

Questions and Answers

We respond to every comment or question that comes to our Guestbook. If your question or comment is not addressed below, please send it to national@johnhoward.ca

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From: B & F

Sent: November-21-07 9:24 AM

To: national@johnhoward.ca

Subject: What planet do you live on?

Just read your nonsense that stiffer drug sentences etc will only lead to more problems and that you want to legalize drugs, What Planet Do You Live ON?

What should really happen is if you get caught selling drugs you get a minimum of 10 years no ifs or buts. If you get caught doing and using drugs you get a minimum of 2 years. Time to get rid of this once and forever. Trust me there is one hell of a lot a land and space from the Bowden Jail to the Rocky Mtns. Furthermore if you get caught bring drugs into a jail you get 20 years. Enough of this Liberal goody bleeding heart BS.

Throw the keys away on these drug dealers and oh by the way if they are from some other country that is really tough on drug crimes don't lock them up here send them there on a 1 way ticket, and whatever happens to bad so sad.

I have had enough of this drug crap going on in this country, maybe it's time we take idiot Trudeau's charter of rights and dig the bastard up and re bury him and his charter. Failing that it may just be time for the rise of the Peoples Republic of Alberta and to hell with the rest of the Bleeding Liberal Hearts in this whacko country.

B & F

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Dear B. & F:

What I really want to do is deprive organized crime of the oxygen that sustains it. My target is organized crime – their principle source of money derives from drug trafficking.

Our war on drugs is a replay of alcohol prohibition – and we ended that because it produced an explosion of organized crime, featuring corruption, shootouts and payoffs to police, judges and politicians.

The problem is prohibition. Drug use and abuse is a public health issue – criminal prohibition turns individual behaviour into a criminal matter and enriches organized crime.

And it's got nothing to do with the Charter of Rights because we had this problem – drug prohibition fuelling organized crime – long before 1981. In fact 2008 is the

100th anniversary of drug prohibition in Canada.

Did you know that, in 1908, the Chief of Police of Victoria BC warned the Canadian Government that opium prohibition would “corrupt his officers”?

Prohibition is the cure that is worse than the disease – but it’s so deeply entrenched that we can’t see our way out of it. And it’s killing us – just like it’s filling prisons in the US without either (a) lowering the crime rate or (b) reducing drug use.

We need to re-regulate currently illicit drugs along the lines of alcohol, beer and wine. We need – more precisely – to take it out of the hands of organized crime. We need to tax it and educate people about it. Most drug use is not abuse – just as most alcohol use is not abuse. And most drug users are not criminals SAVE for the fact that drugs are illegal.

But alcohol was once illegal too – and we learned the lesson of that: You cannot make illegal what people want to do to themselves. That’s not Liberal, in fact that’s Conservative!

Consider this: We already, in fact, regulate the production, distribution and sale of illicit drugs (including heroin, cocaine and meth) according to a system that delegates production, distribution and sale to the contest between organized crime and the police. This is a highly dysfunctional system of regulation. It leads to gang wars, fills prisons to bursting, but does nothing to reduce the use of drugs or minimize the harm of drug use. All it does is enrich organized crime and bloat police budgets.

There has got to be a better way – and my preference is for doing ANYTHING to reduce the power, resources and influence of organized crime.

Best ...

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From: Bob.
Sent: October-23-07 10:40 AM
To: national@johnhoward.ca
Subject: Repeat Offenders

Recent tv interviews have featured your spokespeople stating that incarceration for longer terms will not “cure” repeat offenders.

1. Where do you find such statistics to prove shorter sentences are best?
2. What is the Society’s rationale that proves that shorter terms mean better chances of not re-offending?
3. As “self styled “defenders of criminals’ rights, how do you defend this to victims of second and more offenders?

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Hello Bob ...

I'm happy to respond to your questions.

First: It's not so much a question of shorter sentences "being best" – it's a matter of longer sentences being WORSE. The former Home Secretary of the UK who, after an exhaustive study of what worked and what did not in the UK correctional system, summed up his findings with the observation that "Prisons are an expensive way to make bad people worse" – which has been known for a long time in this country too.

If you want to know more about how prison makes people worse, see Alison Liebling and Shadd Maruna, eds., *The Effects of Imprisonment* (Cambridge University Criminal Justice Series, 2006).

What we DO know, and what there is a lot of good evidence for, is that even the worst sexual offenders respond to treatment in the community if the community treatment supports are there. You can find some of that research on our website, or you can start here http://www.csc-scc.gc.ca/text/rsrch/compendium/2000/chap_23_e.shtml

In fact Canada produces some of the leading criminological research in the world. Google the name Jim Bonta and see how many hits you get. The government pays Bonta and others for their world-leading and cutting-edge research on "what works" in corrections ... and then ignores it when it does not agree with their ideology.

There is a lot of science on this, for example:

- 1) Andrews, D. A. (1995). The psychology of criminal conduct and effective treatment. In J. McGuire (Ed.). *What works? Reducing reoffending*. (pp. 35-62). New York, NY: Wiley.
- 2) Andrews, D. A. (1996). Recidivism is predictable and can be influenced: An update. *Forum on Corrections Research*, 8(3), 42-44.
- 3) Andrews, D. A., & Bonta, J. (1994). *The psychology of criminal conduct*. Cincinnati, OH: Anderson.
- 4) Andrews, D. A., Bonta, J., & Hoge, R. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice & Behaviour*, 17, 19-52.

We also know – with certainty – how to guarantee that a sexual (or any other) offender will repeat: hound him from address to address, town to town, treat him like a pariah, put his picture in the paper and a poster with his face on it in the community, create a moral panic in the neighbourhood where he lives and put him under great stress.

Second: Shorter terms do not necessarily equate to lower risk of re-offending: it's just that community-based treatment alternatives cost less and work better. Prison is a horrible place and most don't get nicer while inside. So the evidence argues that less time inside means a better chance of rehabilitation outside. Of course some people have to be incarcerated forever – Clifford Olson, Paul Bernardo. But these are a small minority.

You only read in the papers about the small number who re-offend. You seldom hear about the thousands of offenders who don't re-offend.

Third, we are not actually “defenders of criminals” but defenders of the “Corrections and Conditional Release Act” which is here <http://laws.justice.gc.ca/en/C-44.6/index.html>

Our Mission statement is “effective, just and humane responses to the causes and consequences of crime” and our actual job consists of holding the government to the enforcement of its own laws against itself plus bringing to the attention of Members of Parliament the best peer-reviewed evidence of what works in corrections according to the Government of Canada's experts.

You would think that it would be easy – or fairly easy – to get the government to take the advice of its own experts who, after all, have devoted their lives and careers to building a safe and effective correctional system. But sometimes, like now, ideology trumps evidence.

As an example: if you read the text of the introduction to the National Anti-Drug Strategy (which is here: <http://pm.gc.ca/eng/media.asp?id=1837>) you will note the [curious] omission of the words “evidence-based” and “harm reduction” — two foundational principles endorsed by every expert body from the *World Health Organization* (WHO) to the *Canadian Medical Association* (CMA).

So you won't be surprised to find, if you are following the debate, that the expert community – *i.e.*, those who actually study crime who are not remunerated by the police – have come out against Bill C-2 and the crime agenda. According to the government's own numbers, crime has been trending downward for 25 years – as has the fear of crime. So it seems like a curious time to ‘get tough on crime.’

All we ask is that criminal justice policy be informed by what the evidence says “actually works” to reduce crime and victimization.

We have deep sympathy for victims. Make no mistake. Our work is dedicated to creating *fewer* victims through crime prevention and through doing what the evidence shows works best to prevent offending and re-offending.

I hope this responds to your questions. Please have a look through our website, where we have archived position papers and reports.

I'm happy to answer further questions.

Best ...

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From: Gary
Sent: October-05-07 11:23 PM
To: national@johnhoward.ca
Subject: Drug Policy

This is a message for Craig Jones:

I was most impressed by your comments on CBC earlier today. You gave such a clear exposition of the problems with our drug policies that you have inspired me to explore devoting an issue of our magazine to the topic. It seems to me such a clear case of ideology trumping rationality – something we are strongly opposed to.

I had been thinking for some time of doing an issue on this. Each of our issues is devoted to a single topic; the most recent ones have been "Justice and Revenge" (just out), "Minding the Media" (summer) and "The War on Science and Reason" (spring). In the past we have covered various stories on legal injustices, including a piece on Robert Latimer and extensive coverage of the trial of Evelyn Martens.

The theme of the issue, which would probably come out in the spring of 2009, would be something like "Drug Policy and Crime". We would subsequently distribute it to all MP's.

Would you be interested in writing a lead article for this issue? What I have in mind is a clear exposition of the problem with our drug policies, in all of their absurdity, and then a description of what a rational person, and a rational society, would try to do about it.

Hope you will consider this Craig. You can read about us on our website HumanistPerspectives.org We are a small but rapidly growing magazine which started in 1967 (as the Humanist in Canada) but in the last few years has more than doubled in subscriptions to about 1,800. We also sell about 400 on newsstands across the country. I'd be happy to send you some copies of the magazine.

Best regards,
Gary

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Dear Gary ... Thanks for your kind invitation. How's this?

Drugs, Drug Policy and Crime: 100 Years of Asinine Law

by Craig Jones, Humanist Perspectives, Issue 164, Spring 2008

Social policy in Canada around drug use and abuse has always been driven by a moralizing impulse to employ the criminal law to achieve social purposes for which it is ill-suited, but for which nothing else will do. In that vein, drug prohibition makes a situation that is already bad – the use and abuse of certain drugs – worse, by adding the stigma of criminal behaviour to what is essentially an issue of personal choice and, in some instances, a public health problem.

Social policy – if the law is not to be made into an ass – ought to be constrained by a Hippocratic Ethic: “Don’t make things worse.” According to this standard, drug prohibition fails. In what follows, I will review some of the ways in which drug prohibition ‘makes things worse’ and makes an ass of the law, including a short tour through the abuse of language, a brief review of how we got here, and a way to think about how to escape from the intellectual, historical, theoretical and policy dead-end that prohibition represents.

The National Anti-Drug Strategy, (NADS) introduced by the current government in October 2008, is the latest step in a long crusade to proscribe what is essentially consensual behaviour. NADS targets those who self-administer from a list of specific substances, some of which occur in nature and others of which are human creations. The text of the Strategy makes no reference to Canada’s two biggest drug problems – tobacco and alcohol – which between them account for countless thousands of deaths and injuries every year in every part of the country. The NADS is silent as well on the scourge of prescription drug abuse, though this negatively affects many thousands of Canadians. The NADS arises out of a protracted struggle by certain segments of the Canadian polity to employ criminal sanctions against others. It has its roots in the turbulent early 20th-Century when the ascendant social classes sought ways to entrench their control but found themselves constrained by traditions of law and respect for individual rights. This social struggle turned on the legal oppression of specific persons and groups while simultaneously protecting the individual, business and political rights of others. This balancing act was resolved, in part, through the imposition of legally enforceable discrimination that continues in today’s National Anti-Drug Strategy.

It has to be counted as a public relations coup that Canadians so seldom call our drug control regime by what it is: prohibition. The material fact is that Canadians have been pursuing a decaffeinated version of the American “war on drugs” since at least the beginning of the 20th Century – but our public discourse has never accurately reflected this lived reality. It could be that the late-Victorian spectre of the “drug fiend” has so taken hold in the public imagination that we have yet to break its enchantment of our critical faculties, or it could be that the unrelenting clamour for harsher measures from south of the border has inured Canadians to the real harms and consequences of pursuing a strategy that cannot and does not deliver on its promises. “Political language,” George Orwell famously opined, “is designed to make lies sound truthful and murder respectable, and to give an

appearance of solidity to pure wind.”¹ And, as we will see in what follows, there is no language more political than that which is intended to convince that what has not worked will eventually work if we simply do more of it.

Prohibition fails on three counts. It fails historically since, at least, the Garden of Eden. It fails in theory because it employs a truncated model of human nature. And it fails in practice because, after 40 years of war, illicit drugs are cheaper, purer and more easily available. Finally drug prohibition fails because it offends what I will here call the “don’t make things worse” requirement – a Hippocratic standard according to which we can judge the success of social policy. This standard can be stated succinctly: A social policy choice or strategy is to be condemned if it makes what is already bad and/or problematic – like drug or alcohol use and abuse – worse than it would be in the absence of that policy, in this case through the employment of the criminal justice system.

The Origins of Drug Prohibition in Canada

Drug prohibition – as it found expression in the Opium Act of 1908 – is an unfortunate legacy of our racist past. Our prohibition policies are only comprehensible through an understanding of early 20th-Century anti-Chinese racism – what was then called “the Chinese question.” The Anglo-American white majority was still consolidating its political, economic and social supremacy in western Canada when opium, and the influx of Chinese immigrants, presented certain challenges to this early thrust of capitalism. A solution was found in the identification of ‘aliens’ as the source of labour and economic problems then confronting British Columbia society. The Opium Act re-defined what essentially was a labour supply problem and created a “Yellow Peril” phantom, driving a wedge between competing labor organizations to the benefit of the federal and provincial Liberal parties.² The fear and hatred of “the Asiatic” explains the morally fervent nature of the law, its targets and exclusions, and the peculiar energy with which it was enforced.

No less than the fate of western civilization was seen to be at stake, according to Hansard transcripts from the era. Certain people, notably L.J. Ladner, the Member of Parliament from Vancouver South, saw the Opium Act as the stone that would kill two birds: the scourge of an addictive drug and the suppression of the despised racial group with which it was associated. Ladner addressed the House of Commons in 1922 on opium addiction: “Here we have a disease, one of many directly traceable to the Asiatic. Do away with the Asiatic and you have more than saved the souls and bodies of thousands of young men and women who are

¹“Politics and the English Language” (1946).

²Elizabeth Comack, “The Origins of Canadian Drug Legislation: Labelling vs Class Analysis,” in Thomas Fleming, Ed., *The New Criminologies in Canada: Crime, State and Control* (Toronto: Oxford University Press, 1985), pp. 65-86.

yearly being sent to a living hell and to the grave through their presence in Canada.”³

People like Ladner and others at the time – for example William Lyon McKenzie King and Emily Murphy – were driven by an inter-related set of anxieties about opium and the Chinese. One anxiety drew from the belief that humans were essentially fallible creatures who, but for the vigilance of their betters, would be tempted to dire harm by exotic and unscrupulous aliens. This anxiety dovetailed with the generalized fear that in moving so far so fast the British Empire had come up against a force that could weaken imperial supremacy through the exploitation of the Edenic fallibility of which Victorian-Christian revivalists were so mindful.

The theme of racial pollution runs through the public discussions of the day: there is recurring reference to how easy it is for young, innocent white women to fall under the malevolent influence of Chinese opium users. A passage from Emily Murphy’s *The Black Candle* (1922) puts it concisely: “the traffic always comes with the Oriental, and ... one would therefore, be justified in assuming that it was their desire to injure the bright-browed races of the world. Some of the Negroes coming to Canada ... have similar ideas, and one of their greatest writers has boasted how ultimately, they will control the white man.”⁴ These pollution and domination tropes recur frequently in subsequent campaigns to win over support for increasing political oppression through drug prohibition. Across North America we can follow the history of a generalized fear at the prospect of white women falling under the magical influence of black jazz musicians and their ‘demonic swing music’ or into the clutches of the inscrutable Chinese. *The Black Candle* – compiled from a series of alarmist *Maclean’s Magazine* articles penned by Emily Murphy – features a grainy photograph of a young white woman lying in a bed with a black man. The message was unambiguous.

There were, of course, countervailing voices. It was commonly understood that opium and its derivatives were addictive to many people – though not all. This was known at least since its widespread use for battlefield injuries in the American Civil War (after which addiction to morphine was known as “soldier’s disease”). But there was conflict between the medical and pharmaceutical communities over the right to prescribe a growing class of elixirs, tonics and concoctions.⁵ The biggest importers of opium at the turn of the century were

³Quoted in Shirley J. Cook, “Canadian Narcotics Legislation, 1908-1932: A Conflict Model Interpretation,” *Canadian Review of Sociology and Anthropology*, 6:1 (1969), p. 43. See also Elizabeth Comack, “The Origins of Canadian Drug Legislation: Labelling vs Class Analysis,” in Thomas Fleming, Ed., *The New Criminologies in Canada: Crime, State and Control* (Toronto: Oxford University Press, 1985), pp. 65-86.

⁴Emily Murphy, *The Black Candle* (Toronto: 1922), p. 186-89.

⁵Daniel Malleck, “Refining Poison, Defining Power: Medical Authority and the Creation of Canadian Drug Prohibition Laws, 1800-1908,” (PhD Dissertation, Department of History, Queen’s University, 1998).

Caucasian-owned pharmaceutical companies, giving one doctor cause to observe that:

The indiscriminate use of opium is a very deleterious habit, yet that is no justification for making the use of it a criminal offense. The habit is principally among the Chinese. Have we the right to make criminals of people, because they have learned the habit in their younger days and now desire to continue it? They give no offense except by injuring themselves. Much of the habit of using opiates, morphine or cocaine, has been brought about by its indiscriminate use as authorized by physicians. Why not punish the physicians?⁶

The Opium Act of 1908 and the harsher and more punitive Opium and Narcotic Control Act of 1911 established the legal and regulatory template for all subsequent drug control acts in Canada and embedded in the legitimacy of discrimination as public policy. The inclination to punish and incarcerate, rather than offer treatment and the opportunity for rehabilitation, can best be seen in the context of capitalist class formation and the deployment of a particular political instrument (the criminal law) by one social group against another. In this respect, the law imparts a veneer of respectability and legitimacy to what would otherwise be a strategy for political marginalization of a stigmatized minority. And so it remains to this day. The strategy of criminalization and legal sanction – which is demonstrably the most expensive and least effective of all available alternatives – upholds a particular set of ideological, moral and racial interests which are not that different in composition from their antecedents. What is perhaps less well known, and deserving of reflection, is that this was achieved with barely a word of debate in Parliament – and that the refinement and amending of the relevant laws and regulations was delegated to the enforcement authorities themselves. Thus, from very early days, the crafting of Canada's drug prohibition legislation was the responsibility of the same people charged with its enforcement. And they revised the law and regulations to ensure that their organizational interests – not public safety or the interests of citizens – were served. In the end, the laws concerning drug prohibition came to be an instrument toward the bureaucratic advancement of law enforcement authorities.⁷

The Intellectual Dishonesty that Attends Drug Prohibition

Prohibition has never been able to survive an examination of its principles and has, therefore, come to be enveloped in lies, distortions and half-truths. Take this current example from the *Ottawa Citizen* of 12 October 2007:

⁶House of Commons Debates, 1910-1911: p. 399.

⁷P.J. Giffen, S. Endicott, S. Lambert, *Panic and Indifference: the Politics of Canada's Drug Laws: A study in the Sociology of Law*. (Ottawa: Canadian Centre on Substance Abuse; 1991).

It's no secret that illicit drugs fuel organized crime and foster petty crime. They also undermine healthy families and safe communities across Canada.⁸

It's not a secret. It's a lie. It's not drugs *per se* that fuel organized crime, foster petty crime and undermine healthy families and safe communities. It's the *prohibition of drugs*. This distinction, though, is rarely permitted to confuse "drugs are bad" political language. Drug abuse is a problem for some people (though actually many fewer than such claims would have us believe), but criminalizing drug use converts what is essentially an issue of personal choice – a health or lifestyle decision – into a social and criminal justice problem thereby adding the stigma and complication of criminalization. There is no justification for drug addiction becoming an issue of concern to the criminal justice system unless the people so affected inflict themselves on other people. Criminalizing what is actually a personal issue makes worse what is already bad and offends against the Hippocratic injunction to "not make things worse."

Another example of intellectual dishonesty is the conflation of use with abuse. According to the logic of abstention, which is the basis for prohibition, it's a distinction without a difference: there is no such thing as the safe, moderate or non-abusive use of an illicit substance. We have long gotten over this misapprehension concerning alcohol. The vast majority of users know from direct experience that moderate and non-harmful use of this drug is hardly exceptional. The distinction between use and abuse of illicit drugs is not lost, fortunately, on those who have studied the matter. It is fundamental to the logic driving the recommendations in the 2002 report from the Senate of Canada which, like its intellectual predecessor, the Le Dain Commission in the early 1970s, commands our respect for its pursuit of conclusions grounded in evidence untainted by ideology or moralizing.⁹ Also like the Le Dain Commission report, the Senate report of 2002 was ignored by politicians too cowardly to do what was right rather than what was expedient.

In contrast to the clear thinking and coherent logic of Nolan's 2002 Senate Report and Le Dain's findings, the NADS echoes the drug war rhetoric we hear from the United States, and unlike the two reports mentioned above, is firmly rooted in the Alice in Wonderland logic of prohibition: "We have a two-track approach. If you're addicted to drugs, we'll help you. But if you deal drugs, we'll punish you."¹⁰ The expert evidence – missing from the NADS as it is from the rest of this government's crime agenda – is that dealers and users are the same people: dealers frequently sell in order to finance their own use. There is no duality

⁸The Ministers of Health, Public Safety and Justice. The exact wording has appeared in a couple of different media outlets, giving rise to the likelihood that it's a form letter.

⁹"Cannabis: Our Position for a Canadian Public Policy," Senator Pierre Claude Nolin, Chair, September 2002 and "Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs," Gerald Le Dain, Commission Chair (Ottawa: Information Canada, 1972).

¹⁰From the PM's introductory remarks to the National Anti-Drug Strategy, Winnipeg, Manitoba, 4 Oct 2007.

comprised of evil dealers and victim addicts in the real world of drug use and abuse – the real world with which the NADS makes no contact.

Another prohibition-related lie is called the “stepping stone hypothesis” or “gateway theory” of drug use according to which a user is compelled to graduate from one stage to another until addicted to heroin, cocaine, crack or methamphetamine. Hence cannabis, the most widely used and least harmful or addictive of all illicit drugs, must be vigorously suppressed because, allegedly, every heroin addict started with cannabis. Such *post hoc ergo prompter hoc* logic would not pass the laugh test in an undergraduate paper – but drug war defenders routinely employ it.¹¹ If there is such a thing as a gateway drug – a substance that primes the brain for addiction – it is tobacco, which is legal and regulated and backed by powerful corporate interests. The gateway theory fails to explain why Canadian society is not awash in heroin addicts, given our consistently high rates of cannabis use. The gateway theory employs a form of logic that requires us to suspend critical reflection. It is the logical equivalent of outlawing bicycles to impede the progression to motorcycles. But the frequent evidence-based debunking of the gateway theory does nothing to impair its appeal to those committed to prohibition.

That prohibition seems to call into being such an array of deceits, distortions and half-truths is – or ought to be – an indictment. But after 100 years, drug prohibition’s failure is not subject to ordinary standards of logic or evidence. It is a “policy zombie” – intellectually dead, for lack of supporting evidence but still wreaking havoc because it is useful to certain interests.

How Prohibition Works and Why it Doesn’t

Prohibition is based upon two complementary principles of human behaviour: that people are deterred by the threat of punishment, and that people can be made to see the error of their ways through punishment. Is there any evidence that this model actually works? Actually there is lots of evidence that deterrence doesn’t work – and no evidence whatsoever that punishment does. In a wide-ranging meta-analysis of sentencing severity and its consequences for crime rates across the United States, Tony Doob and Cheryl Webster conclude that “the hypothesis that harsher sentences [would] reduce crime through general deterrence ... is not supported in the research literature.”¹² If anything, we know that threat of harsh sentences affects *how* a crime is committed, but not whether. Does punishment provoke reform? – which is the other presumption upon which prohibition is

¹¹*Post hoc ergo prompter hoc* – Latin for “after this, therefore because of this” expresses the confusion of correlation with causation.

¹²Anthony Doob and Cheryl Marie Webster, “Sentence Severity and Crime: Accepting the Null Hypothesis,” in Michael Tonry, Ed., *Crime and Justice* (University of Chicago Press, 2003), pp. 143-95. The authors concede that although this conclusion has been apparent for some years, researchers have been reluctant to state it openly.

based. No. In fact imprisonment for drug-related crimes not only hardens already anti-social attitudes but may actually be a cause of crime itself. This (possibly) counter-intuitive conclusion emerges from another meta-analysis of the consequences of imprisonment for future crime rates. The authors assess panel data – which enables the re-analysis of very large data sets from numerous checks – to conclude that “incarceration may increase the likelihood of crime after release.”¹³

Drug prohibition operates by maintaining an artificially high price for illicit drugs so that, in theory, rational consumers are encouraged by the law of supply and demand to make choices other than those that involve the purchase and/or consumption of the drugs. The artificially high price is a result of the legal and moral stigma attached to trading in the prohibited substance. In theory, rational actors make choices on the basis of this information. That creates incentives for consumers and sellers to abandon activities stigmatized by law and to migrate to activities where the consequences are either non-existent or so small as to be manageable. This logic rests on classical micro-economics and the presumption of rationality as it is understood in economic theory. *Homo economus* will not, accordingly, trade in or consume substances prohibited by law, particularly if those substances are more expensive than legal alternatives. So, the higher the price to the end user, the greater the incentive to choose alternatives that lessen the cost and the risk of discovery.

The reality is different. The demand for drugs, particularly highly addictive drugs like heroin or crack, turns out to be *inelastic* (unresponsive to market signals). When heroin gets expensive, users simply turn more tricks or break into more cars or houses, or do whatever they need to do to stave off withdrawal. The typical user calculates that the actual odds of being caught with a quantity of illicit drugs or doing a break in approaches zero. Since drug transactions always involve willing buyers and sellers, engaged in consensual behaviour, no participant in a typical drug transaction has an incentive to blow the whistle on the other. In order for police to apprehend a drug user or seller, they must actually witness the transaction or be able to prove to a court that they had good reason to think that a drug transaction was underway. This has led to “testilying” – the act of testifying beyond what the evidence will bear, or of distorting one’s testimony on the stand in pursuit of a conviction.¹⁴ The inelastic demand for drugs and the inability of police to do more than temporarily irritate established drug markets is frustrating for police drug squads.¹⁵ This organizational frustration has given rise to police

¹³Lynne Vieraitis, Tomislav Kovandzic and Thomas Marvell, “The Criminogenic Effects of Imprisonment: Evidence from State Panel Data, 1974-2002,” *Crime and Public Policy*, 6:3 (2007), pp. 589-622.

¹⁴Alan M. Dershowitz, “Controlling the Cops; Accomplices To Perjury,” *The New York Times Online*, May 2, 1994 accessed on 24 January 2008 at <http://query.nytimes.com/gst/fullpage.html?res=9D07EFDD1030F931A35756C0A962958260>

¹⁵See the illuminating essay by former drug cop Gil Puder at http://oldfraser.lexi.net/publications/forum/2001/03/section_05.html

corruption and abuse of power of which the Los Angeles Rampart Division scandal is only the most egregious.¹⁶

Prohibition creates the maintenance of an artificial scarcity, ensuring that prices remain higher than they would in a market not characterized by the threat of criminal stigmatization and incarceration. A risk tax is the burden one assumes for engaging in a given enterprise. As the penalty for apprehension goes up, so goes the risk tax – making the supply of the end product that much more profitable to those willing to assume the peril. In this manner, prohibition sustains the drug trade since – except for Afghanistan under the Taliban – no penalty has been sufficiently draconian to adequately deter new suppliers or consumers.

Keeping Organized Crime in Business

Without artificially inflated drug prices, organized crime has no interest in the drug trade. Prohibition through legal stigmatization and the threat of incarceration raises the risk tax for suppliers so that prices – which translate into profits – are maintained at a high level. According to one conservative estimate, 10–15 % of heroin and 30% of cocaine is thought to be intercepted, according to police statistics from various years. Drug traffickers have gross profit margins of up to 300%. The upshot is that least 75% of drug shipments would have to be intercepted before the traffickers' profits were hurt.¹⁷ These artificially elevated profits attract new entrants and increase the stakes for existing players, because new entrants threaten market share and profits from existing purchasers. The resulting gun violence necessitates a response for which only the police agencies of the state are appropriate. A symbiotic relationship builds between organized crime – seeking drug profits – and the police, seeking bureaucratic and organizational growth. Both entities benefit from the activities of the other, in spite of the fact that one entity (the police) are allegedly trying to put the other out of business. The new National Anti-Drug Strategy aspires to “put organized crime out of business.” It will have the exact opposite effect. This symbiotic relationship between the police and organized crime is the dirty secret of drug prohibition, an unintended and especially perverse consequence that benefits only the contestants and harms everyone else.

Unfortunately, where prohibition is concerned, evidence, logic, theory and history become the playthings of ideologues – irritants to be ignored when in conflict with pre-ordained conclusions. Citizens concerned about the resulting consequences for society – the growing influence of organized crime combined with an ever-burgeoning law enforcement system – ought to contemplate the costs of this strategy. These laws enrich organized crime, expand the enforcement

¹⁶See the PBS *Frontline* documentary “L.A.P.D. Blues,” online at www.pbs.org/frontline.

¹⁷Richard Davenport-Hines, *The Pursuit of Oblivion* (New York: W.W. Norton & Company, 2001).

agencies of the state, and limit the liberties of citizens. They corrupt our police officers, incarcerate non-violent offenders and consume scarce legal resources.

So the *status quo* is unworkable – both in theory and practice – and that leaves us asking: “What then?” My answer is re-regulation.

For the Re-Regulation of Psychotropic Drugs

Let’s start by being clear: Canadians *already* regulate the production, distribution and marketing of currently illicit drugs from cannabis to methamphetamine – though we don’t call it “regulation” – but we regulate in a manner that encourages and promotes criminal activity and fuels the encroachment of state power on individual liberties.

If we already regulate, but our mode of regulation delivers bad consequences – particularly the enrichment of organized crime – then we ought to ask how we might re-regulate in order to do less harm, and mitigate or moderate the consequences we condemn. Every different model of re-regulation will produce its own consequences – intended and unintended – and we must be adult in our acknowledgement of this. Social policy choice is the domain of “choosing your poison” because there is only the practice of trading of one set of problems for another informed by the best evidence and the courage of honourable convictions, which should be grounded in the requirement “to not make things worse.” The evidence of history, theory and policy convinces me that if we could regulate in a manner that greatly reduced the power and influence of organized crime, we would free up more than sufficient resources to treat, prevent and reduce harm from drug abuse *without provoking more drug use*. In fact, although the evidence is not easy to assemble on this, by terminating prohibition we might see a modest decline in all forms of drug use. We would certainly see a dramatic drop in criminality associated with drug use and that – on its own – would satisfy the “do not make things worse” injunction.

What form might this re-regulation take?

Effective re-regulation would conform to the best evidence arising from the psycho-pharmacological literature. Access to currently illicit drugs would be easier or harder, depending on their pharmacological effect, not according to their power to inflict individual or personal costs. The over-riding requirement is not that individuals don’t hurt themselves, but that the activity of hurting oneself – which some drugs clearly do more than others – not be externalized to the community either through the enrichment of organized crime or the expansion of police powers to intrude on individual choice. The less harmful the drug (e.g. cannabis) the easier the access and – as one ascends the level of psycho-pharmaceutical toxicity – access becomes more burdensome (but never so burdensome that it tempts organized crime to supply unmet demand). There is no

escaping the reality that some forms of behaviour – including drug taking – impose costs on individuals and communities which will, inevitably, be socialized across the community. The argument here is that, in re-regulating the criminal justice system out of the equation, we reap enormous savings, not only in opportunity costs of police resources, but also in less easy quantifiable savings to individuals and their life histories. The costs to the medical and social care system are borne irrespective of whether we also employ the criminal justice system – but there may be savings here too because in the absence of prohibition we are no longer burdened by the attendant compulsion to lie, distort and mislead (discussed above).

Equally important, no drug – especially cannabis – should be privatized in any sense whatsoever. Tobacco became as big a health problem as it did because it had the forces of the private market manipulating its addictive properties¹⁸ – ensuring profits and corporate growth. Where the production of any substance is controlled by private, profit-seeking entities, there too will reside the impulse to enlarge market share through manipulating the product to make it more appealing. This means that the state would produce – or cause to have produced – all currently illicit drugs and make them available according to evidence-based criteria, seeking to balance the right of people to alter their consciousness in the manner of their choosing with protecting the community against the enrichment of organized crime.

We cannot stop some people from hurting themselves, but we can more humanely and rationally limit the damage they inflict on themselves and others – and this would do less harm. We can educate, provide treatment and offer alternatives to the most dangerous drugs. If, and this is much to be desired from a public health and criminal justice standpoint, we could reduce the problematic consumption of methamphetamine, heroin, crack and cocaine – even at the cost of greater cannabis consumption – we would have found a way “to do less harm.” The psycho-pharmacological properties of cannabis vs. methamphetamine, heroin, crack and cocaine guarantee this. In any event, whatever the eventual patterns of consumption we would have sucked the life-sustaining oxygen out of organized crime. How could this outcome be worse than the status quo?

Conclusion

Drug prohibition is unethical. It offends the worth, dignity and autonomy of the individual and the right of every human being to the greatest possible freedom compatible with the rights of others. Prohibition is based upon a model of human nature that embodies the need to punish others for their own good. Prohibition is

¹⁸I am referring to the discovery – within the last 20 years – that the tobacco companies have been adding addictive nicotine to the raw product in order to ‘hook’ their customers. Though they publicly denied it, their internal documents belied them. See Stanton Peele, *The Tobacco Papers*, online at <http://www.tobaccopapers.com/>

irrational. It surrenders the sensible regulation of addictive and toxic substances to a never-ending struggle between the profiteering forces of organized crime and the privacy-encroaching forces of the criminal justice system. Prohibition ignores science while endorsing a conception of human welfare that makes the best (abstinence) the enemy of the good (controlled, harm-reduced, consumption). Prohibition encroaches upon personal privacy because the private and consensual nature of drug transactions tempts prohibition's operatives – particularly the interdiction and enforcement elements of the state – ever deeper into personal lives to apprehend offenders. Police must rely on less-than-honorable means: informers, electronic surveillance, warrants, wire-taps, and plea bargaining. As drug prohibition has matured in the last 100 years, it has grown and expanded in numerous and sophisticated ways. The advent of the digital age has multiplied the liberty-infringing powers of prohibition agencies.

What of the balance between personality liberty and social responsibility? Prohibition ventures to build a world on the idea that the altering of consciousness is to be circumscribed according to a particular value system rooted in a particular historical place and time. Some means are legitimate and tolerated – alcohol, tobacco, religion, coffee, chocolate – while others are punished. Prohibition holds to a doctrinaire commitment that people may alter their consciousness in authorized ways, but not in unauthorized ways. Where humanism supports free inquiry coupled to the power of science and creative imagination, prohibition employs the power of the state to enforce a truncated vision of human freedom and creativity.

Drug prohibition fails morally, in theory, in history and in practice.¹⁹

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Craig Jones is the Executive Director of the John Howard Society of Canada.

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From: S.R.

Sent: July-08-08 6:05 PM

To: national@johnhoward.ca

Subject: Re: Crime and the Human Rights Act

I was wondering if anyone from the John Howard Society has ever actually read the Human Rights Act. I find all this contradictory and would like to know why, because of this society, criminals are now being treated better than those of us who actually respect the law!

¹⁹Dear Editor "Humanist Perspectives": Craig Jones' article "Drugs, Drug Policy & Crime," in the Spring 2008 HUMANIST PERSPECTIVE is one of the best I have ever read regarding the legal system and prisons. Since the end credits to the article noted that Craig Jones is Executive Director of the John Howard Society of Canada I immediately went to their website and sent them some financial support. Keep up the good work to overcome the barbarians (and well-intentioned enablers) who have moved the US to the brink of chaos as they ravaged rehabilitation and replaced it with retribution. Humanists need to move back to the high ground -- which I fear they have abandoned on the issues of crime -- and work to create societies to correct social injustice rather than joining the crowds to punish the victims, that have increased US prison populations five fold since the early 1970s. ~ Arthur Jackson, San Jose, CA.

According to the Human Rights Act, and the Charter of Rights and Freedoms, everyone has the right to "Life, Liberty, and Pursuit of Happiness". By definition, criminals take this specific right away from us, yet this right is given to the inmates while in prison. Further, the fact that criminals receive undeserved rights they do not take the treatment that will actually might help 5% of them (while the other 95% are known to be released, re-offend, go back, receive statutory release again and start this process cycle for the rest of their lives).

It has come to the point that prison inmates are rioting when they don't get their McDonald's burger or can't watch some TV show that they wanted to see. The rest of us have the right to Life and Liberty yet we get neither because we have to work all that much harder so that our money will go to these untreatable criminals to continue their vicious cycle in our prison system!

Further still, if prison inmates were to receive the same rights as stated in the Human Rights Act then why do we even have prisons as locking someone in a cell, under the Human Rights Act, is a violation of their rights. If we can charge/convict/sentence a criminal to time in a prison cell then their right to Liberty has been revoked (not to mention their mobility rights). If these two rights can be revoked then why are we allowing these criminals rights that the law abiding still can not even achieve?!

Your society is backwards, it should be helping out victims of crime and the consequences of the inmates that are being felt by these victims. Not on how to protect the criminal from their punishment! Keeping just one violent criminal in prison, today, is now costing our country more money, per year, then it would to hold the same inmate long enough for his mandatory appeal process and eventual execution! It is also a fact that the majority of people in this country are starting to think about the execution or life imprisonment debate more and most people are now changing their minds about supporting a life imprisonment system.

I think it is time that the John Howard Society thinks about the facts and shuts itself down.

Rev. S.R.

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Dear Rev. R.:

Thanks for your letter. I'll try to respond to as many of your concerns as I can.

First, a point of clarification: "Life, Liberty, and Pursuit of Happiness" is an American formulation. Canada's is "Peace, order and good governance." Quite a different inventory of values.

Second: Prisoners do not surrender their human rights when they are incarcerated. Here's the relevant legislation: <http://laws.justice.gc.ca/en/C-44.6/index.html>

In fact, it is precisely BECAUSE they are incarcerated that the protection of their human rights is so important. Upon incarceration, they are under the total supervision of the state which – as you know from your study of 20th-Century history – puts them at maximum vulnerability to state-sponsored violence, oppression and abuse.

It is precisely because prisoners are removed from the public sphere – and confined to prisons where their conditions cannot be reliably monitored – that the protection of their rights from the state is so urgent.

Globally, as you know, the protection of prisoner's rights is a defining characteristic of modern societies founded on liberal-democratic principles. It's quite different under totalitarian regimes like China, North Korea, Syria or Cuba.

Winston Churchill, who was no friend to the marginalized, observed that

“The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the state and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry of all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes and an unflinching faith that there is a treasure, if only you can find it in the heart of every person - these are the symbols which in the treatment of crime and criminals mark and measure the stored up strength of a nation, and are the sign and proof of the living virtue in it.”

I can assure you – as I tour prisons all the time – that the life of a prisoner is deadly boring, tedious, and fraught with fear and anxiety. Imagine months of boredom punctuated by moments of sheer terror and fear for your safety – then lock yourself in your bathroom for a few months and try to imagine it. It doesn't come close to the reality.

Third: It is true that a minority of offenders do not respond to treatment. These persons exhibit a list of psychological, psychiatric, emotional, developmental and impulse control problems. The vast majority of people in prison are products of "bad parenting" which, for some reason, is NOT a crime in this country.

Many people in prison suffer from foetal alcohol disorders: which disorders give rise to a host of learning disabilities and impulse control issues. The average man in a federal prison reads – if he reads at all – at a Grade 4 level. The high flyers

read at around Grade 8. Most did not get beyond Grade 8 or 9 because their learning disabilities were undiagnosed.

Many have substance abuse problems, which – you will know from your service to your parishioners – usually follows the onset of mental illness by ten years.

Prisons are full of people with serious mental illnesses – because prisons have become dumping grounds for people with mental illness, as you will know from having read the series of essays on Mental Illness in the *Globe and Mail*:

<http://www.theglobeandmail.com/breakdown>

You will be particularly interested in the essay on prisons:

http://www.theglobeandmail.com/servlet/story/RTGAM.20080626.wmhprisons26/BNS_tory/mentalhealth/

Fortunately, the rate of re-offending is actually much lower than 95%.

Perhaps you would be interested in reading the Corrections and Conditional Release Statistical Overview, Annual Report 2007 which is here:

<http://www.publicsafety.gc.ca/res/cor/rep/ccrso2007-eng.aspx>

Prisoners eat institutional food, heavy on carbohydrates – which is coming to be understood as a factor in the safe management of prison populations.

Prisons are extremely overcrowded these days. It's now normal for cells to be double-bunked and, as our government seeks to grow our prison population, they will soon be triple-bunked. Gymnasiums and recreational areas are being "re-purposed" for sleeping and accommodation.

The current government's crime agenda – in addition to growing Canada's rate of incarceration – will force the mixture of violent with non-violent offenders, thereby hardening non-violent persons.

Some people definitely have to be in prison – make no mistake about it – but very FEW people are improved by the experience. In fact, "prisons are an expensive way to make bad people worse," which was the conclusion of British Home Secretary Douglas Hurd.

You ask: "why do we even have prisons as locking someone in a cell, under the Human Rights Act, is a violation of their rights(?)"

I'm not sure what you mean by this question, Reverend R. Perhaps you can recast it for me.

You ask: "If these two rights can be revoked then why are we allowing these criminals rights that the law abiding still can not even achieve?!"

If I understand you, this is a MOST interesting question. I suggest you read, if you have not already, the very famous essay by Isaiah Berlin "Two Concepts of Liberty" which is here: <http://tlrdoc.free.fr/pages/berlin.htm>

On Victims: Our position on victims is a very simple one: evidence-based correctional and criminal justice policy produces *fewer* victims of crime.

In this country – and in other liberal-democratic countries – we send people to prison AS punishment, not FOR punishment. This, too, is one of the defining features of a modern liberal-democratic criminal justice system.

As for a return to capital punishment, I presume you're not impressed with the roll call of the falsely convicted: some of whom would have faced the death penalty, except they were innocent; Steven Truscott, Donald Marshall, Guy Paul Morin, Thomas Sophonow, David Milgaard, Robert Baltovich, etc.

The whole modern liberal-democratic world – with the noteworthy exception of the United States – has done away with capital punishment.

Finally, as to shutting ourselves down, the evidence is on our side, Reverend, or we would have shut down decades ago.

I encourage you to peruse our website and read for yourself:
<http://www.johnhoward.ca/links.htm>

I am happy to answer your questions.

Sincerely,

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