

## The Hidden Costs of America's War on Drugs

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### Abstract

America's war on drugs has been costly in many ways but has yielded few results. This paper first examines the history of anti-drug legislation. It then looks at the hidden costs of the criminalization of drug use to physicians, police, communities, and society as a whole.

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### I. The Cause of Crime

In 1870, an Italian physician, Cesare Lombroso, sometimes referred to as the father of criminology, concluded that there was a "criminal type." Lombroso, after studying the inmates of an Italian Army penitentiary, hypothesized that it was possible to identify lawbreakers by inherent physical characteristics (Friedman, 1993, p.141). Ever since Lombroso advanced his premise of "Atavistic Anomalies," countless behavioral scientists have theorized on the causes of crime.

Despite the abundance of conjecture, it is possible in the United States to identify the literal cause of crime – an act or omission prohibited by law and punishable by fine, imprisonment, or death (Black, 1968, p.444). The United States, unlike many other nations, embraces statutory law. In other words, the crime must be defined in writing by a legislative body of elected officials and endorsed (rather than vetoed) by an executive member of government, who is usually also elected. Thus, the government, by defining certain acts, such as assaults, thefts and murders, or omissions, such as refusing to pay income taxes or failing to obtain a license before driving a motor vehicle, as illegal, causes crime. All fifty states have lengthy penal

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codes classifying various behaviors as crimes. In addition, counties, municipalities, towns, and villages also label certain activities as illegal. In general, however, federal law preempts decrees of subordinate jurisdictions, subject to certain provisions of the national Constitution, as adjudicated by federal courts (Friedman, 1993, p.55-58; 297-300).

I was a policeman for 34 years of the last century. As a beat officer in New York's Harlem, and as police chief in Kansas City, Missouri, and San Jose, California, I caused many drug users to be locked up. I have come to believe that jailing people simply because they put certain chemicals into their bloodstream is a gross misuse of the police and criminal law. This article examines some of the reasons why.

## **II. The History of Drug Criminalization in the U.S.**

As medical historian Professor David Musto (1987) of Yale has reported, the drug war started roughly 100 years ago. Protestant missionaries from the U.S. working in China and other American religious groups joined with temperance organizations in convincing Congress that drugs were evil and that drug users were dangerous, immoral people. These groups often exhibited xenophobic and religious bias and mistakenly believed that drug use was a habit of foreigners. Some reformers candidly viewed it as the white man's burden to Christianize the yellow (Chinese) heathen. Some were disgusted by the thought of white women being with "Chinamen" in opium dens. Others perceived the drug problem as causing Negroes in the South to attack and murder whites. In addition, many saw drug use as the habit of degenerate Mexicans. The religious groups predominately believed these foreign drug habits to be a moral threat to native-born Americans. Still others were humanely concerned with the obvious damage that this "sinful, depraved and immoral behavior" caused among the "inferior races." The reformers' mistaken biases (most drug use in America was by native-born Caucasians) swayed Congress (Musto, 1987; McNamara, 1973b; Hofstadter, 1955, p.177-85).

The Progressive drug reform efforts certainly did not solve the drug problem, but they did give birth to unanticipated social damage.

This process of legislating criminal behavior is vital in analyzing America's war on drugs. Given the intensity of emotions surrounding the drug war, the overwhelming majority of Americans, including

police officers, let alone residents of other nations, would be surprised to learn that for roughly the first 140 years of this Republic, the sale or possession of certain drugs that today might result in a life sentence in prison was legal. Even children were free to enter a pharmacy or general store to purchase morphine, opium, cocaine, cannabis, and other nostrums that today trigger heavy criminal penalties for possession and sale. In those days, the popular soda beverage Coca-Cola contained cocaine, and most over-the-counter cough medicines included morphine.<sup>1</sup>

In 1914, a government publicly advocating the reduction of crime passed legislation creating unknown millions of additional crimes. Overnight, the U.S. government turned hundreds of thousands of previously law-abiding drug users, *ex post facto*, into criminals. Historian David Musto (1987, p.65) describes the Harrison Act as: "...a routine slap at moral evil"; drugs had to be outlawed because "Cocaine raised the specter of the wild negro, opium the devious Chinese, morphine the tramps in the slums."<sup>2</sup> Furthermore, this legislation, the Harrison Anti-Narcotics Act, represented a sea change in interpreting Constitutional restrictions on the federal government's right to interfere in police powers previously reserved to the states. The Congress that passed the Harrison Act brooded over whether it was violating the Congressional principle that powers not enumerated in the Constitution were reserved to the states (Musto, 1987, p.21–23). Congress finessed this issue by referring to the Harrison Act as a revenue measure affecting opium, cocaine, and other drugs, because raising revenue and regulating interstate commerce were among the federal powers authorized by the Constitution. Thus, the Harrison Act of 1914 became the cornerstone of American criminal drug control policy, which has continuously expanded the drug war.

Constitutional uneasiness similar to that experienced during the passage of the Harrison Act of 1914 also afflicted Congress when it outlawed cannabis in the 1937 "Marijuana Tax Act," which also eventually received federal court approval as a penal statute. In contrast, federal prohibition of alcohol from 1920–1933 was achieved by the far more formal and cumbersome process of amending the Constitution through the 18<sup>th</sup> Amendment. When the nation decided

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<sup>1</sup> See McNamara (1973a, p.16–59) and Lindesmith (1965, p.3) for a fuller discussion.

<sup>2</sup> See also McNamara (1973b).

that the “noble” experiment of criminal alcohol prohibition had done more harm than good, it was repealed by the 21st Amendment to the Constitution. Some legal scholars thus raise the question as to whether the federal drug laws, which have been legislated by Congress as opposed to being approved through the prescribed process of Constitutional amendment, exceed the authority of Congress (Pilon, 2000, p.23–40; Duke, 2000, p.41–60).

### **III. Health Care Costs of the Drug War**

The Harrison Act contains the sentence: “That nothing contained in this section shall apply (a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only:...with the appropriate practice of medicine” (Harrison Anti-Narcotics Act, 1914, Ch 1, 38 Stat. 785). However, this was not to be the case. The 1938 Food, Drug and Cosmetic Act (U.S. Code Title 21) and the Federal Drug And Control Act (sec. 201[g][1]), the enabling statutes for the Food and Drug Administration, define drugs by their intended purpose, as “(a) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease...and (b) articles (other than food) intended to affect the structure or any function of the body of man or other animals.” It is self-evident that the broad scope of these definitions means that hundreds of thousands of pharmacological substances are labeled as drugs. It is also true that a modest alteration of molecules can transform a chemical from a legal medicine into a prohibited substance. Furthermore, distribution of non-prohibited substances can result in federal or state prosecutions well beyond the average or even wealthy person’s ability to mount a legal defense. Some doctors are now being prosecuted as drug traffickers after federal agents and prosecutors decided that their prescription practices were not “appropriate.” Expensive legal fees and the possibility of a life sentence if the verdict goes against the defendant provide a powerful incentive for most physicians to plead guilty to a lesser charge in return for a reduced sentence.

The United States Supreme Court, under its judicial review function, vacillated on the nature of the Harrison Act. Federal Treasury Department agents arrested a number of physicians who had been prescribing narcotic drugs to treat drug addicts and other patients with chronic pain. The doctors’ defense that they were

practicing medicine was successful in some cases. In 1915, the Supreme Court hardened its position when Justice Holmes wrote in a majority opinion that in passing the Harrison Act:

Congress meant to strain its powers almost if not to the breaking point in order to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal or at least prima facie criminal, and subject to the severe punishment made possible by S.9. It may be assumed that the statute has a moral end. (*U.S. v. Jin Fuey May*, 241 U.S. 394, [1915]).

In the 1925 Linder Case (*Linder v. U.S.* 268, U.S. 5, [1925]) the Supreme Court temporarily wavered by deciding that drug addiction was a disease, not a crime, and therefore subject to medical treatment. But the sum of all these and subsequent opinions, known as “the Doctor Cases,” was that prescription of narcotics to help addicts was a violation of criminal law.

In recent years the federal government has begun a new wave of doctor cases. This campaign owes its origin to frequent, embarrassing accusations that the drug war cannot be won because the majority of drug use is by ordinary citizens using legally manufactured, albeit potentially dangerous, prescription drugs. It appears, in the opinion of federal authorities, that these legal medicines are being “abused” to an even greater extent than illegal drugs. The current “doctor” cases differ from those immediately following the Harrison Act in that accused physicians now face federal charges as racketeers distributing drugs as well as a multitude of other felonies, thus exposing them to harsh minimum mandatory sentences up to and including life in prison.<sup>3</sup>

Criminal accusations against doctors can arise in several ways. Commonly, undercover agents of the Federal Drug Enforcement Agency (DEA) visit doctors’ offices complaining of severe pain. If the physician prescribes pain medication that is excessive, the physician prescribes without sufficient medical scrutiny to prove that patients’ pain complaints are legitimate in the opinion of the police

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<sup>3</sup> In 2004, the federal government convicted William E. Hurwitz, M.D., on charges of conspiracy and drug trafficking for prescribing OxyContin and other painkillers in his Virginia clinic. Dr. Hurwitz, who is facing a sentence of 25 years to life, is appealing (Tierney, 2007).

agents and prosecutors, or the authorities believe alternative, non-addictive drugs might be as effective, the physician may be charged with a multitude of crimes. Law enforcement authorities may also ask patients who are disgruntled or have been apprehended for illegally possessing or trafficking in drugs to complain of chronic pain, in attempts to get physicians to prescribe drugs in quantities or a manner deemed to be criminal by the authorities. Some of the bogus patients are facing long prison terms that can only be mitigated by “cooperating” with authorities. Their testimony and actions frequently lack credibility due to their motives, history of questionable personal drug use, and other crimes they’ve committed. Nevertheless, defense attorneys often feel compelled to recommend to their physician clients that they plead guilty in a plea bargain promising lesser punishment rather than risk the draconian penalties if they lose at trial. In addition, attorneys facing well-financed prosecutors and law enforcement agencies must advise their clients that mounting a defense, which may or may not succeed, can cost more than a million dollars.

Consequently, many doctors under-prescribe or avoid prescribing pain relievers out of fear of prosecutions that can lead to large fines, defense costs they cannot afford, and decades-long sentences or, indeed, life in prison. Accused physicians also routinely face the loss of their state permits to practice medicine and their DEA licenses to prescribe drugs. Non-profit organizations have formed to advocate for patients suffering pain from terminal or chronic diseases who are unable to locate doctors willing to prescribe legal pain medications during treatment. The drug war has shredded the traditional confidentiality of doctor-patient relationships, with doctors testifying against patients, and real and fake patients testifying against doctors.

Furthermore, the rigid labeling of some drugs as being without medical value has hindered research experiments designed to test their value and danger. Although opium, cocaine, and marijuana have been used for centuries by many different cultures for medication or rituals, they have, ipso facto, been placed into Schedule I, a category that the federal government says has no accepted medical use. The government’s rigid position that many drugs are too dangerous to have any legitimate medical use has prevented valuable research on the impact of a number of psychotropic substances.

Another hidden cost of drug prohibition is the lack of appropriate supervision over the manufacturing, distribution, and use

of drugs, as well as lost tax revenue. Once users turn to the illegal black market, their drug use becomes more dangerous. One of the most disastrous examples is the prohibition of hypodermic needles. Because in most jurisdictions mere possession is a crime, intravenous drug users commonly share needles and in so doing contaminate each other with HIV, hepatitis, and other life-threatening infections. These potentially lethal diseases are easily transmitted to the law-abiding, non-drug using population through sexual intercourse or other interactions. Several studies have shown that cities providing sterile needle exchanges have reduced the spread of HIV infections without incurring an increase in heroin use and addiction.<sup>4</sup>

#### **IV. The Harm of Drugs**

Some time ago, in a televised discussion of the U.S. Drug War, a respected friend and former chief United States prosecutor astounded me by declaring that these drugs (the illegal ones) were bad not because they were illegal, but they were illegal because they were bad. Were this true, it would lend a degree of legitimacy to the argument for criminalizing the more dangerous drugs, although it obviously ignores the crucial issue of prohibition and the costs it presents in terms of violence, corruption, financing of illicit enterprises, and disrespect for law and civil rights, not to mention the demonstrated danger of undermining fledgling democracies. In addition, making certain chemical substances illegal makes them more dangerous because it removes their production and use from protective professional and government oversight.<sup>5</sup>

Furthermore, much of the federal government's own data and data from government-financed research contradict the contention that relative danger was the basis for outlawing certain substances. As shown in Table 1, the most lethal substances are legal. Unfortunately, under the spell of protecting public health and morals,

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<sup>4</sup> See McVay's (2007, p.176–84) discussion of Pain Management for information on syringe exchanges, and p.146–58 for an excellent and extensive review of the problems of illegal syringes and pain treatment.

<sup>5</sup> See Friedman (1972) for a comprehensive description by Nobel Laureate Milton Friedman of the various hidden costs of drug prohibition, such as corruption, violence, unethical and illegal use of informants, diversion of law enforcement resources from essential duties, the undermining of other nations' sovereignty, and other economic predictions that have come to pass because of the nation's wrongheaded war on drugs.

Congress couldn't foresee these contemporary mortality rates when it passed the Harrison Act.

**Table 1: Approximations for Annual Causes of Deaths in the United States in 2000**

<b>Cause</b>	<b>Number of Deaths</b>
Tobacco	435,000
Poor diet and physical inactivity	365,000
Alcohol	85,000
Microbial agents	75,000
Toxic agents	55,000
Adverse reactions to prescription drugs	32,000
Suicide	30,632
Incidents involving firearms	29,000
Motor vehicle crashes	26,347
Homicide	20,308
Sexual behaviors	20,000
Illegal drug use, direct and indirect	17,000
Anti-inflammatory drugs such as aspirin	7,600
Marijuana	0

Source: McVay (2007, p.10)

## **V. Increasing Crime**

By passing the Harrison Act, the United States federal government, publicly committed to crime prevention, created untold millions of new crimes by overnight criminalizing widespread behavior that had been legal. In effect, the government transformed somewhere between hundreds of thousands and millions (estimates at the time varied widely from 100,000 to 4 million) of individuals into de facto criminals (Black, 1968). In contrast to the mala-in-se (wrong in themselves) crimes such as murders mentioned above, it is impossible to determine with any precision the number of drug crimes because they are consensual transactions between both buyers and sellers who are breaking the law. Actually, the only drug crime data estimates collected and published by the government are those recorded subsequent to drug arrests. One may only speculate how many drug crimes have been committed by those not arrested, as well



as the number of past drug crimes committed by those who have been apprehended.<sup>6</sup>

No similar reputable efforts are made to capture the total number of drug crimes because of their secretive and consensual nature. There are data focusing on the supposed number of users of various drugs, the level of international drug production, the quantity of drugs seized, and the health problems and deaths they cause. However, as Peter Reuter, the highly respected analyst, then with the Rand think tank and now a professor at the University of Maryland, put it:

Official estimates of such things as the number of heroin addicts and the total income from heroin sales were: “a class of ‘mythical numbers’” that is becoming the routine product of government agencies. The statistics were gathered by very questionable, but unquestioned data collection (Reuter, 1984, p.136–37).

In short, no one has any idea of the total number of drug violations committed in the United States.

In 2001 a subcommittee of the National Academy of Science compiled a report on the efficacy of U.S. Drug Control Policy. The chair of this subcommittee (Manski, 2001) testified, “We found that the nation lacks the necessary information to gauge the effectiveness of current [drug] enforcement activities. For a program of this magnitude, that is simply unconscionable.” In essence, the

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<sup>6</sup> The federal government does provide two longitudinal annual indices of crimes reported by victims or witnesses. *Crime in the United States*, Uniformed Crime Reports, published by the Federal Bureau of Investigation since 1927, compiles yearly totals of various offenses reported to local and state police agencies. The other index, *Crime Victimization Studies*, begun in 1972, enumerates, through telephone surveys, individual reflections of someone in the household (approximately 77,600 households) as to victimization. Homeless people and those without telephones or who refuse to participate are not included. There are numerous limitations on the research methodology of both indices, not the least of which is that they measure different phenomena. The annual FBI report, although labeled “uniform,” nevertheless contains some inevitable cultural reporting differences among the nation’s 17,000-plus police agencies. Furthermore, there is general consensus that for a variety of reasons most crime is not recorded in either index.

subcommittee was critical that a program costing hundreds of billions of dollars, incarcerating millions of Americans, being inundated with violence and corruption, and frequently failing in its stated objectives to significantly reduce drug production, importation, use, and the resulting dangers to users, had failed to document the consequences of various changes in government methodology and philosophy through the years. Amazingly, the committee's report received little media attention and no Congressional action.

## VI. Fiscal Costs

U.S. drug control policies evoke considerable differences of opinion. Yet, there is consensus that America's drug problems have not been resolved despite enormous increases in government efforts. One indicator of the difficulties inherent in preventing illegal drug use is in the growth of federal spending on drug control. After passing the Harrison Act in 1914, Congress appropriated \$150,000 for the Treasury Department, thus maintaining the fiction that the Act was a revenue measure. In 1972, when President Richard Nixon called for a war against drugs, the federal drug war budget was roughly \$101 million. In 2011 President Obama's requested budget for "Federal Drug Control" is a record \$15.5 billion (Executive Office of the President of the United States, 2010).<sup>7</sup> In addition, the states are estimated to have spent at least \$30 billion each year on justice-related drug war expenses since 1998 (CASA Press Release 2000).

The magnitude of the increase is further illustrated by comparing the average 1972 monthly Social Security payment of \$177 with the growth of drug control spending. If Social Security benefits had increased at the same rate, current monthly Social Security payments would be in the range of \$30,444 rather than approximately \$900 now. Similarly, the average 1972 weekly salary of \$114 would have soared to roughly \$19,608, and a mortgage payment of \$408 would have grown to as much as \$68,000 per month.<sup>8</sup> It is noteworthy that these comparisons take into account only federal spending. If state

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<sup>7</sup> These are the official figures, but Gaver (2009) argues that the true figures are each at least \$8 billion higher.

<sup>8</sup> Statistics compiled from the White House, Office of National Drug Control Policy 1999, U.S. Social Security Reports 1973 and 1998, and Statistical Abstract 1972.

and local drug control expenditures are considered, the total cost estimates are approximately \$30 billion per year.

Despite this growing expenditure of taxpayers' money, this decade has seen a doubling of opium production in Southeast Asia and a one-third increase in cocaine production in Central and South America. Eighty to ninety percent of illegal drugs shipped to this country arrive undetected (Office of National Drug Control Policy, 1999). More than two decades ago the United States Congress proclaimed, "It is the declared policy of the United States to create a Drug-Free America by 1995" (Anti-Drug Abuse Act of 1988), but the United States, indeed the world, is still awash in illegal drugs that are purer and more potent than ever.

The vast profits resulting from prohibition – a markup as great as 17,000 percent – have led to worldwide corruption of public officials and widespread violence among drug traffickers and dealers that endanger whole communities, cities, and nations. The United Nations reports that there is a \$500 billion international black market in drugs. It is beyond the scope of this paper to consider foreign policy costs of the drug war, although Milton Friedman's contentions on the subject are compelling (Friedman, 2005, pp. 77–80). In the U.S., drug-related overdose deaths and emergency room visits have increased. Half of all high school seniors surveyed report having used an illegal drug (Johnston et al., 1996), and 85 percent of them say that illegal drugs are easier to obtain than legal, but regulated, beer (National Center for Addiction and Substance Abuse at Columbia University, 1996).

Presidents William Clinton and George W. Bush assured us that we are winning against drugs, as did their predecessors. Yet people in law enforcement and local communities are unconvinced, for good reason. Although casual illegal drug use appears to fluctuate and may have declined in recent years, regular use has not. People young and old seem to use drugs according to unfathomed fads. Dire government warnings about the newest dangerous trends describing "the most dangerous drug threat ever – heroin, marijuana, cocaine, rock cocaine, ice, date rape drugs, methamphetamine, morphine, oxycontin..." only confuse matters further. Actually, such warnings are themselves an indication that the drug war is unwinnable. Production sources, smuggling techniques, purity, price, and use patterns have changed throughout the years in the dynamic drug

market as the government has made claims of progress, but the war begun in 1914 has no end in sight.

Moreover, the decline in casual drug use may be unrelated to the war on drugs. Cigarette smoking and consumption of hard liquor and high cholesterol food – all as dangerous as illegal drug use – declined because of greater awareness of health dangers, not because consumers were jailed or because the government reduced the supply of these substances by waging a criminal justice war.

### **VII. Costs to Law Enforcement**

In 2008, The Federal Bureau of Investigation reported a total of 14,005,615 arrests in the United States. The number of arrests made by American law enforcement officers in that year for drug abuse violations was 1,702,527 (12% of all arrests) and was more numerous than for any other crime (Federal Bureau of Investigation, 2009). However, jailing drug users does not persistently lessen drug use in society at large, or for that matter in prisons themselves, where illegal drugs are available. Incarceration for mostly minor drug offenses usually destroys the person's life and does immense harm to families and neighborhoods. Justifying jail sentences by claiming that users would likely commit other crimes if they remained free is a flagrant rejection of a fundamental American right – the presumption of innocence.

Certainly, many people who commit crime are also users of illegal drugs. However, there is a vast difference between correlation and causation. Studies of prison populations indicate that inmates have a multitude of questionable behaviors in their past, many times even before venturing into illegal drug use. For example, high percentages of those convicted of crime are illiterate or otherwise uneducated, have poor histories of employment, come from dysfunctional families and neighborhoods, lack positive role models and mentors, received inadequate medical care, and generally lack the social skills that enable most of society to live wholesome lives. Drug use is no more a conclusive explanation of their criminal behavior than these other characteristics; instead, drug use may simply represent another factor that makes these people high-risk candidates for criminality. On the other hand, the illegality of certain drugs inflates their price and may well lead some individuals to commit crimes to obtain drugs. Some users are undoubtedly drawn into the underworld by their necessary contact with drug-dealing criminals, and many non-

drug users are attracted to the illegal drug market by the opportunity to earn large sums of money and to gain status among their peers.

There are, however, vast differences in the difficulty that drug crimes pose for the police than other offenses. For example, as has already been mentioned, the police do not routinely resort to use of informants, unlawful searches, or morally and physically dangerous undercover tactics in dealing with the vast bulk of crime. Because drug transactions are consensual, the police do not have the victims, witnesses, and physical evidence that help them solve crimes such as murder, assault, robbery, rape, and burglary. Under the Fourth Amendment, the police, with few exceptions, are not allowed to search people or their homes without a warrant. Yet, last year, state and local police in the United States made close to a million and a half arrests for illegal possession of drugs. Overwhelmingly, these were minor arrests and rarely involved a court-approved warrant.

The inescapable conclusion is that in hundreds of thousands of cases, police officers violated their oath to uphold the Constitution and often committed perjury so that the evidence would be admitted in court. The practice is so prevalent that the term “testilying” is sometimes substituted in police jargon for “testifying.” The injury that unlawful searches and perjury by the police does to the credibility of our justice system is immeasurable.

It is also crucial to realize that when the police arrest an armed robber, rapist, or habitual thief who is then imprisoned, another criminal does not quickly move in to fill the void. There is no demand for so many murders, rapes, robberies, or assaults that must be filled. In contrast, the law of supply and demand is operative in the illegal drug market. When the police succeed in destroying a major drug ring [this is rare; most of the 1,702,527 annual drug arrests by state and local police are for minor drug crimes, including approximately 800,000 for marijuana (Federal Bureau of Investigation, 2009), by far the most for any drug], the demand for illegal drugs seems fairly constant, and other “entrepreneurs” quickly fill the void, even before their predecessors are sentenced.

Aside from the considerable cost of conducting years-long investigations of major dealers, other hidden costs arise. The larger drug operations grew because they utilized superior market strategies or employed greater violence against competitors. When the police eliminate the more successful drug organization, rivals commonly usurp other drug entrepreneurs by violence, endangering innocent

citizens as well as harming the quality of life in the area. Rival drug dealers do not sue each other. They employ extraordinary violence against not only competitors, but also witnesses they suspect of informing the police of their activities. Indeed, even within their organization, individuals seeking leadership or suspected of “ratting out” to authorities are killed. Moreover, there is greater inclination toward dishonest behavior in illegal industries than in lawful enterprises, which are deterred, at least to some extent, by threat of lawsuits. In the drug underworld, failing to deliver the merchandise or money triggers more violence. Despite the disruptions, the level of drug use in the neighborhood rapidly rises to its previous level, or at most is displaced to nearby locations. In some cases, disruptions in the drug market lead users to other, more dangerous drugs that remain available.

A good question to ponder is, when was the last time a Budweiser beer distributor was gunned down in a drive-by shooting? Most of the crime committed by drug users is not so much the effect of the altered mental state resulting from drug ingestion as the result of the product’s illegality. This leads to the further question of why the police, courts, and correction and other government agencies are investing huge sums in the drug war at the cost of diverting scarce resources from pursuing other crimes. At least part of the answer is that government is a monopoly not subject to going bankrupt as a result of failure. Thus, police and criminal justice agencies’ performance is measured in terms of process – the number of drug arrests, the number of people incarcerated, and the quantity of drug seizures – rather than goal achievements, such as reducing illnesses and deaths among drug users or keeping the local economy healthy and peaceful enough to provide employment so that families, schools, and neighborhood associations can function well enough to establish and maintain conditions contributing to a prosperous and law-abiding society.

### **VIII. Drug War Costs Related to Racial Inequality**

Non-whites have borne the brunt of the punishment for drug crimes even though most drug use is by whites. Alfred Blumstein (1993), former president of the American Society of Criminologists, described the drug war as “an assault on the African-American community.” Police on patrol make most drug arrests by simply confronting people on the street, usually without any legal basis for

an arrest. Needless to say, members of minority groups resent what they regard as racial profiling by the police, which is itself a violation of law in the United States. Yet, uniformed and plainclothes officers are most often confronted with anonymous buyers and sellers of drugs. Officers necessarily must act more on hunches than evidence. The result is not only a public relations quandary but also a legal one because the Fourth Amendment prohibits warrantless searches in most cases.

The current protests over racial profiling by the police are a reflection of the damage that an ill-conceived law enforcement war against drugs has on the ability of the police to win the cooperation that they need to do their basic job of protecting life and property. Resentful citizens are unlikely to dial 911 to report a burglary in progress or other crime if they view the police as adversaries. It is also true that the average citizen who identifies a drug seller to the police is taking a considerable risk of physical harm from the defendant and his colleagues.

### **IX. Gangster Cops**

Even more damaging is the destruction of trust that follows the exposure of gangster cops who have robbed drug dealers, sold drugs, and framed people in the communities that they swore to protect. Police perjurers far outnumber those cops who are predatory drug criminals; still, there have been thousands of drug-related police crimes since the 1972 declaration of a drug war.

The prevailing opinion of Americans is that drug corruption is a serious problem in countries producing drugs, serving as a conduit for drug smuggling or helping to launder the immense profits from the illicit drug trade, but only a negligible issue in the United States. Yet, data collected from the 1970s to the present lead me to speculate that United States police officers across the nation have committed more than a million serious drug felonies. Some degree of police corruption has been an inherent problem ever since the establishment of the first professional police force in London in 1829. However, because fairly low-paid officials are able to accumulate tax-free fortunes due to the enormous black market profits ensuing from drug prohibition, no nation is free from police drug crimes. In contrast to the traditional police corruption in which police take bribes from gangsters to “look the other way” rather than

enforce the law, thousands of American police officers become drug gangsters.

Drug corruption has also penetrated all services of the U.S. military, as they have been given increasing responsibility for drug enforcement. Perhaps the most revealing example is the 2000 conviction of Lieutenant Colonel James C. Hiatt, a 24-year Army veteran, who was the United States Army Group Commander heading American military forces in Colombia. The colonel's wife shipped \$700,000 worth of cocaine and heroin through the U.S. Embassy in Bogota and sold it in the U.S. He pleaded guilty to laundering some of the money into United States banks (Associated Press, 2000).

There is no way to assess the fiscal cost when neighborhoods become convinced that police officers are part of drug distribution, but it is enormous. Without public trust in the integrity of law enforcement officers, police departments cannot be effective. Citizens will not report crimes to the police, testify during prosecutions, or as jurors believe police officers' testimony. The whole fabric of a civilized society is endangered, if not destroyed.

## **X. Conclusion**

The United States has been unable to face the failure of its drug policies and to examine alternatives that would lessen dangerous drug use. We are still captive to the myths about drug use and the false stereotypes of drug users created a century ago by religious zealots, xenophobic native-born Americans, and Progressive reformers. Some of the same religious fervor remains. Timothy Lynch (2000, p.4), Director of the Cato Institution's Project on Criminal Justice, writes of supporters of the drug war talking of drug immorality and drugs destroying users' souls.

Once we are beyond the emotional straightjackets imposed by the Harrison Act's original lobbyists, we can study how we and other countries can minimize the harm of drugs. There is no panacea, but it is clear that continuing to do more of what has not worked in the past century is not the way to start a new millennium. Although all criminal laws are in a sense moralistic, the First Amendment to the United States Constitution calls for a separation of religion and government, especially government coercion favoring certain religions. Those who wrote the Declaration of Independence and the Constitution did not intend that the enormous police power of

government should be used to establish public morality and to “save souls.” It would benefit America and the world to leave the protection of health and salvation of souls to health professionals and clergy, and to insist that police, courts, and prisons concentrate on protecting life and property from criminals.

Throughout history, mankind has used psychoactive substances for a variety of purposes. Whether we like it or not, drugs will prove attractive to some people. The invisible hand that Adam Smith described as controlling the marketplace exists in the drug market as well. As long as there is a demand for drugs, someone will find a way to supply them. As economically and militarily powerful as the United States has grown, it cannot suspend the law of supply and demand, either domestically or globally. It is not sound public policy to defend America’s world war on drugs merely by advancing the argument impervious to empirical proof, namely that things would be even worse without the drug war. Pushing aside unrealistic moralizing, it is arguable that the drug war is causing more harm than the drugs. The challenge to the world is to confront the true costs of U.S. drug control efforts in order to maximize the healthy utility of these substances and to minimize the harm they, and wrongheaded criminal prohibition, cause.

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