

DRUG LAW, DRUG TREATMENT

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Though matters had been brewing for some time, beginning with the election of Ronald Reagan as president in 1980, the U.S. government and American society entered in earnest into an era of virtually zero tolerance for and maximum enforcement against illicit drugs. In 1986, Reagan renewed Nixon's "War on Drugs," but with greater urgency, along with a strident stress on punishment rather than treatment—a war that, indicators say, seems to have tempered somewhat only with the arrival of the twenty-first century, especially with the policies of the Obama administration. But let's keep in mind several fundamental facts about politics and the war on drugs. *First*, all the state prison systems in the United States, added together, house seven times the number of inmates than the federal prison system—roughly 175,000 versus 1.2 million inmates.

This means that the President of the United States has little or no direct sway over the direction of *most* of what law enforcement does; yes, he may inspire its direction, but his influence is indirect rather than direct. *Second*, the federal prison system houses a *much* higher proportion of drug arrestees (47%) than the state prison systems house a *much* higher proportion of drug offenders (47%) than the state prison systems (15%)—on the order of three times (roughly 200,000 versus a shade over 80,000). But both law enforcement systems give high-level traffickers greater priority than low-level sellers, and distributors of the more dangerous drugs, especially heroin, cocaine, and methamphetamine are more likely to be on law enforcement’s radar than pot sellers. All things considered, the president of the United States, whether Reagan, Obama, Trump, or Biden, provides inspiration rather than direct muscle. But there’s yet another element in the equation: The United States Attorney General. Trump’s AG, Jeff Sessions, accused Obama’s AG, Eric Holder—who carried out less harsh policies toward drug crimes than his predecessor—of being responsible for an increase in the murder rate of 10 percent, which translates into tens of thousands of lives.

How has the drug war been carried out? What are its basic foundations, outlines, patterns, dynamics, and trends? And what about the “cracks” or “chinks” in the law enforcement armor—the establishment of drug courts and the institutionalization of drug treatment for addicts and abusers? Are alternatives to strict enforcement and incarceration more effective in reducing our currently high levels of drug abuse? How, why, and in what ways did this ferocious “war” slow down somewhat and possibly even reverse itself a bit in the 2000s—and what are the chances it will start up again with renewed vigor? What does the future hold for drug enforcement?

DRUG CONTROL: THE CURRENT SYSTEM

In the United States at the present time, a range of psychoactive substances are regulated by the criminal law; they are the controlled substances. The *Controlled Substances Act*—also referred to as the *Drug Control Act*—provides for schedules or categories of drugs with varying controls and penalties for violations. To simplify a complex situation, three categories of psychoactive substances or drugs are controlled by the law.

Three Categories of Drugs

The first category of drugs may be referred to as the *legal* drugs. They are not included in the Controlled Substances Act at all; in effect, the government does not even consider them to be drugs in the first place. These psychoactive substances are available to anyone over a certain age. A variety of laws, rules, and regulations stipulate the conditions of sale and consumption—where, when, and by whom they may be purchased and consumed. Violations of these laws may result in arrest and/or a criminal fine. Still, these substances may be obtained and consumed under a wide range of circumstances without violating the law. Alcoholic beverages and tobacco cigarettes provide examples of legal drugs. Their sale and use are controlled by law, but they are not mentioned anywhere in the Controlled Substances Act. In addition, some other substances, not strongly psychoactive, are commonly referred to as drugs because they are used for medicinal and quasi-medicinal purposes, but they do not appear in the Controlled Substances Act either. These are the *over-the-counter (OTC) drugs*, such as aspirin, Advil (ibuprofen), Tylenol (acetaminophen), No-Doz, Dexatrim, and Compoz. Since OTC drugs are not psychoactive and are not used recreationally, we will not consider them here.

The second category of substances is made up of the *prescription drugs*. These are the Schedule II-V drugs in the Controlled Substances Act. As we've seen, thousands of drugs that are psychoactive are available by prescription, which are written by physicians for their patients' medical and psychiatric problems, illnesses, or maladies. These drugs are controlled more tightly than alcohol and tobacco, which are completely legal. These drugs are available only by prescription, and only within the context of medical and psychiatric therapy. The schedules define the degree of control over the dispensing of prescription drugs, as well as spell out the penalties for violating the law. Schedule II drugs (such as cocaine, amphetamine, and short-acting barbiturates) are tightly controlled; Schedules III-V are less tightly controlled. The sale of any of these drugs for nonmedical purposes—for instance, to get high—can result in the arrest and imprisonment of the physician and the user. In addition to their legally prescribed use, as we saw, a number of prescription drugs mentioned in the Controlled Substances Act that are psychoactive are also widely used illegally for the purpose of intoxication; some are manufactured illegally in clandestine labs, sometimes in the United States, sometimes in other countries, most often Mexico, while some are stolen from legal labs or diverted from legal pharmaceutical channels.

In addition to prescribing to individual patients for the treatment of specific ailments, controlled pharmaceuticals are widely used for two other populations: (1) the mentally disordered, both as inmates of mental hospitals and as outpatients, and (2) narcotic addicts who are clients or patients of methadone maintenance programs or (less commonly) drug therapy programs. The administration of antipsychotic medication to mental patients and methadone to narcotic addicts provides a partial exception to the rule that American society pursues a punitive approach to drug use. As a general rule, “doves” advocate an expansion of methadone programs, while hawks wish to hold the line on maintenance programs or call for serious cuts in their funding.

I've sketched out three categories of psychoactive substances: First, those that are legal and so are not controlled by, and do not fall under the provisions of, the Controlled Substances Act (those include alcohol and tobacco); second, those that are classified as Schedule II through V drugs under the provisions of the Controlled Substances Act; and the third category of drugs is made up of those whose possession and sale are *completely* illegal; they are not available, even by prescription. The Controlled Substances Act regards these drugs as having no medical utility and a high potential for abuse; they are classified as Schedule I drugs. (The “no medical utility” is largely a legal fiction, since many medical experts, not to mention the provisions of more than half the state laws (plus the District of Columbia), regard marijuana a Schedule II drug—that is, as being medically useful.) But according to federal law, contrarily, such drugs, including marijuana, cannot be legally purchased or obtained for any reason whatsoever (except under extremely rare experimental or research conditions). Anyone who possesses, transfers, or sells them automatically violates the law, is subject to arrest, and, if convicted, may have to serve a jail or prison sentence and/or pay a criminal fine. Examples of the Schedule I drugs under federal law include marijuana, heroin, MDMA (or Ecstasy), and LSD; they are always (or almost always) obtained illegally, and are widely used, illegally, for the purpose of intoxication.

The Punitive Approach

For the completely legal drugs, the use of a given substance is not in question; possession and sale for the purpose of just about any and all use—including intoxication—are legal.

For the completely illegal drugs, it is exactly the opposite—possession and sale for no use whatsoever are legal. In the United States, it doesn't much matter why one wishes to use heroin; even medical uses are against the law.

In sharp contrast to these two, the matter is quite different for the prescription drugs: It is the *use* of the drug (and how it is obtained) that defines its legal status. If used in a manner the government deems medically acceptable and obtained by means of a legal prescription, their possession and sale are legal; if used for what are regarded as illicit or disapproved purposes (say, getting high), or obtained without benefit of a prescription, their possession and sale are illegal. Notice, too, that, technically, drug *use* is not a crime; it is possession and sale that are against the law. When observers refer to the illegal use of prescription drugs, this is shorthand for nonprescription possession and sale for the purpose of illicit use. For Schedule I drugs, although the possession and sale are technically illegal—and not use—it is ultimately the use of these substances that the law is presumably intended to control.

Marijuana provides two partial exceptions to the punitive policy toward Schedule I drugs. First, as we saw, under their state laws, 36 states (and DC) permit marijuana as medicine; still, it remains completely illegal under the federal Controlled Substances Act. And second, 13 states have decriminalized the possession of small quantities of marijuana. In these states, possession of a small quantity of marijuana (the amount varies from one state to another) is not a crime but a civil offense—a “violation.” If individuals are apprehended with less than the stipulated amount, they cannot be arrested—although their stash will be confiscated—convicted, or serve jail or prison time. For such an offense, they will receive a citation much like a traffic ticket and pay a small fine. In these states, the sale or transfer and the cultivation of marijuana, the possession of more than the stipulated amount, and the *public* use of marijuana, remain on the books as crimes; only the possession of small quantities is exempt. In 2021, three states—New Mexico, Connecticut, and Virginia—removed criminal penalties from the possession of marijuana. Cannabis has now been legalized or decriminalized in states in which nearly half of the population of the U.S. lives—145 million people. Moreover, in 18 states, marijuana, even for recreational purposes, is legal. Again, the federal law contradicts *most* state laws; eventually a rapprochement will be reached in the form of changes in the federal law.

Currently, the predominant legal stance in the United States is punitive toward a wide range of drugs. Many drugs are completely illegal; their possession and sale are controlled through the criminal law in every jurisdiction of America. These are the prohibited drugs. The punitive approach has been pursued more or less continuously in this country since the passage of the Harrison Act of 1914 and subsequent Supreme Court interpretations of this act during the 1920s; the Controlled Substances Act of 1970 carries on this same tradition. In a nutshell, the punitive policy toward drug use is this: To solve the “drug problem” and minimize the harm that certain substances cause, its proponents argue, arrest sellers and users, convict them, prosecute them to the full extent of the law, and incarcerate them. If any nonusers contemplate taking up the habit, the example of what happens to those who get caught should dissuade them from such foolish behavior. As I said earlier, there are variations on a punitive theme.

Regardless of how severe or mild the penalties proposed, the criminal law, arrest, and incarceration—punishment—remain the cornerstones of the punitive approach to drug abuse. It is our current policy for many drugs, and it is a policy that most Americans

support. Public opinion polls find that roughly 90 percent of all Americans believe that the possession and sale of the hard drugs should remain illegal. But a majority of the population agrees with the proposition that marijuana users “should not be arrested,” a direction in which the state laws, as we saw, are headed. In effect, except for a few retrograde states, the war against marijuana has already been won by the pro-legalization side.

The Bottom Line

At present, then, the United States follows the maintenance model for 100–180,000 or so narcotic addicts who are enrolled in methadone programs; the partial decriminalization or legalization model (following state, not federal, law) for marijuana possession in most states; the legalization model for alcohol and tobacco cigarettes; the medical or prescription model for psychoactive pharmaceuticals, such as Valium, Halcion, morphine, Prozac, and Thorazine, and, in 36 states, for marijuana; and a criminalization or punitive model for its illegal drugs—crack, Ecstasy, PCP, GHB, LSD, and heroin, and a variety of prescription drugs, such as barbiturates, amphetamine, and cocaine, which are completely illegal if used recreationally or without benefit of prescription. Also, in an odd twist of history, not all states in which marijuana is decriminalized allow medical marijuana, and vice versa.

To put the matter another way: *All recreational drug use in America is prohibited unless otherwise exempted.* The exceptions are alcohol and cigarettes. Marijuana is a partial exemption in that, even in the decriminalized states, the user cannot possess above a given quantity and, even if he or she does possess less than that, may receive a fine similar to a traffic ticket. (The prescription drugs do not represent an exception to this rule, since, in principle, they are to be used exclusively for therapeutic, not recreational, purposes.) In effect, in the United States, the only drugs that users are completely free to take legally for pleasure (caffeine excepted) are alcohol and tobacco.

PROHIBITION: TWO PUNITIVE ARGUMENTS

The word “prohibition” has both a specific and a general meaning. In its most specific meaning, *Prohibition*, refers to the legal ban on the sale of alcohol beverages which was in effect in the United States between 1920 and 1933; used in this way, the word is usually capitalized. In its more general sense, *prohibition* refers to banning any activity, service, or product through the criminal law. Prohibition may be referred to as a punitive approach; the *punitive model* calls for a policy of punishing persons who ignore the law and purvey or partake in a specific banned or illegal activity, service, or product.

As it applies to drugs, the word, “prohibition” can refer to a ban on any psychoactive substance. With a punitive policy, someone who is engaged in a drug transaction or who possesses a given quantity of an illegal substance may be arrested, prosecuted, convicted, and imprisoned. Under a punitive policy, drug possession and distribution are crimes, much like rape, murder, and armed robbery; a criminal penalty is provided for infractions of the penal code. This penalty could entail a fine, a jail or prison sentence, or probation instead of imprisonment; in some jurisdictions (outside the United States), this may even entail execution. When laws are passed providing penalties for a given offense, this is referred to as *criminalization*; when laws are repealed and call for a “hands off” policy in arrests, this is called *decriminalization*.

Currently, the punitive or prohibitionist position argues for the possession and sale of the currently illegal psychoactive substances to remain a crime because, its supporters feel, use will decline thereby. (Or because they feel that such penalties symbolize society's opposition to such use.) Since staunch or strict prohibitionists support a war on drugs, advocates of the punitive policy may be referred to as *hawks*, a term that is usually used to refer to the more warlike factions in a society. In contrast, legalizers may be referred to as *doves*, since they oppose this "war on drugs," and believe we should "lay down our weapons" and "declare peace" (Reuter, 1992, p. 16).

The more extreme versions of the punitive approach that are used elsewhere are not legally possible in a society such as the United States, one that values civil liberties, the right of due process, and freedom from unreasonable punishment. For instance, today, very few commentators support the death penalty for drug violations. (A few do, and have so stated in public.) In China, executions of drug dealers are routine; they number in the thousands per year. While lecturing at Beijing's Medical University, psychopharmacologist Avram Goldstein (2001, p. 296) watched the television coverage of a public hanging of 52 convicted heroin dealers. With a crowd of thousands watching, the governor of the province declared: "This is how we deal with drug traffickers!" Such a draconian penalty is simply not a viable option in the United States.

However, some American advocates of the punitive policy called for execution of the most serious offenders. In testimony to the Senate Judiciary Committee, Daryl Gates, former chief of the Los Angeles Police Department testified that casual marijuana smokers "ought to be taken out and shot," because, he said, "we're in a war" (Beers, 1991, p. 38). Speculated William Bennett, former federal drug "czar," on a nationwide radio talk show, perhaps anyone who sells illegal drugs to a child should be beheaded. "Morally," he said, "I don't have any problem with that at all" (Lazare, 1990, p. 25). These were minority opinions back then, even among criminalizers; their presence today has, in all likelihood, considerably diminished, and very possibly disappeared altogether—a historical relic of a more punitive era. During his presidency, Donald Trump called for the execution of drug traffickers who brought fentanyl into the United States from China. "We catch a drug dealer, death penalty. That's it," he declared, in a rally for fellow Republican running for the House from Pennsylvania. "It's a discussion we have to start thinking about. I don't know if the country's ready for it," he mused. "Some countries have a tough penalty, the ultimate penalty, and they have much less of a drug problem than we do," Trump said during an appearance at a White House summit (Porter, 2018). In 2020, a 17-year ban on executions was lifted, and so, true to his stated inclination, in 2020, the lame-duck president rushed to approve 13 killings of prisoners on death row who were convicted of federal crimes. No American president has overseen as many federal executions in more than 120 years. None, however, was on death row for a drug crime. At this writing, 50 prisoners remain in federal prisons on death row. Joe Biden has vowed to end the death sentence and hence, is extremely unlikely to approve any federal prisoner's execution.

The reasoning behind the passage and enforcement of drug laws is, presumably, that substance use is a threat to the safety and well-being of the society, and it can and should be eliminated, or at least substantially reduced, by arresting and imprisoning violators. While lawmakers may have noble intentions in mind when drafting and enacting a piece of legislation, as Robert Burns, Scottish poet (1759–1796) reminds us (rendered into

modern English), “The best laid plans of mice and men often go astray.” Lawmakers do not always achieve their desired goal, of course, and a variety of unintended, unanticipated, and undesired consequences often result from even the best intentions. Some legislation has caused a great deal more harm than good, as we learn from the lesson of national alcohol prohibition (1920–1933). However, this should not condemn all legislation, for surely there are some laws that have had beneficial results. Hardly anyone would vote to repeal laws against serious crimes such as rape, robbery, and murder, simply because they fail to eliminate the behavior they criminalize, or because such criminalization may sometimes have unanticipated consequences.

There are two entirely different punitive arguments, and many observers confuse the two. Let’s call them the “hard” or *strict* and the “soft” or *moderate* versions. The strict punitive version makes use of the logic of *absolute deterrence*, while the moderate punitive version uses the logic of *relative deterrence*.

The hard or strict punitive argument says that a given activity can be significantly reduced or eliminated by law enforcement, that crime is deterred or discouraged in some absolute or abstract sense by law enforcement. This is the rationale for the government’s war on drugs: Escalate the number of arrests of users, addicts, dealers, and producers; impose longer prison sentences on them; fill the jails and prisons; and eventually, drug use will be “defeated.” The advocates of the hard punitive argument quite literally suppose that drug use can be wiped out, or at least drastically curtailed, by an escalation in arrests and sentencing. Arrest and imprison enough drug users and sellers and use will drop to nearly zero, or at least to tolerable, minimal levels.

In contrast, according to the soft or moderate punitive position, law enforcement does not attempt to bring about a defeat of or even a drastic reduction in drug use or abuse. This argument is quite different from the hard or strict criminalizer’s position. It says, in effect, that *in the absence of law enforcement*, a given activity will be much more common than it is with law enforcement. It relies on the logic of relative deterrence because it says that *with* law enforcement—as compared with *no* law enforcement—certain kinds of crime less often take place. If there were no laws or penalties against, say, robbing or assaulting others, more people would engage in such behavior. (Not most people—*more* people.) Law enforcement does not reduce the incidence of these acts as much as *contain* them. Same thing with drug use: Punishing the drug violator is not, and, under most circumstances, cannot be, a means of drastically reducing or eliminating drug use. If there were no drug laws, and no penalties for the production, sale, and possession of the presently illegal substances, trafficking and use would be significantly higher than these are now.

Thus, the soft or moderate criminalizers do not see the inability of law enforcement to “stamp out” drug abuse as a failure of the punitive policy. They view stamping out drug abuse is a futile task, and an absurd measure of the ineffectiveness of the laws against drugs. Unlike the legalizers, who argue that “everyone knows” that the drug laws have failed (Best, 1990; Yett, 1990; Hyse, 1994), the proponents of the soft punitive position base their position on relative deterrence. Do a mental experiment, they say. Imagine removing any and all penalties for any and all drug manufacture, cultivation, possession, distribution, and sale. Anyone claiming that drug use would not rise under such circumstances—contrary to every known currently prohibited pleasurable action—risks absurdity. In looking at the drug legalization debate, the difference between these two

versions of the punitive argument should be kept in mind. It will assume central importance in several future discussions.

IS THE DRUG WAR OVER?

In November 2019, a *New York Times* reporter raised the question: “Is the ‘War on Drugs’ Over”? (Stellin, 2019). Her answer: “Arrest Statistics Say No.” She emphasizes three points: Drug arrests are as numerous as they have been for decades, they are also mostly for the *less* serious offense of possession (rather than trafficking); moreover, they are *most* common for the possession of the *least* dangerous illicit substance, marijuana—at a time, she adds, “even as public opinion has shifted in favor of its legalization.” The proportion of all drug arrests for simple possession has *increased* from 67 to 86 percent over time (from 1989 to 2018—and for marijuana specifically, that figure stands at 92 percent. The greatest number of drug arrests were generated by marijuana possession. In addition, African Americans, who make up 18 percent of New York State’s population, contribute twice their share of drug arrests—37 percent. As we saw earlier, the difference between the percent using illicit substances by race is negligible. It is true, however, is that marijuana possession is less likely to lead to conviction and imprisonment than arrest for the more dangerous drugs. What drives racial disparities “that flow through the criminal justice system” is the possession of the most serious drugs: for whites, it’s heroin and meth; for Blacks, it is crack (Stellin, 2019).

When we look at the sweep of time during the past five decades, we witness an enormous disconnect between the incidence of drug use and the number of drug arrests and incarcerations. Drug use declined from the late 1970s into the 1980s and 1990s, and has remained more or less stable, with a bit of wobbling, during the first two decades of the 2000s. In sharp contrast, during that period, drug arrests and imprisonments skyrocketed, though, nationally, this increase seems to have slowed down a bit in the 2005–2019 period. According to the *National Household Survey on Drug Abuse* and the *National Survey on Drug Use and Health*, between 1979 and 1991, the percent of the American population age 12 and older who used at least one illicit drug in the past month (which defines “current” use) declined from 14.1 to 6.6 percent; between 1992 and the early 2000s, that percentage has remained more or less stable at between 6 and 8 percent; in 2008, the figure stood at 8 percent; in 2011, 8.7 percent; in 2016, 10.6; and in 2019, 13.0. The percent taking cocaine in the past month was 2.6 percent in 1979, 3.0 percent in 1985, 1.6 percent in 1988, and between 1992 and 2019, it has remained more or less stable, at between 1 and 0.5 percent. Interestingly, though the percentage of illicit drug use has increased, nearly all of that increase is a result of an increase specifically in marijuana use. (See Tables 13-1 to 13-6.) And, as we see in Table 13-5, the percent that drug arrests make of the total arrests has nearly tripled over the past four decades—from 5.6 to 15.5 percent. Consequently, we are forced to agree with the conclusion that, no, the drug war is *not* over. It is not only escalating, it is specifically escalating in those areas in which it makes the least sense. Common sense would tell us that drug arrests should mirror use and distribution of our most dangerous drugs, but in this case, common sense would be wrong; in fact, drug arrests mirror the use of the least dangerous drug, and it reflects numbers of users, not the number of distributors. Moreover, the arrests statistics are skewed in the direction of racial minorities whose use is no greater than that of majority whites. (See Tables 13-1 to 13-6.)

TABLE 13-1 Arrests in the United States

Charge of Offense (2019)	Number of Arrests
Murder	11,060
Rape	24,986
Robbery	74,547
Aggravated assault	385,278
Burglary	171,590
Larceny-theft	813,073
Motor vehicle theft	80,636
Arson	9,068
Forgery and counterfeiting	45,183
Fraud	112,707
Embezzlement	13,497
Receiving, buying, possessing stolen property	88,272
Vandalism	180,501
Weapons possession, carrying	153,161
Commercialized sex, prostitution	26,713
Other sex offenses	40,796
Drug-related violations	1,558,862
Gambling	2,458
Offenses against the family and children	85,687
DUI	1,024,508
Liquor law violations	175,548
Public drunkenness	316,032
Disorderly conduct	310,331
Vagrancy	21,896
Curfew and loitering violations	14,653
GRAND TOTAL, ALL OFFENSES	10,085,207

Source: *Crime in the United States, 2020.*

TABLE 13-2 Number of Arrests for All Offenses, 1980–2019 (In Millions)

	Total	Drug	Violent	Property
1980	10.4	0.58	0.48	1.86
1990	14.2	1.09	0.71	2.22
1995	15.1	1.48	0.80	2.13
2000	14.0	1.58	0.63	1.62
2010	13.1	1.64	0.55	1.64
2015	10.8	1.49	0.51	1.46
2016	10.7	1.57	0.52	1.35
2019	10.1	1.56	0.49	1.07

Source: FBI, *Crime in the United States*, relevant years.

TABLE 13-3 Use of Illicit Drugs in Past Month, Age 12 and Older, Selected Years

	1979	1985	1991	1996	2005	2008	2011	2016	2019
Any illicit	14.1	12.1	6.6	6.1	8.1	8.0	8.7	10.6	13.0
Cocaine	2.6	3.0	1.0	0.8	1.0	0.7	0.5	0.6	0.7
Marijuana	13.2	9.7	5.1	6.1	6.0	6.1	7.0	8.9	11.5

Source: National Household Survey on Drug Abuse and National Survey on Drug Abuse and Health, relevant years.

TABLE 13-4 Selected Data on Jail and Prison Population, Number of Persons in Prison and Jail, 2020

Year	Jail	State Prison	Federal Prison	State + Prison	Total Incarcerated	Total U.S. Population (Millions)
1980	182,288	183,988	25,000	208,988	391,276	226.5
1990	405,320	684,544	58,838	744,000	1,149,000	248.7
2000	621,149	1,179,214	131,495	1,310,709	1,932,858	281.4
2008	785,533	1,407,002	201,282	1,608,204	2,393,817	304.1
2012	744,524	1,382,418	216,362	1,598,780	2,343,304	311.8
2015	728,000	1,330,000	196,000	1,526,000	2,254,000	321.3
2019	758,420	1,255,689	175,116	1,430,805	2,189,225	328.2

Source: Bureau of Justice Statistics (1980–2015), Vera Institute (2019).

TABLE 13-5 Drug Arrests, Percent of Total Arrests: 1980, 1990, 2000, 2010, and 2019

	Total Arrests	Drug Arrests	Drug Arrests Percent of Total
1980	10,441,000	580,900	5.6%
1990	14,195,100	1,089,500	7.7%
2000	13,699,254	1,579,566	11.5%
2010	13,120,947	1,638,846	12.5%
2019	10,085,207	1,558,862	15.5%

Source: Uniform Crime Reports, relevant years.

In stark contrast, however, during that same period, the total number of adult drug arrests tripled; between 1980 and 2000, it rose from 580,900 to nearly 1.6 million. During that stretch of time, the number of defendants who appeared in federal courts on drug charges grew from 7,000 to roughly 30,000, and the percentage of all prisoners incarcerated in federal penitentiaries who were convicted specifically of drug offenses increased from 7 to 20 percent. In 1980, there were about 20,000 prisoners incarcerated in state

TABLE 13-6 Assorted Prison Statistics

Total Federal Prison Population (including U.S. Marshalls Service): 226,000	
Offenses, Federal Prisons (excludes some offenses and U.S. Marshall Service): 166,000	
Drug offenses: 47% Public Order Offenses (including weapons): 39% Property Offenses: 6% Violent Offenses: 8% ICE (Immigration and Customs Enforcement): 40,000	
Inmates by Race and Ethnicity (2019) (State and Federal Prisons)	Inmates by Gender (2019) (State and Federal Prisons)
White: 35% Black: 38% Hispanic: 27%	Male: 92.5% Female: 7.5%

2019 Adult male imprisonment rate: 789/100,000
 2019 Adult female imprisonment rate: 61/100,000
 2019 Adult male imprisonment rate is 12.9 times that of female rate.

2019 Adult African American incarceration rate: 1,096/100,000
 2019 Adult white incarceration rate: 214/100,000
 2019 Adult Latino incarceration rate: 525/100,000
 2019 Adult African American incarceration rate is 5.1 times that of white rate.
 2019 Adult Latino incarceration rate is 2.45 times that of white rate.

Note: Figures do not include juvenile facilities, Indian Country jails, civil commitment centers, military prisons, or state psychiatric facilities.

Sources: Carson, 2020; Sawyer and Wagner, 2020; Kang-Brown et al., 2019.

penal institutions for drug crimes (7% of all state inmates). Today, almost half of federal prisons (47%) were incarcerated for a drug offense. Federal time served for an inmate convicted of a drug offense, about 55 months, is only slightly less than the length of sentence for arson and explosives, weapons, and racketeering and extortion offenses. Drug offenders, on average, are currently sentenced to only eight months less than violent offenders. The scare over drug abuse that was brewing in the 1970s, and that exploded in the 1980s bore bitter fruit in the 1990s and early 2000s in the form of strikingly stricter law enforcement. During a stretch of the first decade of the 2000s, we arrested more drug suspects, convicted more drug defendants, and incarcerated more drug offenders than ever before in the nation’s history—and for longer sentences.

But in the *short* run, however—in the 2000–2019 period—the rush to incarcerate generally, and to incarcerate drug offenders specifically, has slowed down. For instance, between 2007 and 2008, only 7,300 state and federal prisoners were added to penal institutions, the lowest yearly figure in decades. Then, throughout the 2000s, we have seen not only year-by-year slowdowns, we’ve also seen some years where there’s been a decline. For instance, in 2002, state correctional institutions in America held 265,100 convicted drug

offenders; in 2003, they held 250,900, a drop of 14,200. And in the following year, 2004, the number of prisoners dropped again, by 1,500. Thus, the eighties and nineties race to incarcerate drug offenders slowed down during 2000s, and seems to have reversed itself: The 2015 figure was 53,000 prisoners fewer than was true in 2006, in keeping with the 2000s tendency toward decarceration. The number of persons who were arrested on drug charges declined between 2010 and 2019 by roughly 80,000. But in the *larger* picture—from the 1970s to the beginning of the 2000s—the contrast between the decline in *drug use* and the huge rise in *incarcerating* drug offenders, at least in federal prisons, specifically and offenders generally, has been the big news. Over the *long* run, the upward trend in punitive penology—both for crimes generally and for drug crimes specifically—has been remarkable, and that striking fact demands a close look at the part the law, the police, and the courts play in our drugs-as-crime drama. As to whether this big-picture tendency has turned around for good remains to be seen.

The increases in drug arrests and sentences that took place after the 1980s were not unique to drug offenses alone. Seemingly, in the last quarter of the twentieth century the country was seized with an almost evangelical fervor to punish offenders of nearly all stripes. Between 1980 and 2000, the total number of prisoners in federal and state penitentiaries increased from 208,988 to 1.3 million. In addition, on any given day, over 740,000 inmates are in jails, institutions that detain men and women who are awaiting trial or serving brief sentences for misdemeanors. But in 2008, the American penal institutions seemed to reach something of a peak, with a total of nearly 2.4 million incarcerated, including jails and federal penitentiaries. After that, the number of inmates subsided slightly. But what is crucial here is that this rise in the prison population over the past generation or two was *not* due to a rising crime rate. Indeed, while incarceration rates have increased, the crime rate actually declined—and dramatically. Between 1993 and 2015, firearm violence in the United States declined by 40 percent, violent victimization by strangers declined by over 75 percent, female sexual violence victimization by more than 50 percent, and household burglary by over 50 percent (Planty and Truman, 2013; Harrell, 2012; Walters et al., 2013; Planty et al., 2013; FBI, relevant years; NCVS, 2015). To repeat: *At the very time that the crime rate (drug offenses included) had been dramatically declining, our prison population rose sharply.* Again, the tendency to incarcerate has lagged behind the crime incidence declines; only by the early years of the twenty-first century did incarceration begin to decline as well. Today, incarceration rates have begun to fall into line with the declining rates of illegal behavior. This has especially been true of non-victim crimes such as drug possession.

DOES PROHIBITION WORK?

In their book, *Drug War Heresies*, Robert MacCoun and Peter Reuter (2001) undertook the most thorough and systematic evaluation of drug prohibition ever attempted. They address the question of whether prohibition works—and in what ways—as well as whether legalization would work better. (We'll have more to say about legalization and decriminalization, or what MacCoun and Reuter call *depenalization*, in Chapter 14.) Is law enforcement effective in deterring drug use? Their answer is not likely to please either the prohibitionists (the hawks) or the legalizers (the doves). After assembling and evaluating the

available empirical evidence, MacCoun and Reuter conclude, “It is plausible that drug penalties could be substantially reduced without significantly increasing use” and that “legalization might lead to sizeable increases in use” (p. 74).

In assessing the data on fear of legal sanction as a deterrent to illegal behavior, MacCoun and Reuter conclude that perceived severity “plays virtually no role in explaining deviant/criminal conduct” (p. 83). For instance, variations in marijuana use, they conclude, are not influenced by perceived severity. In the United States, the Netherlands, and Australia, the elimination of or reduction in criminal penalties for small-quantity marijuana possession has had little or no impact on use (p. 96). Almost none of MacCoun’s undergraduates at Berkeley even know that California had decriminalized the possession of small amounts of marijuana a quarter-century previously (p. 97).

MacCoun and Reuter also examined the objective likelihood of drug arrest and incarceration. As we saw, between 1980 and 2019, state and federal arrests on drug charges rose from 581,000 to 1.6 million—a rise from 5.6 to 15.5 percent of all arrests. In 1980, marijuana arrests were 70 percent of the total; in 2019, they made up 43 percent of the total, while heroin and cocaine arrests constituted 30 percent. Over that same period of time, the number of commitments to state and federal prison increased ten times; roughly a fifth of state and nearly half of federal commitments are for drug convictions. Do these arrests and incarcerations argue for or against the effectiveness of law enforcement in reducing illicit drug supply?

While it is true that drug arrests and convictions have increased over the past generation, it is also true that drug transactions have increased as well. And the risk of arrest for a given transaction is actually quite low. Given the volume of sales and the number of cocaine transactions, for example, the likelihood of prison for a single episode of sale is roughly one out of 10,000—an extremely small risk indeed. The cards are enormously stacked against law enforcement. The capacity of the law enforcement to stamp out or seriously disrupt drug supply through seizing supplies and arresting traffickers is extremely limited. The reasons are many and varied.

- The drug trade is a multinational enterprise. This means that the drugs sold on the streets of American cities have their origin in dozens of countries around the world. Decentralization means that stemming the drug tide in one country results in smugglers from other countries stepping in and supplying the shortfall. As we’ve seen, this has been referred to as the “push down/pop up” phenomenon (Nadelmann, 1988, p. 9). The elimination of one competitor means greater sales for those that remain, and incentive for new actors to come onto the drug trade stage.
- Illicit drugs can be produced in extremely small spaces in many different locales around the globe. The world’s total production of illicit heroin is made from only 5 percent of the world’s opium production, most of which is legal. The entire world’s heroin supply can be grown on roughly 50 square miles of poppy fields, in tens or hundreds of thousands of scattered fields that are virtually immune to surveillance. Less than 1,000 square miles of land is devoted to the world’s illicit coca production, and this production can be shifted around to avoid detection.
- The drug trade is a major employer: It makes a significant contribution to the economy. Considered strictly from its economic impact, as I pointed out, selling drugs is

theoretically no different from any legal business. And it isn't only the top distributors who profit, it is anyone who derives employment from it. The "ripple effect" is enormous; when drug dealers spend money on the legal sector, they generate jobs for the entire economy. If the drug trade were wiped out in countries in which it is a major sector portion of the economy, billions of dollars and millions of jobs would be lost.

- The drug trade is a violent enterprise. Major smugglers command armies that are larger in personnel than many U.S. drug agencies, such as the DEA. Judges and police are bribed or intimidated into cooperating with illicit operations. In some countries, individual reformers are killed, indeed, their entire families are killed, resulting in compliance that is simply not possible in the legal sector.
- Intercepting a substantial proportion of the illegal drugs at the border of the United States is a virtual impossibility. In the most recent publication of the Federal Aviation Administration, during FY (Fiscal Year) 2019, the FAA provides service every day to 45,000 flights, carrying 2.9 million passengers for 10,000,000 flights, flying 25.5 million flight *hours*, per year. Roughly 5,400 flights are in the air in U.S. air space at any one time. There are 19,600 airports in the United States. Very nearly a quarter of a billion passengers fly either to or from the United States to or from locales abroad. There are 24.1 million square miles of oceanic air space surrounding the United States and 5.3 million square miles of domestic air space. Counting the many inlets, islands, and harbors, there are 90,000 miles of coastline where small, drug-laden boats can dock silently, surreptitiously, without attracting attention. Moreover, smugglers are extremely inventive in hiding illicit cargo.

Officials at the Department of Defense commissioned a study by the Rand Corporation to evaluate the feasibility of "sealing" off the borders from incoming illegal drugs (Reuter, Crawford, and Cave, 1988). The report concluded that it would be "extremely difficult" to reduce cocaine consumption in the United States by even as little as 5 percent, even if the government were to put into operation the most stringent and thorough interdiction program possible. Drug smuggling, the report stated, is too sophisticated, decentralized, diversified, flexible, versatile, adaptable, resourceful, and intelligent an operation to be slowed down by a few—or many—seizures and arrests. It simply can't be done, the RAND report concluded.

Once again, we are forced to face the distinction between absolute and relative deterrence. "Absent law enforcement," say the authors of this report, "the cost of moving a kilogram of cocaine [for instance] from the wholesale to the retail level," is "close to the cost of marketing aspirin." The huge difference between the cost of a drug at its point of origin to the ultimate customer "is presumably a consequence of domestic law enforcement" (p. 2). In sum, "most studies have only examined variations in levels of enforcement, rather than compare enforcement to its absence." And, "though the availability and price of drugs are only modestly affected by variations in the current levels of enforcement or interdiction, they would likely be more dramatically affected by the complete elimination of enforcement brought about by legalization or by substantial reductions in the penalties for use" (MacCoun and Reuter, 2001, p. 78). Full legalization, decriminalization, or depenalization, agree most observers, is almost certain to produce substantially lower prices, greater availability, and higher levels of use for most of the currently illicit drugs. In that respect, relative deterrence works.

To the extent that law enforcement can influence price, contrary to what some drug legalization advocates have claimed, both legal and illegal drug use is *not* completely inelastic and *is* sensitive to price. The higher the price, the lower are the levels of use—although for each substance or product, the elasticity index is somewhat different. For instance, for cars, it is -1.5 , which means that for every 1 percent increase in price, automobile sales decrease 1.5 percent; for movies, the elasticity index is -3.5 (p. 76). Closer to home, estimates for cigarettes “cluster around” -0.4 and for alcohol, -0.7 . The sale of cigarettes, the most compulsively-consumed of these products, is least sensitive to price—but sensitive nonetheless.

Obviously, for legal products, price can be set by the market. Do illegal drugs obey a different economic law? Is the demand for heroin and cocaine completely inelastic, totally unrelated to cost? Though law enforcement does not prevent or seriously disrupt illicit drug supply, it does make obtaining illegal drugs more difficult and more expensive and hence, lowers use. Remarkably, demand for illegal drugs *is* sensitive to price. For a highly addictive, illegal drug such as heroin, elasticity is lower than that for the legal drugs—in the -0.2 to -0.3 range. And for marijuana, a drug “with much lower dependency potential,” this figure is in the -1.0 to -1.5 range (p. 76). Estimates for cocaine exhibit a much wider range from one study to another, from -0.7 to -2.0 (p. 77). To the extent that law enforcement can influence price, price can influence demand—and hence, extent and volume of use.

We are forced to return to our distinction between relative and absolute deterrence. If there were no arrests, no seizures, no inspections at the border, no eradication programs, it is certain that the availability of drugs would be vastly greater than it is currently—and, in all likelihood, use would be greater as well. (Yes, relative deterrence does work.) But relying on arrests, seizures, and inspections to eradicate or drastically reduce availability and hence, use, is a fool’s errand, a delusional enterprise. The legalizer’s argument expresses this position well: The punitive drug policy has been in place since the 1920s; law enforcement has consumed hundreds of billions of dollars in federal, state, and local budgets, investigating, arresting, and incarcerating millions of users—a fifth of all prison inmates, half of all state prisoners—and yet the nation has a core of nearly 20 million current illicit drug users. (No, absolute deterrence does not work.) Once again, law enforcement cannot possibly “wipe out” or drastically reduce illicit drug supply or demand. To the extent that law enforcement “works,” it prevents a flood from becoming a tidal wave.

DRUG COURTS: TREATMENT, NOT PUNISHMENT

In 1989, during the crack epidemic, at a time when the criminal courts were being swamped with cases, Dade County, Florida, officials decided to adjudicate some of their drug defendants in a separate court system. The county instituted a *drug court* to divert defendants charged with narcotic offenses away from the penal system into an alternate program of counseling, therapy, education, job training, close monitoring—including regular urine tests—and threats of return to jail or prison if conditions of the program were not met. Drug courts bypass the usual adversarial system, with defense and prosecution, creating a system in which the judge “addresses each defendant directly,” requiring each

to respond directly to him or her. In drug court, “all the justice players are on the same team, making the same demands on the defendant and standing ready to impose the same penalties for noncompliance” (Finn and Newlyn, 1997, p. 360).

As of November 2020, according to the Department of Justice, Office of Justice Programs, there are over 3,000 drug courts in the United States, an increase of nearly a thousand over the past dozen years. Do drug courts work? Do they reduce drug abuse among defendants? Are they more effective than a jail or prison sentence? Do they save taxpayers money? Do they reduce the crime rate? Should the drug court program be expanded? The drug court system has been systematically and empirically examined in great detail by multiple researchers, whose findings are remarkably consistent. Although some variation exists with respect to rigor of these programs, well-run drug court programs are cost-effective in reducing recidivism, criminal behavior, and cost to the community.

Still, the program has its critics. Two types of critics oppose drug courts. The first is the conservative who believes that all drug offenders should be punished with incarceration, and that alternative programs of therapy and counseling are simply a way of letting criminals “get off the hook.” The second is the drug legalizers and libertarians who believe that the state has no right to hold the threat of imprisonment over the head of the user; after all, do we threaten the alcoholic with imprisonment if he or she doesn’t comply with the mandates of a treatment program? (Many radicals, as well as right-wing libertarians, believe that, by their very nature, any programs sponsored or endorsed by the government are suspect and probably harmful.) The addict needs treatment in the same way the cancer patient does, say legalizers. Treatment should be voluntary not coerced, and prison should not hang over the head of the addict like a Sword of Damocles.

At the beginning of this chapter, I referred to drug courts as a “crack” or a “chink” in the armor of drug law enforcement. Drug courts represent “a paradigm shift away from a predominantly punitive approach to one that focuses on treatment, investment in human potential, second (and third) chances, and restoration” (Goldkamp, White, and Robinson, 2001, p. 28).

How should we evaluate the drug court program? What constitutes success? The drug court program can be evaluated with respect to the achievement of two goals—individual and organizational. Individual goals are those that the program sets for the arrestee; they include a reduction in individual drug use and abuse and criminal behavior, and obtaining some form of employment. Organizational goals represent reduced community-wide rates of criminal recidivism and savings to the society in the form of the lower cost of treatment in comparison with incarceration. Have drug courts met these goals?

Drug courts are municipal and county-wide entities, and hence unstandardized and highly variable from one jurisdiction to another. As a consequence, it is difficult to characterize their operation and effectiveness, taken as a whole. Available descriptions and evaluations tend to focus on specific drug courts rather than drug courts generally. Nonetheless, enough programs have been described and analyzed by researchers for discernible patterns to emerge.

All drug courts set criteria for eligibility. Miami’s drug court is typical. To qualify for the program, arrestees must be charged with possession or purchase of a controlled substance. Defendants charged with trafficking, those with a history of violent crime, or those who have been convicted of more than two non-drug felonies are not eligible for the

program (Finn and Newlyn, 1997, p. 358). To the extent that other courts set broader or less stringent criteria for eligibility (accepting dealers, violent offenders, and/or defendants with more felony convictions), it will include in the program more higher-risk defendants; therefore, officials must be satisfied with correspondingly lower levels of success. Moreover, including higher-risk arrestees in a program will inevitably result in larger numbers who fail—are engaged in crimes in the community rather than being incarcerated. To the extent that the court sets more stringent criteria, its success rate will be higher, but fewer defendants will profit from the program, if it is effective. The community has a stake in and should be aware of the criteria the courts set for drug court inclusion, because these criteria impact on the community.

Measuring the effectiveness of drug courts is not as simple as it sounds. Most studies compare graduates of the program—arrestees diverted from the criminal justice system into the drug court who have completed a year in the program—with drug court dropouts. And in study after study, drug court “graduates” have lower rates of drug and crime recidivism than drug court dropouts. But since dropouts are already drug court failures, we assume that they will fail in other ways as well, including using illicit drugs and committing crimes. Basically, these studies “show that the successes succeed and the failures fail” (Goldkamp, White, and Robinson, 2001, p. 32). To understand the impact of the drug courts, we need a more meaningful comparison between defendants who have graduated from a drug court and comparable defendants who were subject to more traditional, and punitive, criminal justice treatment.

All qualifications registered, most observers agree that the drug courts have been successful in meeting both their individual and their organizational goals. One study (Peters and Murrin, 2000) examined the recidivism rates of drug court graduates with a matched or comparison sample of probationers and a sample of nongraduates of the drug court program. One measure of success: 6 in 10 of the enrollees in the drug court program were retained after a period of a year (p. 74). The average number of arrests per 100 participants in the year following the program “start date” was 22 for drug court graduates, more than 77 for a matched sample of probationers, and over 156 for non-graduates of the program. The number of felony arrests in the 30 months following entry into the program was just under 30 for graduates, 58 for matched probationers, and 109 for non-graduates. The proportions arrested in the 12 months following the program start date were 20, 43, and 79 percent, respectively; for the proportion arrested in the 30 months following the start date, the figures were 48, 63, and 86 percent, respectively (p. 83).

One of the very few studies of a drug court that randomly assigned eligible clients who were drug-involved, nonviolent offenders, to either drug treatment or treatment as usual—jail sentences, parole, and probation. Drug court clients were more likely than controls (“treatment as usual”) to participate in drug treatment and drug testing and less likely to be rearrested. When “differences in the opportunity to reoffend are taken into consideration, controls were rearrested at a rate nearly three times that of drug treatment clients” (Gottfredson and Exum, 2002, p. 337).

With some variation in outcomes, and sometimes with slightly less impressive figures when key variables are controlled, a substantial number of other studies have found the same thing. To summarize, the results of the available research indicate that “the drug court is an effective intervention.” Drug court participants tend to have significantly lower re-arrest rates than felony drug offenders who go through “traditional adjudication and

sentencing” (Spohn et al., 2001, p. 171). However, programs usually work only if there are frequent urine tests, routine appearances before the judge, active enrollee treatment participation, and the threat of sanctions—jail or prison time—if the enrollee does not meet program goals (Goldkamp, White, and Robinson, 2001, p. 67). And by reducing individual recidivism rates, drug courts also meet collective, organizational, or community goals by lowering the crime rate and, because drug courts are strikingly less costly than incarceration, saving the government and the taxpayer a great deal of money. One estimate has it that drug court costs \$3,500 per defendant per year, while it costs up to \$44,000 to incarcerate a convict for a year (Unze, 2007). At this writing, the most up-to-date report summarizing (and offering a guide to) the multiple recent studies on the subject, entitled *Drug Course*, a joint NIJ (National Institute of Justice), BJA (Bureau of Justice Assistance), and OJDP (Office of Juvenile Delinquency Prevention) publication. The report concluded that participants committed an average of roughly 46 percent fewer crimes, had about 57 percent fewer arrests, used about 66 percent less drugs, and were 37 percent less likely to test positive. It seems clear that drug courts represent an idea whose time has come.

Drug Treatment

Drug treatment programs represent a “crack” in the armor of a strict “lock’em up and throw away the key” policy toward illicit drug use. Indeed, drug courts and treatment programs are interlocked, since nearly half of all enrollees in treatment programs were referred by the criminal justice system. This means that drug offenders were given a choice: treatment or prison. They are being treated in preference to being incarcerated. The effectiveness of drug courts and treatment programs affirm that it is far better to treat drug abusers than to incarcerate them. Many observers view drug treatment as an alternative to—indeed, a rejection of—the “hawkish” arrest-and-incarcerate model.

Drug treatment is based on a pathology or *medical model*. It regards abuse and/or addiction as a disease much like cancer: There’s something wrong with the abuser/addict; he or she is “sick” in some way and in need of therapeutic intervention, or “treatment.” One set of assumptions held by the medical model is that the drug has seized hold of the abuser, the abuser has lost control of his or her behavior and is no longer morally responsible for his or her drug use. The medical model contrasts sharply with the moral model, which is the basis of the punitive or prohibitionist policy toward illicit drug use/abuse. Proponents of the moral model argues that the user/abuser/addict is very much responsible for his or her actions and chosen to engage in behavior that is immoral, a violation of what should be regarded as right, good, and proper. Enactors of such behaviors are must be punished to teach them and others a lesson.

Drug abuse may or may not be a disease or something like a disease; the abuser may or may not have lost control of his or her behavior; and the abuser may or may not engage in “immoral” behavior. These considerations are secondary to a far more important issue: Do treatment programs work? Do they get abusers and addicts to discontinue behavior that is both self-destructive and harmful to the society as a whole? And are they cost-effective? Do they save the taxpayers money, as compared with the costs of drug-related medical care, crime, and property loss? Speculating on the moral, philosophical, or ideological status of drug use is a separate and independent issue from whether and to what extent drug treatment works. The question of free will is probably unanswerable, and as

to whether or not addiction is a disease depends on what we mean by “disease” in the first place. But the attempt to unravel and solve these issues is unproductive with respect to assessing the effectiveness of drug treatment programs.

Evaluating Program Effectiveness

It is something of a cliché that most enrollees in self-help or treatment programs fail to change their behavior. In a given attempt, most cigarette smokers fail to give up cigarette use; over the long run, most weight loss programs fail—the majority of enrollees fail to take and keep off significant poundage; after treatment, most alcoholics go back to compulsive, destructive drinking; and so on. Careful studies of the majority of treatment programs show that they have a failure rate of 70 to 90 percent, depending on the criteria used.

Yet, when psychologist Stanley Schachter, a psychologist, interviewed the residents of a village on Long Island, in New York State, three-quarters of those who were smokers in the past had been successful in quitting permanently (Brody, 1983, p. C1). One possibility is that these smokers tended to be well educated, and a high level of education is related to successful cessation of smoking. But the experience of the drug-dependent Vietnam veterans, most of whom did not have high levels of education, indicates that abstinence is not as difficult as the dismally high rates of failure of treatment programs suggest. Fully 86 percent of soldiers dependent on heroin in Vietnam discontinued their use of the drug (Robins, Davis, and Nurco, 1974, p. 39). Moreover, almost all of them either gave up narcotics voluntarily or did not revert to use after “brief forced detoxification subsequent to their discovery” (p. 43; Robins, 1973). Only 5 percent of the addicts who gave up narcotics did so in a formal treatment program. What these and other findings suggest is that abusers—whether of tobacco, alcohol, food, drugs, gambling—are a very unrepresentative “tip of the iceberg.” They represent only those abusers who were unable to quit on their own, the “dregs” of treatment programs, that segment of the abusing population that has been most resistant to treatment. What about the success rates of drug treatment programs?

Before looking at the findings from the many studies that have examined drug treatment program effectiveness, we must establish several important qualifications.

First, reducing drug use or abuse to zero is an extremely unrealistic goal. It is crucial that we measure effectiveness by *reductions* in use, not total abstinence. Almost inevitably, if total abstinence is the goal, the overwhelming majority—if not all—programs will be found to fail.

Second, there will be some variability in effectiveness from one program to another. Some are better administered, monitor their enrollees more carefully, or are more adequately staffed or better funded than others. The big picture is important here—how programs perform around the country rather than in one particular instance.

Third, one type of program may work better for a particular type of client than for another: younger versus older, male versus female, polydrug abuser versus the exclusive heroin or crack addict, educated versus uneducated, and so on. It could be that programs need to be tailored or geared to the characteristics of their clientele.

Fourth, drug treatment programs are not in the business of performing miracles. Their clientele often have medical problems and psychiatric disorders, tend to be relatively

uneducated, unemployed, under-employed, or intermittently employed, are frequently involved in a life of crime. Also, most are polydrug drug users, dropouts or failures at more than one treatment programs, and, close to half the time, they are abusers of alcohol as well as drugs. Most of their enrollees are multi-problem clients. In fact, the more severe the client's problems when entering a drug treatment program, the lower the likelihood of success. Drug treatment programs are unlikely to turn people with multiple problems into law-abiding, hardworking, responsible, abstemious citizens. Once again, the goal must be a reduction in rather than a complete elimination of problem behavior.

How do we measure drug treatment success? What are the goals we want these programs to accomplish? In the 1800s, countless quack cures for drug abuse were announced, each to be unmasked for the fraud it was. In the 1950s, Synanon, a therapeutic community program, was trumpeted as a cure for former numerous heroin addicts, who—or so the claim went—were drug-free for a year or more during treatment. The problem with such claims is that they were always made in the absence of control groups, not to mention verifiable evidence. Flawed as they were, during the 1960s, investigations of the pioneering methadone maintenance programs were subject to empirical scrutiny and found to be effective (Dole and Nyswander, 1965). Subsequent research found these early claims to be inflated, due to their selection of clients with an optimistic prognosis and their less-than-careful tabulation of dropouts (Kleinman and Lukoff, 1977). Nonetheless, these early methadone maintenance programs have withstood the challenge; they grow in enrollments and remain one of several viable treatment options. And the early studies examining these programs have enabled later researchers to establish meaningful criteria with which to evaluate drug treatment programs. What criteria should we use to evaluate the effectiveness of a drug treatment program?

The reduction in the use of illicit drugs must be regarded as paramount here; second, a reduction in the use of alcohol, likewise, is important; third, a reduction in criminal activity, fourth, the acquisition of an education and marketable skills, along with a rise in employment: These must be listed as significant (Hubbard, et al., 1989, p. 5). And in an age in which budgetary constraints are ever-present and considerations of the bottom line are deemed essential, we are forced to ask, are these programs cost-effective? Do they save taxpayers money? Does the society come out fiscally and economically ahead by funding drug treatment programs?

Types of Programs

Four principal types of drug treatment programs, or treatment modalities, currently prevail in the United States: (1) methadone maintenance; (2) the therapeutic community (or TC); (3) outpatient, drug-free programs; and (4) self-help peer groups, such as Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). Each has strengths and weaknesses; each is appropriate for a somewhat different clientele. The therapeutic community is much more expensive than the other two programs and seems to work best for younger, polydrug clients. Methadone maintenance is used exclusively for narcotics addict and seems to work best for older clients who have tried a number of programs and failed to make a go of it. In addition, compared with the other two programs, very few maintenance clients are referrals from the criminal justice system. Drug-free, outpatient programs work best for clients for whom the other two are inappropriate. It is clear that the principle “one size

fits all” is wrong. Instead, a “full range of settings is necessary to treat the variety of drug abuse patterns currently prevalent” (Hubbard, et al., 1989, p. 98).

Methadone maintenance is used solely and exclusive to treat narcotic addicts or abusers, or, in the case of recently released convicts, former narcotics or addicts. (Or polydrug abusers who have a primary dependence on one or more narcotics.) Methadone is a synthetic narcotic that is administered to clients who are dependent on an opiate drug. Enrollees in which treatment programs are either stabilized on a particular dosage of methadone or are withdrawn from methadone, in stages, over a very long period of time—months, even years. Hence, when they are treated in the program, they are physically dependent on the methadone instead of the illicit narcotic (heroin or one or more of the other narcotics) they were dependent on previously. If patients were to suddenly withdraw from the methadone, they would undergo painful abstinence symptoms, just as they would have previously done had they been withdrawn from heroin. To be plain about it, these clients are methadone addicts. And since methadone is a long-acting drug (unlike heroin, which is a relatively fast-acting drug), the withdrawal symptoms with methadone are likely to be even more prolonged and painful than with heroin. If methadone maintenance programs were to be evaluated on the criterion of whether the addict achieves a drug-free existence, they would always be judged a failure because by definition, on the methadone maintenance program, he or she remains addicted.

Two types of methadone maintenance programs exist—the metabolic or adaptive, which administers high doses for long periods of time, in theory, for the remainder of the addict’s life, and the change or abstinence-oriented, which administers smaller doses for shorter periods of time and aims eventually to withdraw addicts from methadone altogether. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), there are about 180,000 enrollees in methadone maintenance programs nationwide.

Therapeutic communities (TCs) are residential or live-in programs. Phoenix House, Daytop Village, and Odyssey House are some of the hundreds of TC-type programs operating nationally. TCs operate under the assumption that a drug-free existence is a realistic goal for recovering drug abusers but an absolutely necessary one. (Tobacco use, presumably, is excluded.) The view of all TC programs is that substance abuse is not the abuser’s central problem. Instead, drug abuse is symptomatic of an immature, hedonistic, self-centered personality, a disorder of the whole person, not a single aspect of the person.

Outpatient drug-free programs do not include medication (such as methadone) in their treatment modality; they enroll clients who live in the community; and they administer some form of therapy and counseling in their treatment.

Peer self-help programs such as NA and AA are cost-free, not-for-profit organizations made up of thousands of local, autonomous groups, each of which is self-supporting. AA and NA are based on “The Twelve Steps,” which require that the member acknowledge powerlessness in the fact of substance abuse temptation, and submission to the higher power.

Do these programs work? Do they help enrollees reduce their current levels of drug abuse? Do they save the society money, save lives, reduce crime in the community? The earliest full-scale evaluation study of the effectiveness of drug treatment programs is referred to as DARP, the Drug Abuse Reporting Program; it looked at clients enrolled in treatment programs between 1969 and 1972. Its conclusions were that “treatment in

methadone maintenance, TCs, and outpatient drug-free programs [is] effective in improving post-treatment performance with respect to drug use, criminality, and productive activities” (Simpson and Sells, 1982, p. 7). As many observers in the treatment community say, cutting drug treatment is “penny wise and pound foolish.”

SUMMARY

Between 1980 and the early 2000s, on a per population basis, while the crime rate has plummeted, the rate of incarceration in the United States has increased three and a half times. The reason for the increase is threefold: parole is less likely to be granted; if granted, parole is more likely to be revoked; and drug offenders are more likely to be incarcerated. During the past two or three decades, while most indicators of drug use have declined, arrests and incarceration rates for drug possession and sale specifically have sharply increased. Since 1970, the total number of prisoners in state and federal penitentiaries has increased by more than seven times, and the number and percentage specifically for drug offenders have increased faster than the total. The length of sentences for non-violent drug offenses is very similar to that of many violent offenses.

The term “prohibition” refers to a punitive or criminalizing approach to dealing with troublesome behavior. Under drug prohibition, criminal penalties are applied to the possession and sale of controlled substances. Prohibitionists believe that the application of criminal penalties will reduce or contain drug use. The punitive or prohibitionist argument comes in two very different varieties—the strict and the moderate punitive varieties. The strict punitive version makes use of the logic of *absolute* deterrence, while the moderate punitive version is based on *relative* deterrence. The absolute deterrence argument holds that punishment can wipe out or substantially reduce drug use; the relative deterrence argument holds only that in the absence of punishment—in the absence of drug laws, arrests and incarceration, drug use would be comparatively higher. The moderate deterrence argument holds that the currently high rates of drug use does not provide evidence for the fact that drug prohibition has failed. Indeed, the opposite is the case: The drug laws deter enough drug use to make the enterprise a success; laws and law enforcement *contain* drug use, but they cannot wipe it out.

The United States harbors a mixture of drug policies for different drugs. Its drug laws, principally the Controlled Substances Act of 1970, define three different universes of drugs. First, there are the legal drugs, like alcohol and tobacco, which are regulated, available to anyone above a certain age but bought and sold under restrictions set by law; the Controlled Substances Act does not regard them as drugs at all. Second, under the Controlled Substances Act, there are the Schedule I drugs, which are completely outlawed. They include marijuana (legal as medicine under state law in 36 states, as well as Washington, DC), LSD, heroin (legal in medical treatment in the United Kingdom), and MDMA (Ecstasy). The possession and sale of such drugs are automatically a criminal act. One exception: The possession of small quantities of marijuana has been decriminalized in 13 states, has been fully legalized in 18 states, and is legal as medicine in 36 states as of June 2021. And the third type of drug under the provision of the Controlled Substances Act: The Schedule II through V drugs, which are legal if obtained via prescription and used for medicinal and psychiatric reasons, but illicit and illegal if obtained without a prescription and/or used for recreational purposes. These drugs include cocaine, methadone, the amphetamines, most of the sedatives and tranquilizers, and most of the narcotics.

An enormous volume of research has been conducted on the impact of drug prohibition. Two policy analysts, Robert MacCoun and Peter Reuter (2001), reviewed, summarized, and analyzed much of this literature. Their conclusion would be pleasing neither to the staunch advocates of the war on drugs (the hawks) nor to the legalizers (the doves). Increasing the severity in penalties for drug possession and sale have no deterrent effect whatsoever. “Sealing the borders” of the United States does not reduce consumption because the country’s borders are extremely porous. On the other hand, following the relative deterrence argument, removing all criminal penalties on illicit drug possession and distribution would, in all likelihood, increase use of and harm caused by the currently banned substances.

After more than a quarter-century of launching President Ronald Reagan’s “War on Drugs,” we’ve learned that criminal penalties for drug trafficking do increase the cost of drugs, and use is responsive to cost. Once again, the distinction between “absolute” and “relative” deterrence is crucial. Full legalization, or a legalization, decriminalization, or depenalization policy of any kind, is almost certain to produce lower drug costs, greater availability, and higher rates of drug use and abuse. But, once again, law enforcement cannot wipe out or drastically reduce drug use. To the extent that drug law enforcement “works,” it merely acts to keep illicit drug use from becoming too cheap, too available, and too attractive. Law enforcement contains or keeps the lid on rampant use. Perhaps that’s the best we can do.

In jurisdictions around the country, alternatives to incarceration have been instituted. Called “drug courts,” they offer the non-violent drug offender a program of diversion from the criminal justice system into some sort of treatment program. Although the evidence is complex, the results are mixed, and the outcomes are variable, the available evidence suggests that drug courts are effective in saving the community money and lowering the re-arrest rates of drug offenders.

Drug treatment programs, likewise, have a mixed record of successes and failures. Three waves of research have been conducted; their findings are more or less consistent. Not all clients who go through a program show improvements; as a general rule, the longer a client remains in a program, the greater the likelihood of improvement. Taken as a whole, drug treatment significantly lowers rates of drug use and criminal behavior, but, for methadone maintenance clients, little improvement is seen in rates of employment or alcohol abuse. In contrast, cocaine samples show marked declines in levels of alcohol consumption. The most recent studies show an improvement in risky, AIDS-related sexual behavior among treatment program graduates.

ACCOUNT: Interview About Drug Abuse, Arrest, Treatment, and Recovery

At the time of this interview, the respondent was 21 years old. Sally had been released early after serving one year of a three-year sentence for the sale

of a controlled substance. After being out of prison for four weeks, she began working at an office job. She is determined to go straight.

- Q:** When were you arrested and what was the crime?
- A:** I was arrested two years ago last December. I was 19. The crime was a Class B felony, the sale of a controlled substance in the third degree. The substance was cocaine.
- Q:** To whom did you sell it?
- A:** To friends. We were basically selling to friends because we wanted to do drugs. We'd get a couple of grams extra to sell to our friends. Somehow, the [undercover] police got wind of what we were doing and they wanted ounces. We were just selling maybe five or six grams a week, but the police wanted six ounces. We said we can't get six ounces, that's too much. That's how the police do it—they try to get you to sell a lot so that they have no problem convicting you. Anyway, the police kept calling us and calling us, they really wanted it, they said, and we thought about it and we thought about it. They really wanted to get us. The police bugged us for about two months, and so finally we said we could get six ounces. We finally sold coke to them, but we had come down to two ounces. They wanted at least that much so they could get a solid conviction. That was the most we could possibly get our hands on. Even when we went around trying to get it, people we dealt with asked us, "What do you want two ounces for?" We had been dealing with our friends for months and months, just small quantities, and all of a sudden, we were asking for two ounces. They figured something was up. But we said, don't worry about it. Being stoned, you're not thinking properly. . . . We made two sales to the cops. The first time was just to see if we could get it for them. That was only half an ounce. They said they wanted to check out what kind of stuff we could get. They didn't arrest us that time. A month later, they called us again, and we got them two ounces. The night we got it, the police came over to our apartment. We weighed out the coke, they

snorted a little with us, then they wrapped it up and put it in their pants. One cop told the other to give us the money. The second reached into his pants and instead of coming out with a wallet, he came out with a gun. At first, I thought we were getting ripped off. We had a lot of coke and a lot of jewelry and other valuable stuff in the house. I thought for sure they were going to rip us off. The funny thing is, I was relieved that they were cops. It didn't dawn on me that a ripoff could happen, but at that moment, I thought they were going to take everything we had. . . . The police arrested us about midnight. They took us to [the county seat], down in a basement of some building where they booked us and did all this paper work. They tried to get us to sign papers stating that we would cooperate with them. I wouldn't sign anything until I talked to my lawyer. . . . My codefendant, who was my boyfriend, was ready to sign anything, he was so scared. He just wanted to get out. My parents came down to the courthouse. . . . The police kept us there overnight. Booked us and kept us in a holding cell. We were arraigned the next morning. Then they let us go in our parents' custody. We went to court on and off for fourteen months. Then they incarcerated us. (After fourteen months,) we came back and the judge said three years and then they just took me away. I didn't expect to go to prison because I had been out on the street for so long. When I was free, I was scared (about the possibility of being incarcerated), but after more than a year had passed—I had a good job by then—just the arrest alone had scared me enough to stop what I was doing. The one night in jail after our arrest had scared me badly. I thought for sure they were going to give me a second chance. It was my first offense. . . . I went upstate, to (a correctional facility for women). I was confined for a full year, but I only served nine months there and three months in a much smaller facility near the city. . . .

Q: What were the conditions of your release?

A: I got two year's parole. The conditions are seek, obtain, and maintain employment. And report to my parole officer twice a month.

Q: Do you feel your parole officer is providing you with assistance and guidance?

A: Yes. I'm happy to have a very good parole officer. She seems to me to be one of the most caring officers I have met. I have spoken to others on parole and their officers are always threatening to violate them, to send them back [to prison]. My parole officer has not violated me [reported me for a violation], and I've been out for four weeks without finding a job. She could have violated me, but she's not into violating me, she wants to see me make it. We sit down together. I can really talk to her. I put everything on the table with her. We have a good relationship; she wants to help me. . . . She is very supportive.

Q: When you returned to your community, what adjustments did you have to make?

A: Well, the whole group of friends I had, I can no longer relate to them. Right now, I don't have any friends. . . . They're all doing the same things I was doing before I left. Drugs, drinking, going out all the time. I don't want to do that any more. When you start getting older, there's a lot of responsibility you have to accept, and these people don't see that. I try to talk to them, and all they say is, yeah, yeah, have a drink, do some drugs. I don't want that, but they won't listen. I just can't relate to them any more.

Q: What about your parents?

A: They are happy to have me home and out of prison. They just want me to stay home all the time, which I don't want to do. I like to go to the movies, I want to go out and see men. I don't want to sit home with my mother all the time. . . .

Q: Your father being a retired police officer, what effect did your arrest have on him and the relationship between the two of you?

A: He saw it coming. At the time, I wasn't living at home, but when I did come home, I was always stoned. Being a cop, he knew. My boyfriend and I had a brand-new car, a large amount of gold jewelry, new clothes all the time. And I was not working. My father put two and two together and figured out what was going on. I kept saying, don't worry, I'm not doing anything wrong. A month later, I got arrested. He was very upset, but he came to court with me all the time. He thought his being a cop would help me, but it didn't. If anything, everyone thought I should have known better. Your father's a cop, they kept saying. Through it all, my father was very supportive. When I went upstate [to prison], he came to see me, but the experience upset him so much, I asked him not to come any more. He just sat there, grinding his teeth. I could see by his face it scared him. Seeing all those people I was with, seeing his little daughter there—it didn't fit with him at all. But both my parents could see that I was doing well [in prison]. I had put on weight, I wasn't doing drugs, and I was thinking clearly. In a couple of months, my whole way of thinking was turned around.

Q: Do you feel the arresting officers and the district attorney were pushing for a conviction?

A: Oh, yes, they were pushing. They love to get convictions. . . . The cops tried to make us look like such big dealers, like we were such dangerous people. In reality, we were dealing a gram here, a gram there, maybe \$500 a week. We were dealing so we could snort without paying for it. We were also making a little money on the side. They tried to make us out as big and bad. Yeah, they were really out to arrest us.

Q: Did the authorities offer you any plea bargaining?

A: Yes, that's how I got the one to three years. They wanted my boyfriend and me to

cooperate with the police. To go around and set up other dealers. . . . We went to a couple of bars in the area. Getting drugs around here is no problem when you are into it. So we met a couple our age [in a bar], they were turning us on [to cocaine]. But we couldn't rat on them, we couldn't turn them in. I suppose if we could have (ratted on them) we probably would have gotten off (avoided the sentence). But if you have a reputation of being a rat, this causes a big problem in prison. So we kept lying to the cops, saying we couldn't find anyone [who deals cocaine]. Practically everyone else knew we had been arrested and they wouldn't deal with us. People were avoiding us. Eventually the cops stopped pushing us to become rats.

- Q:** What is your feeling about the criminal justice system?
- A:** When I was in prison, I was in a program . . . which is a positive alternative type of program. The program offers an environment which gives the inmates training in human development. It helped make my prison experience more rewarding for me. If it had not been for this program, the whole experience would have been very negative. . . . This program encourages inmates to look at themselves, to discover the good stuff about themselves. A lot of people in prison seem to hate themselves. You can see this by the way they treat themselves. Prisons need more programs, more counseling to get inmates to like themselves. To want to get out, to work, to support their kids, make a contribution, realize that they have not done the right thing. Some inmates feel they have not done anything wrong, even though they have shot someone or robbed a little old lady. Through these programs, they learn to get more self-respect. These programs make you think about yourself, your crime and your life. . . .

- Q:** How do you feel about the past and the future?
- A:** I would never want to go back, but it did me good. It took me out of my environment long enough for me to look objectively at everything. What I had been doing and where I was going. It motivated me. I have to be a better . . . worker because of my record. If anything, it gave me motivation. It was a good experience for me, but I would never want to do it again or wish it on anyone. But I tried to make the best of it. I had to. I wouldn't be straight right now (if I hadn't served time in prison). I would still be out smoking pot, drinking, doing drugs, and not looking for work. I just got a good job. I'm so glad it's all over.
- Q:** Do you feel that through your experience you have found a new you?
- A:** Right. I learned the hard way.

QUESTIONS

Do you think that Sally's sentence was fair? Would she have served a longer sentence if she had been a member of a racial minority? Did her arrest and incarceration deter her from selling cocaine? More generally, in the case of drug use and sale, do you think that law enforcement is an effective deterrent. Do you think that Sally's reform is permanent? Did she really learn to go straight—in her words, “the hard way”? If so, how is her case different from those of the many other drug arrestees who continue to use and sell even after a jail and prison sentence? Do we learn something from this case about the wisdom of arresting and incarcerating drug sellers and users? And if this policy is not wise, what's a more effective alternative deterrent? Or do we want to have a society in which drug use and sale are even more widespread that they are today? Does Sally's success story verify that prohibition is the best policy? Or is Sally an exception to the rule?

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