequently unjust, disorderly, and based on unproven principles. These ongoing government crusades to prohibit what people choose to willingly ingest, smoke, or inject into their own bodies have devolved into what is commonly known today as “the War on Drugs.” The costs and consequences of this errant war—which very often include destroyed lives or worse for those who find themselves on the wrong side of ever-varying drug laws—demand analysis. This paper will argue that the worst of these effects are primarily attributable to the enforcement efforts and altered economics of government prohibition rather than to the substances themselves.

HISTORY

The majority of Americans can readily identify the Prohibition Era of the early 1900s, wherein the U.S. government criminalized the production of the mind-altering substance alcohol. That prohibition ended in formal repeal after more than a decade of costly and violent failure. The experiment was a lengthy and lesson-rich topic with practical

applications *to* and analogies *for* the modern drug war. Unfortunately, the complexities and harm associated with the legislations against psychoactive substances are poorly comprehended by most, and any insights gained through the prohibition of alcohol seem to have been lost.

Throughout U.S. history a large number of substances have been banned for various reasons. Often, at least in part, these bans have been driven by the general public's fear of cultural and racial differences. As previously noted, the first instance came in the late 1800s with the banning of Chinese immigrants' opium. Much of the reasoning behind this move was the "serious concern to legislators... of white women frequenting opium dens occupied by Chinese men." Then, in the 1930s, there was the regulation of marijuana. Fears here were associated with Mexican immigrants who were being "negatively portrayed as drug-crazed criminals—made immoral and violent by their use of marijuana—who were responsible for the moral collapse of many communities throughout the West and Southwest."⁴ In the 1980s it was the "crack cocaine epidemic" associated with the black ghetto and heavy gun violence, and by the 2000s much of the emphasis had shifted onto the methamphetamine hysteria and its white "trailer trash" junkies.⁵ Throughout it all, drug policy in America has more often been reactive, biased, fear-driven and emotional rather than based on evidence and reasoning.

The modern-day War on Drugs is generally recognized to have officially begun with President Richard Nixon's speech on June 17, 1971 in which he declared drugs to be "public enemy number one" in his "new, all-out offensive."⁶ It has been observed by some that Nixon's motivation to undertake such a massive legislative endeavor—one that would significantly affect the country as well as many parts of the world—likely had less to do with a humanitarian interest in drug users' well-being or overall societal improvement and more with the common realization that being "tough on crime" improves poll numbers and wins elections.⁷ As Nixon's program built on existing prohibitionist efforts and spread domestically and internationally, it has encountered all manner of complications.

Certainly unhelpful to the official government domestic policy against the drug culture has been the decades of little-publicized, unofficial, but nonetheless taxpayer-funded activities of other branches of the government (especially perpetrated internationally) which act as impediments to the eradication of drugs back home. There is a long history of military and CIA interventions that have either tolerated or promoted the narcotics

trade where it might benefit U.S. interests, missions and allies. For example, the CIA's involvement with the narcotics trade of the Golden Triangle in Southeast Asia and drug transportation via Air America throughout that region were prominent from the late 1940s to the 1970s. The drug trade has been an important source of off-book income for decades, and that clandestine cash flow was useful to support the opposition forces against Chinese communism throughout Asia.^{8,9}

Unfortunately, American soldiers in the Vietnam War were heavy users of that region's opium crops, with about 35% of them trying heroin and up to 20% of them becoming addicted prior to their return home.¹⁰⁻¹² The irony of conscripted GIs becoming ensnared in the drug prevalence resulting from decades of their own government's activities in Asia seems to have escaped most Americans. The Reagan Era of the 1980s were particularly problematic for domestic control of drug imports. This was partly the result of CIA and White House intervention with certain Central and South American governments and a number of narco-traffickers like Manuel Noriega of Panama. Tons of cocaine were either knowingly permitted or actively transported by CIA contacts into the U.S. in order to raise cash to fund rebel groups. The Iran-Contra Affair of that era received significant publicity as U.S. actors were caught funneling money to the Nicaraguan Contras—an act Congress had expressly prohibited funding with tax dollars.¹²⁻¹⁹

Even today, it can be noted that U.S. government policies in international narcotic production and trafficking continue to confound domestic policy. After 13 years of U.S. war and occupation in Afghanistan and a reported \$8 billion to fight the drug trade there, Afghan opium production has doubled. That country is now considered a "narco-state" and supplies over 80 percent of the world's opium (the precursor of heroin). The subsequent drug revenue is believed to help fund all manner of terrorist groups, from al Qaeda to ISIS.^{20,21} Absent American drug and terror policies, one wonders if these groups—against whom U.S. troops are currently deployed—could be as well-funded and armed. Certainly, it's understandable how some could view government objectives and outcomes to be conflicting and costly, if not downright counter-productive, in many to most regards.

THE ENEMY

In any war, there must be an enemy to combat. In something labeled the "War on Drugs" one would hope that the substances that harm persons and society would be the targets for destruction. That targeting, unfortunately, is not easily accomplished. Rutgers' professor Douglas Husak writes:

“The war, after all, cannot really be a war on drugs, since drugs cannot be arrested, prosecuted, or punished. The war is against persons who use drugs. As such, the war is a civil war, fought against the 28 million Americans who use illegal drugs annually. And unlike previous battles in this apparently endless war, current campaigns target casual users as well as drug abusers.”²²

Although Husak’s quote is from 1992, the drug war persists against all drug users, be they casual or abusive, rational or irrational. Updated 2014 usage statistics by the Substance Abuse and Mental Health Services Administration shows that drug use is even more prevalent today, with over 127 million Americans having used illicit drugs in the their lifetimes and over 41 million having used in the past year.²³ The drug war is not capable of teasing out this majority of casual users from the problematic abusers, and it pursues and prosecutes them similarly.

As drug use has been presented to the public, one might believe that all consumption is irrational, irresponsible, harmful and destructive. But is it? Robinson and Scherlen of the State University of New York find:

“The typical drug user – an older teenager or young person in his or her early twenties – uses drugs only a few times, quits within five years, and does not suffer or cause any significant damage. Most people who try drugs do not continue. Drug policy experts suggest: ‘If there is a typical continuing user, it is an occasional marijuana smoker who will cease to use drugs at some point during his twenties.’”²⁴

In fact, alcohol, as a mind-altering substance, although “legal” and tolerated socially, causes far more health problems when abused than illicit substances. Its use is more prevalent than any illicit drug’s with over 50% of Americans being regular consumers and 6% classified as “heavy users.”²⁵ It is, in fact, the substance most associated with violence against others as well as the most substance-related arrests.^{26,27} Indeed, alcohol is associated with “about 85% of all diagnosable substance-abuse disorders,” but society is nevertheless allowed to manage and even enjoy its use.²⁸ Despite these harms, it seems to have been decided that prisons in America shall *not* be filled with half a million alcohol users.

The drug war and its prohibitionist proponents appear to refuse to acknowledge that reasonable people demand, and can responsibly use, illicit drugs. Many people rationally consider certain drugs to add benefits to their lives such as pleasure, pain relief, mood enhancement, social lubrication and creative stimulation—just to name a few.²⁹⁻³¹ These same benefits are pursued by others through the use of legal substances such as a glass of wine, a cigarette, a cup of coffee, “comfort foods,” energy drinks, and prescription drugs like Zoloft, Xanax, and Phenergan.³²

What is generally believed to be addressed by the War on Drugs are the issues of addiction, violence, and overall social harms. By and large these issues are inflated, overstated, and the result of drug enforcement rather

than the drugs themselves. Among regular drug users, illicit drugs have an addiction potential of between 10 and 30%, ranging from cannabis to injectable heroin, respectively (although “trying without ever using consistently is by far the most common pattern” for the heavier drugs).^{33,34} It is also worth noting that “addiction frequently ceases without treatment” and that, in direct opposition to the misconceptions that most drugs are especially addictive and most drug users are hopeless addicts, these “stereotypical characterizations are seriously inaccurate.”³⁵ While it is true that deaths from drug overdoses typically outnumber those from automobile accidents in the U.S. (over 37,000 in 2010), the majority of those deaths are related to prescription drugs, not heroin and other illicit substances.³⁶

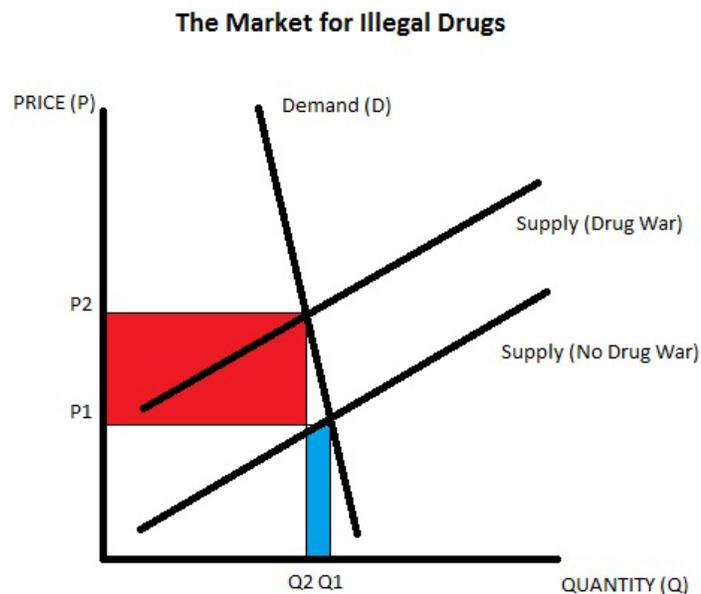
Without doubt, any mind-altering substance has the potential to cause harm to the user and secondary harm to others. Similar to alcohol abuse, drugs can cause significant, negative societal externalities and consequences. However, given the abundance of overstated fears, misperceptions and poorly directed law enforcement efforts, can a real enemy in the War on Drugs be identified? Does a legitimate and actionable target exist? In its absence, can the war have any hope of being “won”?

ECONOMICS

One of the main arguments against the drug war is economic. From the direct and indirect costs to the taxpayer to the array of distortions resulting in and caused by a black market, the economics of the War on Drugs are complex and tortured. The government (taxpayer) spends at least \$50 billion per year on direct enforcement measures, courts, and the incarceration of 500,000 drug offenders (up from 50,000 in 1980).³⁷ Approximately 80% of drug arrests are for simple possession, while “more than half of federal prisoners are serving time for drug offenses.”^{38, 39} In the past 40 years over a trillion dollars have been spent in the attempt to eradicate illicit drugs from American society. Meanwhile, costs and incarceration rates continue to increase without effecting significant change in drug use rates.⁴⁰⁻⁴² That’s a lot of money accomplishing seemingly little good, and maybe some real, significant harm. Could that trillion dollars have been spent more effectively in other initiatives? In drug treatment plans? In pursuing violent criminals and those that harm others rather than themselves? In shoring up social safety nets? Improved schools? National debt reduction?

While the prohibitionists hope that the increased costs of an illegal market will significantly reduce drug use by driving down demand and supply through law enforcement interdiction, neither the economics are that simple

nor the results that responsive. Drug demand, especially among the addicted, does not respond to increased price in the same way that demand for many other goods would.⁴³ For example, if the cost of a luxury service such as a Caribbean cruise were to double, it is possible that demand for the cruise could fall by half. On the other hand, when an item considered more of a basic want or necessity doubles in price—bread, for instance—demand falls much less proportionately. That relatively fixed demand is less elastic to a change in price.⁴⁴ Drug demand behaves much more like that of necessity items than it does for luxury items. It is relatively price-inelastic.⁴⁵ The casual user might purchase and use less, but the dependent, problematic or addicted user (the ones ideally targeted by the War on Drugs) are more inclined to do whatever it takes to come up with the money to keep purchasing the highly desired good—including perhaps resorting to crime and violence.^{46,47} The result is that large increases in price have only modest effects on demand or on the quantity provided by suppliers. Meanwhile, the incentive to suppliers is greatly increased secondary to the artificial price scheme and profit potential created by the prohibitionist market distortion. As opposed to drug demand’s price-inelasticity, drug suppliers and dealers are very responsive to the increased pricing. The supply side of the illicit drug market is highly price-elastic, and those suppliers will likely do whatever it takes to capture that artificially lucrative market, including resorting to violence.⁴⁸



The Relative Price Inelasticity of Demand of Illegal Drugs

From Benjamin Powell’s “The Economics Behind the U.S. Government’s Unwinnable War on Drugs”

These skewed economics on the supply side of the drug war birth a long list of negative consequences, or externalities. As drugs become more scarce, prices can rise tens to hundreds of times their non-prohibition levels to accommodate not only for the decreased supply, but also to factor in the high risks of arrest and supplier losses to law enforcement's interdiction efforts.⁴⁹ This is highlighted in a 2011 book *Drugs and Drug Policy: What You Need to Know*, where the authors traced the cost of cocaine in its source country of Columbia through its final markup on American streets. In Columbia, a kilogram of cocaine might cost \$1500. Smuggling that kilo into the U.S. raises the cost to about \$20,000. Finally, after passing through all the intermediary suppliers and dealers (including the effects of its dilution), the final \$100/gram bag of cocaine represents about \$100,000/kg. That's greater than a 600% premium.⁵⁰ These massive profit potentials amount to what economist Jeffrey Miron calls a "transfer of wealth to criminals."⁵¹ In fact, economist Milton Friedman explains:

"... if you look at the drug war from a purely economic point of view, the role of the government is to protect the drug cartel.... In an ordinary free market--let's take potatoes, beef, anything you want--there are thousands of importers and exporters. Anybody can go into the business. But it's very hard for a small person to go into the drug importing business because our interdiction efforts essentially make it enormously costly. So, the only people who can survive in that business are these large Medellin cartel kind of people who have enough money so they can have fleets of airplanes, so they can have sophisticated methods, and so on. In addition to which, by keeping goods out and by arresting, let's say, local marijuana growers, the government keeps the price of these products high. What more could a monopolist want? He's got a government who makes it very hard for all his competitors and who keeps the price of his products high. It's absolutely heaven."⁵²

There is a great deal of violence associated with drugs, which is a prominent argument for drug prohibition. Criminal Justice professor Matthew Robinson, one of the authors of the book *Lies, Damned Lies, and Drug War Statistics* explains that the portion of drug-related criminality attributable to "psychopharmacological crime" (perpetrated under the influence of drugs) is small. Alcohol is the drug most responsible for that. Marijuana and heroin, for example, are associated with calm and passivity, rather than aggression.⁵³

The greater causes of crime are the result of the distorted economics described above. Robbery is associated with the addicted users seeking the money to support their artificially expensive habits. The more significant violence is that related to the black market drug system: disputes among dealers, territory rivalry, punishment of informers, retaliation for bad product, debt collection, etc. There is no option to utilize legal systems or typical dispute resolution methods in a black market that must remain underground. Violence is the only effective option available. In light of the inherent violence incentivized by the economics and legal exclusions of the current system, Robinson states that "the drug laws are themselves criminogenic" as "most drug-related violence is actually

caused by prohibition.”⁵⁴ Of interest, “drug policy experts assert that about two-thirds of drug-related homicides are market-related”—e.g., dealers killing dealers.⁵⁵ For contrast, one might note that since the 21st Amendment’s repeal of alcohol prohibition in 1933, those manufacturers and dealers no longer turn to murder for dispute resolution, nor is there a mob funded by the sale of liquor.⁵⁶

Local violence is only *part* of the drug war’s deadly consequences of skewed economics. The high profit flows to narco-traffickers around the world gives these groups enormous funds, far-reaching power, and practical monopolies on force which outstrip their governments’ abilities to contain them. Accounts have abounded for decades of the brutality of Central and South American drug lords’ perpetrations of murders, massacres, kidnappings, disappearings, citizen displacement, sex crimes, torture, arms smuggling, police bribes and political corruption.⁵⁷⁻⁵⁹ Despite diverting billions of U.S. taxpayer dollars’ worth of anti-drug measures every year into these countries, violence has steadily increased.⁶⁰⁻⁶² The geographies and personalities in these international narco-organizations may shift over time, but their savagery is relentless.

Perhaps of even greater concern to Americans might be the increasing level of drug funding flowing to terrorist groups as they have learned to profit from drug trafficking.^{63,64} In this way, it can be argued that drug prohibition indirectly funds rebel groups around the world, thereby contributing to civil unrest and to the support of terrorism.⁶⁵ Although numbers are difficult to obtain, as of 2011 it was estimated that the Taliban in Afghanistan likely collected tens of millions of dollars per year from the drug trade.⁶⁶ One might wonder what would happen to these highly profitable drug cartels and terrorist groups with their far-reaching harm if the prohibition on drugs was ended and a major profit source—a perverted drug market—dried up. The questions can be asked...To what degree is the government indirectly funding that which it is directly fighting? Is it undermining its own efforts through its artificial drug markets?

Criminals and terrorists are not the only groups that have profited from the perverted economics of the drug war. Law enforcement at every level confiscates over a billion dollars of civilian cash and property each year through civil asset forfeiture—known by some groups as “policing-for-profit” or “police profiteering.”^{67,68} Under this scheme, cash and property of every sort (including cars, jewelry, electronics and homes) may be confiscated for mere *suspicion* of a link to drug activity. And civil forfeiture may be invoked in a surprising range of situations.

Vehicle seizure can occur if an officer claims to smell the aroma of marijuana from within, even if a subsequent search turns up nothing. A grandmother's home could be seized by the city if her grandson makes a small sale of marijuana in the woman's front yard. The possession of "suspicious" amounts of cash found during a routine traffic stop can be appropriated, regardless of the victim's valid explanation and lack of a criminal history.^{69,70} What's worse, the suspicions of drug links need not be proven for the seized property to be kept by the government agencies. And in many of these cases, criminal charges are not even filed.⁷¹ Apparently, the supposed crime is not nearly as much a priority to government agents as is the potential to acquire easy money. It is the burden of the property owner to attempt to get his or her property back, which is often too difficult or costly a process—especially if the seizure occurs while traveling some distance from home.⁷² For those that choose to proceed through a potentially lengthy court process to attempt to recover their property, the government need only show a probable cause for most property confiscation and a preponderance of the evidence for the appropriation of real property (houses), rather than the higher burden of proof of guilt beyond a reasonable doubt associated with criminal charges.⁷³ David Guillory, an attorney in East Texas who led one of the higher profile asset forfeiture class action suits against the City of Tenaha's multi-million dollar scheme there, termed the law enforcement practice a "highway piracy operation."⁷⁴

These policing-for-profit spoils are used by law enforcement for things such as supplementing officers' salaries, providing bonuses, paying for convention attendance and travel, buying department equipment and doling out perks.⁷⁵ In some counties in Texas, for example, up to 40% of the law enforcement budget is derived from these guilty-until-proven-innocent takings.⁷⁶ Perhaps the most extreme examples currently known are occurring in Philadelphia, where over 1,100 homes and 3,000 vehicles were confiscated due to drug-suspected activity between 2002 and 2012—yielding \$64 million for city coffers. The Philadelphia District Attorney's Office used \$25 million of that money to fund salaries, including those of the prosecutors of these very cases.⁷⁷ One wonders what perverse consequences arise from such conflicts of interest, when suspicions rather than convictions lead to property seizures that financially benefit the takers directly.^{78,79} Examples of such abuses are many, well-documented, and particularly disturbing given they occur within a society as free as Americans believe it to be.

CIVIL LIBERTIES

Another way in which the War on Drugs has influenced America's domestic police forces is encapsulated in what has been termed the "militarization of the police" by Radley Balko, perhaps the definitive authority on the topic.⁸⁰ He and others have detailed how the war mentality approach towards drugs has become a scourge on American citizens by violating a host of civil liberties.⁸¹ A confluence of multiple factors—brought about by the War on Drugs, certainly, but by the War on Terror as well—has fundamentally altered the conception of American law enforcement. This confluence has served to arm police with military weaponry, to create financial incentives for an aggressive and poorly regulated interaction with the public, and to burden police with the impossible task of drug eradication.

The Norman Rockwell depiction of the friendly police officer of yesteryear chatting with a young boy at the local diner no longer applies. It may have been accurate in decades past and consistent with the well-worn phrase historically ubiquitous to police vehicles—"To Protect and Serve"—but many people have been disturbed in recent years to notice a much different image emerging. That of a darkly-clad, body-armored, military-equipped soldier (complete with helmet, grenades and assault rifle) that can now be found riding in a Mine Resistant Ambush Protected (MRAP) vehicle rather than a black and white sedan. With the declaration of a war on drugs, perhaps it should come as no surprise that government would consider America's towns and cities to be war zones. But who would be considered that war's flesh and blood enemies? And from where did all of this military equipment come?

The Pentagon is a source of constant defense industry purchases. As it cycles out used or surplus equipment, it transfers these taxpayer-funded items to law enforcement agencies at all levels. This began officially in 1990 with the National Defense Authorization Act (NDAA) and has become known in recent years as the Pentagon's Excess Property Program, or the 1033 Program.^{82,83} As a result of the War on Terror and America's ongoing conflicts throughout the Middle East and North Africa, the amount and complexity of these transferred war weapons and machines has grown to include items such as armored vehicles, aircraft, grenade launchers, assault rifles and ammunition, bulletproof vests and helmets, night vision goggles, rifle scopes, surveillance equipment, camouflage fatigues, and even bomb disposal robots.⁸⁴⁻⁸⁷ Between the Department of Defense transfers and the grants from the

Department of Homeland Security, over \$45 billion worth of military equipment has found homes in state and local law enforcement departments since 2002—down to the smallest of towns and least-populated of counties.^{88,89} The simple truth is that there isn't much going on domestically with regard to terrorism, and certainly not to any degree that justifies such war weaponry at home. However, the equipment intended for soldiers deployed in foreign battle has found routine use in the other perpetual war—the one on drugs.

In conjunction with the domestic police's military attire and equipment, their incentivized asset forfeiture practices and acquired battlefield attitude, more forceful policing tactics have followed in step. While equipped as soldiers in an aggressive drug war, it shouldn't come as any surprise that police increasingly put these tools to use. Heavily loaded SWAT teams now execute 50,000 raids a year. That's 137 per day.⁹⁰ These raids are not typically carried out to apprehend violent criminals or to save hostages as SWAT teams were originally designed to do. Instead, 62% are searches for drugs while another 18% or so are executed for other types of warrants. In all, 80% of military-style SWAT deployments are carried out for suspicion of non-violent crimes. In other words, in the vast majority of these 50,000 raids per year, there is no threat of injury or harm to others until the police inject it. More troubling yet, 20,000 of these yearly raids are "no-knock" raids, executed without any warning to the inhabitants. This particular type of raid is notorious for occurring under cover of night and for its use of battering rams and flash bang grenades—startling and overwhelming the targets, many of whom are legal weapons owners who in a sudden panic cannot distinguish "legal" intruders from criminals.⁹¹⁻⁹³

Although no records are maintained for botched or erroneous raids or even for police-induced civilian casualties and shootings, news accounts abound: wrong-address raids, innocent people being injured or killed, family pets executed, raid targets being based on faulty information by criminal informants without any corroboration by investigators...the list goes on.⁹⁴⁻⁹⁹ In fact, only 25% of these raids discover any drugs. An American Civil Liberties Union (ACLU) analysis of SWAT raids between 2011 and 2012 alone found at least five wrongful civilian deaths and 46 casualties, although actual victims are suspected to be higher. In a New York City audit from 2003 initiated after a flash-bang grenade induced a civilian heart attack at the wrong address, that city's SWAT team was found to have executed raids on the wrong door in 10% of cases. Taken together, all of these pieces begin to paint a picture of a dysfunctional and threatening culture of police excess.¹⁰⁰⁻¹⁰¹

Adding to the skewed incentives and aggressive nature of these drug raids, billions of dollars in federal funding and grants are fueling the fire. At least *some* of these funds are distributed through the states based either in part or in whole upon “drug policing statistics.” The Community Oriented Policing Services (COPS) Program, for example, provides over \$1.5 billion per year to states which may then distribute those funds to local agencies according to their drug raid and arrest numbers. For some of these agencies, it’s enough funding to cover the entire startup costs for a local SWAT team. One newspaper investigation in Wisconsin found that local police averaged a \$153 gain in additional funding per each drug-related arrest.¹⁰² An additional incentive to step up all this activity is a clause in the 1033 Program that makes departments’ retention of transferred equipment contingent on its use.¹⁰³ Use it or lose it, as it were. Even more enticements for SWAT interventions are the aforementioned dangling carrots of retained cash and property from assets seized in potentially lucrative drug raids (more civil asset forfeiture). Solving murder, rape, home invasion and car theft cases does not reimburse nearly as well. Participating in the drug war, on the other hand, means big money.

One needn’t be targeted by a SWAT team to feel the heavy presence of modern drug war policing, however. In major cities across the country police detain and search individuals at whim. These “stop and frisk” encounters require no probable cause and are used to check suspects for weapons, drugs, and existing warrants. They have not been particularly effective in deterring crime—as the evidence shows—but have been especially adroit at targeting young Latino and Black males. Analysis reveals that only about 10% of the stop-and-frisk targets are white, that 1 in 9 stops results in an arrest (16% of which are attributable to marijuana possession), and that a weapon is discovered in only about 1% of the searches.¹⁰⁴ In 2013, a federal judge in New York determined this practice to be discriminatory and a civil rights violation—at least as practiced.^{105, 106} That ruling dropped the number of stop-and-frisk incidents in New York City from 700,000 per year to below 200,000, but police nationwide still consider the tool important and useful.¹⁰⁷

Not only are these policing methods ineffective at decreasing drug use, they are extremely inefficient uses of police time, resources, and tax dollars. The Marijuana Arrest Project studied the amount of time that a typical drug arrest takes—from the street to the station, through all of the paperwork, etc.—and found that each arrest can take from two to five hours of an officer’s time. Using a low-end estimate of 2.5 hours each, applied just to New York City’s 440,000 low-level possession marijuana arrests from 2002 to 2012, they calculated approximately 1.1 million

police hours were utilized in the endeavor.¹⁰⁸ That's just for marijuana and only in New York City. What would those numbers look like extrapolated across the country? How much police time and taxpayer expense are involved in these efforts of dubious worth and outcome? What else could those officers have been doing? What other crimes could have been addressed? Is it possible that lives might actually have been improved (or even saved) if none of the drug arrests had even taken place?

Less common—though even *more* violating in terms of rights—is the shocking search tactic of penetrating the human body. This often occurs without either the consent of the searched or a valid suspicion of stashed contraband. There are multiple accounts of roadside cavity searches for drugs (both anal and vaginal) as part of a traffic stop or border check, as well as forced enemas and colonoscopies to search for non-existent drugs.¹⁰⁹⁻¹¹⁴ To date, the cases brought public have been either adjudicated in favor of the violated or settled out of court. But is this a practice that society should permit—at all—in the name of drug eradication? Should we in any way condone detention and bodily violation over the mere *possibility* of drug possession? After all, there is a term for forced penetration—irrespective of uniform or badge.

The largest affront to civil rights in the War on Drugs can be elucidated by analyzing the 6.9 million people “in the system” of state and federal prisons. Over 1.5 million of those are currently incarcerated, with the remainder being either paroled or on probation. These numbers don't include those persons incarcerated in city and county systems, but the local rate for 2012 was estimated at 744,000 inmates. Of those incarcerated during 2011, the latest Department of Justice statistics suggest that roughly 48% of those were being punished for drug-related crimes. The system continues to be fed by an additional 1.5 million drug arrests each year, with 82% of these offenders having been apprehended on possession charges. The remaining 18% were charged with crimes related to dealing or manufacturing illicit substances.^{115,116}

While most would not believe there to be quick and simple solutions to these skewed statistics, perhaps some questions exist that can help focus attention on ways the penal system can better deal with drug incarceration. For instance... What is the outcome of placing non-violent drug offenders in prison with murderers and rapists? What is the process by which the non-violent learn to survive and co-exist with the worst of humanity? Do they come out rehabilitated and ready to contribute to society?

The truth is, even after “paying their debt to society” there is no evidence to show that drug offenders give up using drugs. In fact, those that desire to use drugs while in prison find that they are available, and up to 95% continue use after release.¹¹⁷⁻¹²⁰ So, while the drug-addicted exit prison no better off with regard to their drug use, the question must be asked: What traits and experiences do they acquire from their surroundings and fellow prisoners while incarcerated? Consider the fact that 20% of male inmates report having been either pressured into or physically *forced* into having sexual contact with fellow inmates.¹²¹ Is that a healthy and appropriate environment for a non-violent person? Is prison achieving—or even *approaching*—the objective of eradicating the demand for drugs? What ultimate impact does a felony record have on a person’s outlook, job prospects, and potential for a successful life? What is truly the end cost of losing the right to vote, of potentially losing federal assistance for student loans secondary to a drug conviction and of missing out on years of productive life?¹²²⁻¹²⁴

All levels of incarceration combined, it is estimated that over 1.2 million inmates are parents of minor children. It’s been reported that over 10% of African-American children have a father who is currently imprisoned.¹²⁵ What effect does the parent’s absence create? What is the social outcome for the child? To what extent does society have to (or attempt to) assume responsibility for these children? With one parent gone, what resources has the single parent left? Is this what society now considers to be normal?

An additional offense to civil liberties perpetrated by the justice system’s criminalization of drugs is its disproportionate application of punishment to minority groups. Blacks are incarcerated at almost six times the rate of whites. Despite similar rates of drug use, blacks are 3.6 times more likely than whites to be arrested and their sentences tend to be about 9% longer (likely owing to the disparate and mandatory sentences for crack cocaine over its powder form).¹²⁶⁻¹²⁸ 2.8% of all black males are currently incarcerated while only 0.5% of whites are imprisoned. Even more striking is that “between 6.6% and 7.5% of all black males ages 25 to 39 were imprisoned in 2011.” In addition to blacks, all throughout the system there can be demonstrated racial discrimination against minority groups—from everyday traffic stops to stop-and-frisk searches to eventual arrest and conviction rates.¹²⁹⁻¹³⁰ John McWhorter of University of California at Berkley gave a thought-provoking speech in 2011 entitled “How the War on Drugs is Destroying Black America.” An excerpt:

“The main obstacle to getting black America past the illusion that racism is still a defining factor in America is the strained relationship between young black men and police forces. The massive number of black men in prison stands as an ongoing and

graphically resonant rebuke to all calls to ‘get past racism’, exhibit initiative, or stress optimism. And the primary reason for this massive number of black men in jail is the War on Drugs. Therefore, if the War on Drugs were terminated, the main factor keeping race-based resentment a core element in the American social fabric would no longer exist. America would be a better place for all.... This is about making black lives better – and through that, making America better. That is, not ‘America’ in some vague, poetic sense, but the daily lives that all of us lead. If we truly want to get past race in this country, we must be aware that it will never happen until the futile War on Drugs so familiar to us now is a memory.”¹³¹

CUI BONO

Given the evidence—the statistics, the corruption, the utilitarian and moral arguments, the skewed economics and the undeniable failure of the drug war to achieve appreciable good—one could be forgiven for being perplexed as to why it all continues unabated, day after day. Like many heavily politicized, financially profitable (to some) and emotionally charged issues, so many people and industries benefit from the drug war status quo that there exists significant resistance to change. Asking “cui bono”—Who benefits?—may help to identify the forces that obstruct the alleviation of the ills that afflict society as a result of the War on Drugs.^{132,133}

Politicians are an obvious source of resistance to change. They have the ability to initiate and alter legislation, but generally fail to address these glaring injustices. Aside from their own personal views and prejudices, their dependence on public opinion and private financing determine much of what they are willing to do. Historically, they tend to garner public support with “tough on crime” platforms and can be made to seem indifferent to public safety, weak, or morally questionable by their opponents when criticizing the War on Drugs. They also pull in lots of money from a number of private and public entities who oppose decreases in sentencing or relaxation of drug laws, making them susceptible to those pressures.

Corrections Corporation of America (CCA), for example—one of the main private prison industry players, which contracts out hundreds of facilities to governments at several billion dollars in annual revenue—has given over \$6 million in state-level campaign donations and over \$835,000 to federal campaigns since 2003. In addition, CCA spends about \$900,000 a year in federal lobbying (state by state spending is not so easily traced and thus more difficult to estimate). In CCA’s 2010 Securities and Exchange Commission Form 10-K Annual Report, the company discusses potential risks to its revenue stream. Some specific risks CCA highlights relate to legislation that would alter drug laws, loosen enforcement against illegal immigration, lower minimum sentences for non-violent crimes, give early release for good behavior, and promote home monitoring and probation.¹³⁴⁻¹³⁷ In their view, these are all

threats to their bottom line. When an industry equates inmates to currency, it isn't difficult to guess the type of political influence its millions of dollars in contributions are meant to purchase.

Sharing similar economic incentives to the private correction facilities, the associations and unions of prison guards and law enforcement are found to be closely allied in their work to continue the aggressive stance against drug offenders. The California Correctional Peace Officers' Association (CCPOA), for example, rakes in over \$20 million a year from its 30,000 union members and with that money spends millions on politicians and special interest legislation. CCPOA spent \$1 million in 2008 in their successful campaign to oppose Proposition 5, which would have decreased punishments for non-violent drug crimes while increasing drug treatment options.¹³⁸ Also opposing Proposition 5 at that time was Public Safety First, a group funded heavily by law enforcement. Among Public Safety First's list of donors are a host of sheriff, peace officer, narcotics officer, police chief and district attorney associations who all depend on the drug war for jobs, asset forfeiture proceeds and/or grant distributions.¹³⁹⁻¹⁴²

Also telling is the \$100,000 contribution that the California Beer and Beverage Distributors (CBBD) made to fight Prop 5 in 2008, and the \$10,000 contribution to Public Safety First by CBBD in 2010. Ryan Grim of the Huffington Post observed that the "alcohol industry has long seen illicit drugs as a threat to sales, as consumers may substitute pot for booze. A night spent on the couch smoking marijuana and watching television is a night not spent at the bar." His and other articles point out the paradox presented by law enforcement siding with the beer and liquor industry against pot when alcohol is the drug associated with so much violence, drunk driving and death.¹⁴³⁻¹⁴⁴

Although there are other groups that have an employment and/or financial interest in maintaining stringent anti-drug laws (such as workplace drug testing and addiction treatment industries, the DEA, lawyers, prosecutors and judges, etc.), the most financially persuasive prohibitionists tend to be from the pharmaceutical industry.¹⁴⁵⁻¹⁴⁷ Prescription drugs account for over half of the 38,000 drug overdose deaths per year, but that doesn't stop pharmaceutical companies like Purdue Pharma, Abbott Laboratories, Jansen and Pfizer from committing tens of millions of dollars towards direct political activity.^{148,149} They also form and fund interest groups like the Community Anti-Drug Coalition of America (CADCA), the Partnership for Drug-Free Kids, and Project SAM (Smart Approaches to Marijuana) to help maintain illicit drug prohibition (targeting marijuana specifically). Howard Wooldridge, a retired

police officer turned “anti-drug war lobbyist,” reports that the Pharmaceutical Research and Manufacturers of America (PhRMA) is one of his staunchest opponents in Washington, D.C.^{150,151}

In 1961, President Dwight D. Eisenhower, in his farewell address to the nation, warned of the Military Industrial Complex—that collection of diverse private and government interests that benefits from the waging of international war.¹⁵²⁻¹⁵⁴ Similarly, asking “cui bono” with regard to the continued War on Drugs leads one to a large network of interest groups that constitutes what some have termed the Prison-Industrial Complex.¹⁵⁵⁻¹⁵⁷ Identifying those actors and exposing their conflicts of interest are important steps in understanding why the War on Drugs wages on despite all its harm.

A PHYSICIAN’S PERSPECTIVE

The author of this paper is a licensed physician and a practicing, board-certified anesthesiologist in St Louis, Missouri. Some of the medications used in the specialty of anesthesiology include (1) injectable cocaine for local anesthesia in sinus surgery, (2) an array of opiates (including synthetic derivatives such as remifentanyl) which can be more potent than heroin and are used frequently to induce a controlled respiratory depression or purposeful, temporary respiratory failure, (3) powerful hallucinogenic drugs like ketamine, which is related to the better known street drug PCP (or phencyclidine), (4) concentrated sedatives and benzodiazepines like Ativan and Versed, and (5) “induction drugs” such as propofol, which induce a state of complete unconsciousness and unresponsiveness. All of these are wonderful tools for medicine and help create comfortable and safe anesthetic experiences for the most lengthy and invasive of surgical procedures. All of these drugs are also abused outside of the hospital and surgical settings, at times with catastrophic results.

From a physician’s perspective, few of these drugs could be recommended for unsupervised use, even with extreme caution. However, in considering the vast harm and consequences that result from the unsuccessful attempts to eradicate such drug abuse through criminalization, this author finds the War on Drugs to be a scourge and disease in itself. In government’s attempt to treat the underlying condition of drug abuse, it has created a medicine that is far more virulent, destructive and deadly than the initial pathology. From the Oath of Hippocrates: “First Do No Harm.”

At the confluence of medicine and the drug war today are found marijuana and the legislative and societal debates of its legalization, decriminalization and/or medicinal use. Currently, 23 states in the U.S., as well as the nation's capital, have passed some form of legalization for medical marijuana use or possession.¹⁵⁸ While marijuana, especially when smoked, is associated with a number of health issues that may parallel smoking tobacco (such as cardiovascular disease, pulmonary disease and perhaps lung cancer), it does appear to have medicinal applications.¹⁵⁹ Research into marijuana as a medication has been hampered by its incomprehensible classification in 1970 under the Controlled Substances Act as a Schedule I drug. This put marijuana in a class with heroin and LSD, which are considered to have no medical use, to have a high potential for abuse, and to be absolutely unsafe.¹⁶⁰ While marijuana opponents will declare that there is little evidence for its potential in disease treatment or symptom alleviation, that paucity of data is primarily the result of the extreme difficulty in performing randomized, controlled trials due to marijuana's Schedule I classification and the lack of FDA-approved research.^{161,162} The other side of the research coin is that a better, fuller understanding of marijuana's adverse effects remains unknown due to those very same study restrictions. Regardless, and in defiance of traditional prohibitionists, the mapping of cannabinoid receptors throughout the human body in recent years (in the brain, gut and immune system) indicates that cannabis may indeed have biologically active and beneficial uses.¹⁶³

While physicians are inhibited from discussing the option of marijuana use with patients in most clinical situations because of the multitude of potential legal repercussions at the state and federal levels, it may be that the majority of doctors look upon medicinal marijuana use openly, if not favorably. In a 2013 New England Journal of Medicine poll of over 1,400 physicians, given the vignette of a cancer patient with poorly controlled pain and nausea who inquires about the potential benefits of marijuana for her symptoms, 76% claimed that they would recommend marijuana use.¹⁶⁴ In those locales where legal, marijuana is being prescribed for an ever-increasing list of responsive pathologies and symptoms: pain of many types (diabetic and HIV neuropathy, fibromyalgia, and migraine), the anorexia and nausea of cancer states, muscle spasm associated with multiple sclerosis, the inflammation of ulcerative colitis, and more.¹⁶⁵⁻¹⁶⁸ There is also growing evidence that certain cancer cells may be inhibited by cannabis, an area of study with expansive potential.¹⁶⁹ Regarding the safety of marijuana, the Clinical Journal of Pain reinforces that it has minimal toxicity and "no risk of lethal overdose."¹⁷⁰ For how many pharmaceuticals or adult beverages can that claim be made?

Given marijuana's multiple sites of biologic activity, its small but growing body of clinical trial evidences, its large number of subjective reports of patients' relief of a wide range of symptoms, and its favorable drug safety profile, the continued government classification of and resistance to medicinal marijuana is indefensible and asinine in this physician's professional opinion. Furthermore, given the above mentioned benefits, perhaps individuals who desire to use marijuana—for whatever reason they choose—should be permitted to do so without placing the physician as gatekeeper for a substance no more toxic than tobacco or alcohol. Certainly there are plenty of other uses of physicians' time, training and expertise without clogging office schedules and billing cycles with suffering people's attempts to obtain a prescription for an herb that has been on this planet for millennia. "But, doctor, it's just not that simple!" many will clamor. The very complexity of the issue is precisely the reason that bureaucrats and regulators will continue to be unable to control it—and should stop trying. Medical science will continue to study, refine, provide increasing options and advise in the realm of marijuana's effects and uses, preferably without the ongoing interferences and failures of government obstructionism.

CONCLUSION

In a March 2015 interview with *Vice News*, the current president of the United States was asked about removing marijuana from the list of federally prohibited drugs. He responded: "Young people, I understand this is important to you. But, you know, you should be thinking about climate change, the economy, jobs, war and peace. Maybe, way at the bottom, you should be thinking about marijuana."¹⁷¹ Aside from the tone of condescension towards and minimization of those that may recognize the War on Drugs for its obscenity and widespread wreckage, the idea that opposition to the institutionalized failure of government policy is merely a ploy for young adults to toké up and get high is telling of the ignorance and short-sightedness held by policymakers. And then there's the hypocrisy, as pot smoking has been publically common among those elected to office. In fact, the last three presidents are known to have been users of marijuana and/or cocaine, irresponsible alcohol use aside.¹⁷²⁻¹⁷⁶ Had those men experienced a typical law enforcement encounter for their use and possession of illegal drugs, the course of their lives, and perhaps that of the nation, might have been much different.¹⁷⁷

Politicians dance around the topics of drug decriminalization and legalization as they do any potentially divisive topic that could impact poll numbers—so much so that that little real debate takes place in this country at

the national level. The states are moving, to some degree, on their own with regard to marijuana laws. Other countries are serving as laboratories for various levels of drug decriminalization and legalization (the Netherlands, Portugal, Uruguay, the Czech Republic, among others). Where taking place, the results of the loosening of drug laws are not generally leading to increased drug usage and have not resulted in societal disruption, which is what prohibitionists tend to fear.¹⁷⁸⁻¹⁸²

It is not the intention of this essay to minimize or underestimate the harms that powerful drugs and their abuse can cause. Substance abuse and addiction destroy people and families, negatively impact health, can result in violence, lead to societal harm, are incompatible with productive work, and have high economic costs. These are significant issues for serious and ongoing attention, and they will never be fully eradicated, as human beings cannot be fundamentally changed. However, in attempting to ameliorate these issues, the approach that has been taken in the United States is a failed one. In a cost-benefit analysis, the plus column contains no demonstrable evidence in support of the War on Drugs, while there is a seemingly *endless* list of harms associated with such authoritarian measures in the minus column. In Eugene Jarecki's thought-provoking 2012 documentary on the drug war, *The House I Live In*, journalist and writer David Simon discusses many of the costs and harms inflicted by the criminalization of drugs. Paraphrased, he says that it would be one thing if the War on Drugs were Draconian and it worked. It is Draconian, and it doesn't work.¹⁸³

In considering alternatives to the current criminal justice paradigm regarding drug use, getting to a point in which a public health approach—offering treatment, rather than doling out sentences, to addicts—may, currently, be a politically untenable proposition. But the facts remain. And, quite simply, anything short of full legalization perpetuates the ills the War on Drugs creates. The black market and its extensive economic distortions and incentive structures, the indirect funding of narco-traffickers, the endless cycle of the Prison-Industrial Complex, the civil rights catastrophe, the militarized police, the no-knock raids, the civil asset forfeiture, the systemic racism, the incarcerated parents, the corruption, the violence, the medical impediments and the moral hypocrisy...these will persist. Partial prohibition and partial decriminalization offer only partial improvement, which in light of the harms should be wholly unacceptable.

“Good law is good order.” In the prohibitionists’ reactionary attempts to deal with the real and perceived moral and social ills associated with drug use—and in stark contrast to what Aristotle posited so very long ago—much bad law has been foisted upon this country. Rather than improve the underlying issues, the government’s interventions—and their subsequent consequences—have created a humanitarian blight. David Simon referred to the drug war as a “holocaust in slow motion.”¹⁸⁴ To the uninitiated, that claim may seem hyperbole and perhaps even offensive. After a thoughtful consideration of the associated costs and harms associated with the War on Drugs, however, the description could not be more accurate.

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