



James A. Baker III Institute for Public Policy
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Moving Beyond the “War on Drugs”

Our Drug Laws Have Failed

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Introduction

My name is James P. Gray, and I am a former drug warrior. For a short while, in 1978 as a federal prosecutor in the U.S. Attorney's Office in Los Angeles, I held the record for the largest drug prosecution in the Central District of California, which was 75 kilos of heroin. Today, however, to the best of my knowledge, the record is 18 tons of cocaine. In 1978, the street wholesale value of an ounce of heroin was about \$25,000 and the purity was about 20 percent; today, the cost is about \$12,000 and the purity is about 80 percent. In the meantime, as a trial judge in Orange County, California for the past 17 years, I have witnessed the filling of our nation's prisons with low-level drug offenders who are not particularly intelligent, organized, or violent, leaving this unbelievably lucrative illicit drug market to people who are smart, organized, and prone to a level of violence that makes Al Capone look like Arthur Murray.

The United States of America currently leads the world in the incarceration of its people, both in sheer numbers, as well as per capita. In this area, the phrase "We're Number One!" should not make us proud. Throughout the entire history of California, until the year 1984, we had built only 13 state prisons. Today we have 33, and all of them are seriously overcrowded. Nevertheless, the availability of these sometimes dangerous and addicting street drugs is greater than ever before, particularly for our children, and even in prison. However, given the existing incentives for people to sell small amounts of drugs for large amounts of money, this should not be a surprise. So ask yourself the same question I have asked myself for years: If we cannot keep these drugs out of our prisons, how do we reasonably expect to keep them off the streets of our towns and cities?

Tragically, instead of protecting our children, our present policy of Drug Prohibition has often directly put them in harm's way in at least four different ways:

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- Today, if they want to, it is easier for our teenagers and young adults to get illicit drugs than it is a six-pack of beer. Ask them, and they will verify this statement. How could this be true? Because alcohol is restricted and regulated by the government, and the illicit drugs are controlled by the mob, which actually wants our children to get hooked. So, if the purpose of our policy is to reduce the exposure of our children to these often-dangerous drugs, we have failed completely.
- Our current policy is undercutting our children's work ethic. All too frequently, one of our young people who is working at an entry-level job comes into contact with a peer who is selling drugs. The young dealer asks the young worker how much money he or she brought home the prior week, and the response is something like \$150. To which the young dealer sneers, "Boy are you a sucker! I can make four times that much in an afternoon selling drugs!" Unfortunately, the dealer is right, and all of our children know it. This is economic coercion against our children at its worst.
- Our policy of Drug Prohibition is directly recruiting our children into a lifestyle of drug usage and drug selling. Ask yourself this question: how much risk-taking can a person buy for \$100 in cash from a 15-year-old boy in the inner city, or almost anywhere else? The answer often is, quite a bit. Unfortunately, drug sellers discovered a long time ago that, for those reduced costs and a few threats of violence, our children are quite reliable as lookouts and drug couriers. Therefore, they recruit them for those damnable tasks. Soon, when their reliability has been established, the dealers trust these young recruits to sell small amounts of drugs so that everybody can make even more money. Now ask yourself the follow-up question: When this happens, to whom do these children sell the drugs? Us? Of course not; they sell to their peers. Thus, our policy of Drug Prohibition is continuously causing our children to be recruited to this harmful and often fatal course. (Notice that we no longer have this problem with regard to the use and sale of alcohol and tobacco products.)

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- Every day, throughout our country, our young people are dying from such things as overdoses from unknown strengths or the pollutants contained in illicit street drugs. Tragically, even though they are often in the company of their “friends,” no one seeks medical help for the one in distress, because to do so would be a threat to the legal health of all of them. This happened to the young basketball star, Len Bias, on the night he had been drafted into the NBA by the Boston Celtics. It also happened to about twenty teenagers in Plano, Texas, in only one year. All of these young people died because those who were with them did not seek medical assistance until it was too late. This type of thing also occurred during Alcohol Prohibition, but with its repeal with the passage of the 21st Amendment, that problem disappeared. The same thing will happen when we finally repeal Drug Prohibition. What we must do in the meantime, however, is to employ a program of no questions or adverse consequences for anyone seeking medical help for a person in medical distress from any form of drug usage. To those who say that this might be “sending the wrong message to our children,” I ask what the right message is, because the message we are sending today is, “Go ahead and die! If you use drugs, your life is not worth saving.”

Unfortunately, what people do not see is that we are all on the same side of this critical issue. We all share a common goal: we want to reduce harmful drug use and abuse, and all of the crime and misery that can accompany them. The disagreements really arise only over what policy to follow in our attempts to achieve that goal. In my view, given the reality that these drugs have been and always will be with us to some degree, the policy that would most reduce the harms that will occur by their presence in our communities is the one that we should follow. In deciding what that policy should be, we should expressly consider the impacts it would have upon overall drug usage, crime, incarceration levels, health, corruption, expenditure of our scarce resources, and human rights both here in our great country and all around the world.

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We can start by taking a long and thoughtful look at the prohibition of marijuana. Without question, there can be some medical problems connected with its usage, just like any other mind-altering substance. However, all of the medical information shows that the harms to the users of marijuana are far less than the harms to the users of tobacco or alcohol. In addition, there is a sizeable amount of information that shows marijuana to be an effective medicine for relief of problems connected with taking of chemotherapy by victims of cancer, several forms of arthritis, glaucoma, the wasting away symptoms connected with AIDS, and numbers of other diseases and conditions. The voters in seven states as well as the District of Columbia have recognized the benefits of this medicine and have passed, by wide margins, referenda for the use of marijuana by medical patients, and the governments of two other states have passed similar laws on their own. However, various officials in the federal government not only have opposed these compassionate programs, they have taken affirmative steps to punish the participants.

Why is this done? In my view, this extremist and unyielding position against the users of marijuana is based upon the fact that about 75 percent of all illicit drug users use only marijuana. If for some reason marijuana were placed into a program of strict regulation and control by the government for purchase and use only by adults, the numbers of people using all of the rest of the illicit drugs in our country would be clearly seen as not justifying the enormous expenditure of money on the "war on drugs." But reality tells us that every federal agency receives extra funds in its budget expressly earmarked to fight the "war on drugs," and the agencies are often addicted to this money. Lost through all of this is the fact that, for example, in California, we have about four times the number of prisoners serving a 25-years-to-life sentence for a three-strikes violation for a marijuana offense as for robbery, rape, and murder combined. Lost also is the fact that we have literally thousands of prisoners in our state prisons for parole violations simply for having smoked marijuana, since conditions of parole always specify that parolees not use any form of illicit drugs. Not only is this incarceration a major hardship to the prisoners and their families, it is an enormous and unnecessary expense to the taxpayers.

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From a different standpoint, and one that is deeply economically harmful as well as downright silly, we have almost totally eradicated the hemp industry which, from colonial times, has been profitable in making things like clothing, paper products, canvas, gunny sacks, and rope (in ancient Greek, the word for “canvas” was identical to the word for “cannabis).” Hemp is the stalk of the marijuana plant and has no mind-altering properties whatsoever, and the seeds of the marijuana plant can be genetically altered to have next to no such properties. Now, the use of hemp has expanded into valuable products like plywood and other construction materials, lacquers and varnishes, cosmetics, carpets, salad oil, and biodegradable auto parts. Today, England and Canada have joined many other countries around the world in revitalizing the hemp industry. So now, as a further example of the extremism of our present policies, our federal government is compounding the harm and the silliness by trying to ban the importation of hemp products into our country. I use hemp shampoo, which is widely available. Does our government think I am going to drink or snort the shampoo somehow in order to get high? Why are we doing this? We are cheating our farmers and ourselves by turning our backs on this lucrative commercial market. Moreover, since illicit marijuana is the largest cash crop in California today (corn is in second place), it is obvious that we could not make this substance more available if we tried. So why not recognize reality and bring marijuana (and hemp) back under the law so that it can be regulated and controlled (thus actually making it less available for our children), promote the products that come from it, and tax it so that it can provide some welcome relief for our taxpayers.

More fundamentally, why can we not at least discuss these issues? Why can't we also discuss the fact that the “war on drugs” has resulted in a greater loss in our civil liberties than anything else in the history of our country; that the “war on drugs” is responsible for a greater amount of dollars being exported from our country than anything else except for oil; that drug money is directly responsible for the almost total corruption of the government, the military, the safety and the way of life of the entire countries of Colombia, Bolivia, and Peru, and is very close to doing the same thing to Mexico. Drug money has played an enormous role in our country in the corruption of border guards, police, public officials, and private citizens, as well as our children; and drug money is the

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primary source of funding for corruption and terrorism all around the world. In reality, we are not just confronted with a situation in which our policy of Drug Prohibition is failing. The situation under our present policy is hopeless. And we have no hope that the situation will get better until we change our approach.

Faced with that reality, an intelligent society would start by implementing an open, honest, and thorough investigation into what we have done during the past decades that has been both successful and unsuccessful, and then expand that inquiry to investigate what other countries around the world have done and what has been successful and unsuccessful for them. And in carrying out this sensible inquiry, we must continually remind each other and ourselves that just because we discuss the issue of drug policy does not at all mean that we condone drug use or abuse.

This is the most critical issue facing our country, so let's get started. The time is now.

James P. Gray is a Judge of the Superior Court in Orange County, California, the author of the book *Why Our Drug Laws Have Failed And What We Can Do About It—A Judicial Indictment of the War on Drugs*, published by Temple University Press (2001), and the composer of the song, “Call Ourselves Americans.”