DRUGS AND VIOLENCE

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The war on drugs has increased the United States prison population by tenfold. The foundation for the war on drugs and unparalleled increase in prisoners rely on the premise that drugs and violence are linked. Politicians, media, and scholars continue to advocate this view either explicitly or implicitly. This Article identifies the pervasiveness of this premise, and debunks the link between drugs and violence. It demonstrates that a connection between drugs and violence is not supported by historical arrest data, current research, or independent empirical evidence. That there is little evidence to support the assumption that drugs cause violence is an important insight, because the assumed causal link between drugs and violence forms the foundation of a significant amount of case law, statutes, and commentary. In particular, the presumed connection between drugs and violence has reduced constitutional protections, misled government resources, and resulted in the unnecessary incarceration of a large proportion of non-violent Americans. In short, if drugs do not cause violence—and the empirical evidence discussed in this Article suggests they do not—then America needs to rethink its entire approach to drug policy.

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INTRODUCTION

Over the years, with the help of media, scholars, politicians, and the war on drugs, Americans have developed a firm belief that drugs are linked to violence. The assumption that drugs cause violence is at the core of American drug policy, and helps explain why drug convictions increased almost tenfold from 1980 to 1996. While many commentators blast drug laws for failing to reduce drug abuse, or being overly punitive, no scholars

1 See William J. Stuntz, Unequal Justice, 121 HARV. L. REV. 1969, 2022 (2008) (discussing how drug arrests are the focus of police because they are cheap investigations and require few man-hours than robbery or homicide); John Monahan, A Jurisprudence of Risk Assessment: Forecasting Harm Among Prisoners, Predators, and Patients, 92 VA. L. REV. 391, 423 (2006) (“People who report to researchers conducting the National Household Survey on Drug Abuse that they used illegal drugs in the past year are nine times more likely than people who did not report using illegal drugs to also report having been arrested and booked on an assault charge in the past year.”); Rufus G. King, The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick, 62 YALE L.J. 736, 767 (1953).

2 See DAVID LENSON, ON DRUGS, 167–72 (1999); ARTHUR BENAVIE, DRUGS: AMERICA’S HOLY WAR (2009); Note, Winning the War on Drugs: A “Second Chance” For Nonviolent Drug Offenders, 113 HARV. L. REV. 1485, 1489 (2000) (examining the costs of the American war on drugs, both economically and socially). See also Matt Sledge, The Drug War and Mass Incarceration by the Numbers, THE HUFFINGTON POST (Apr. 8, 2013) (showing the effect the war on drugs has had in dramatically increasing the prison population).


4 See infra pp. 4–22.

5 Fareed Zakaria, Incarceration Nation, TIME (April 2, 2012) (further pointing out that the U.S. has spent $1 trillion in the last four decades fighting the war on drugs and that we went from convicting 15 inmates per 100,000 adults for drugs in 1980 to 148 in 1996).

6 JUDGE JAMES P. GRAY, WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT: A JUDICIAL INDICTMENT ON THE WAR ON DRUGS 17–157 (2012) (arguing that despite drug laws, illicit drugs have increased harm to communities and drug users); Noah Mamber, Coke and Snack at the Drugstore: Harm Reductive Drug Legalization: An Alternative to A Criminalization Society, 15 CORNELL J.L. & PUB. POL’Y 619, 629 (2006) (arguing that the “zero tolerance criminalization policy has not reduced the number of drug users,” but has increased a swath of societal ills); David C. Leven, Our Drug Laws Have Failed—So Where Is the Desperately Needed Meaningful Reform?, 28 FORDHAM URB. L.J. 293, 293 (2000) (asserting that “drug...use ha[s] continued virtually unabated” in spite of drug laws that “impose harsh sentences on low level offenders”).

7 Norval Morris, Teenage Violence and Drug Use, 31 VAL. U. L. REV. 547, 547 (1997) (“The rhetoric of the drug warriors, their promises of success in the task of making America drug free are so powerfully and regularly delivered, even at the very highest level of governments, federal and state, with presidential and gubernatorial force, that the drug addict has been demonized and the advocate of change rendered deeply suspect. The public discourse does not seem to have learned enough from eighty-two years of uninterrupted
have previously identified the fundamental flaw of U.S. drug policy. This is the assumed premise that drugs cause violence.

U.S. drug policy stands upon an unsteady foundation. Nearly a century of drug regulations have amassed a legal structure supported largely by political rhetoric and misguided public attitudes about drug users. The edifice of drug policy relies on the premise that drugs cause violence, with incarceration as the primary tool. The War on Drugs launched by the Nixon administration and carried forward by the Reagan to the Obama administrations solidified America’s belief that drugs are dangerous and linked with violent crime. Yet this drug criminalization lacks an understanding of the actual impact of drugs on violence.

Even beyond the political and media rhetoric, the belief that drugs cause violence has led to harsh penalties and increased incarceration rates. Drug defendants face harsh penalties for drug offenses. At the end of 2011, one in every 34 adult residents in the U.S. was under some form of correctional supervision. Worldwide, the United States has one of the highest incarceration rates. Minorities have been disproportionately affected.

failure of our prohibitory drug policy to countenance radical reform. Prudentially, all that has a hope . . . is a steady move towards regulatory, much less punitive policies.”

8 Harrison Narcotics Act, Ch. 1. 38 Sta. 785 (1914); Narcotic Control Act of 1956, Ch. 629, 70 Sta. 567; Controlled Substance Act of 1970, 21 U.S.C. § 801 et seq.

9 Michael Tonry, Why are U.S. Incarceration Rates So High? 45 CRIME & DELINQUENCY, 419, 425 (1999) (asserting that two of the reasons U.S. incarceration rates are so high are strict penalties and misinformed public opinion about drugs).

10 Since the beginning of the War on Drugs under President Nixon up through President Obama’s administration, the Federal government has spent over $1 trillion dollars trying to bring drug use to an end. See Martha Mendoza, US War on Drugs Has Met None of its Goals: AP Impact, THE HUFFINGTON POST (May 13, 2010) (discussing Nixon’s “first drug-fighting budget” of $100 million, and Obama’s request for $15.5 billion for the 2011 drug war).


12 Bureau of Justice Statistics, Correctional Populations in the United States, U.S. DEPARTMENT OF JUSTICE (2012), http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus11.pdf (counting 6.98 million adult offenders, or nearly 2.9 percent of the adult population, under correctional supervision in 2011, which was the third consecutive year in decline, dropping nearly 100,000 from 2010).

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And despite millions of dollars spent on the War on Drugs since the 1970s, drug use has remained constant throughout the past 40 years.\textsuperscript{15} Recognizing the unfairness of drug policies, over the past few years, federal and state officials have made meaningful efforts to lessen the punishment they administer to low-level drug offenders.\textsuperscript{16} Despite these efforts, the incarceration rates in the United States are projected to remain disproportionately high for nearly a century.\textsuperscript{17} This is because many statutes and case law create or allow harsh punishments for drug crimes, assuming violence will result.\textsuperscript{18} And drug policy cannot be reformed in the United States without recognition that drugs do not cause violence.

Although scholars have examined drugs and violence,\textsuperscript{19} and the history of drug policy in America,\textsuperscript{20} no scholars have studied the affect of the assumed link between drugs and violence on the justice system. In contrast to previous scholarship on this topic, this Article demonstrates that a

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\textsuperscript{14} E. Ann Carson & William J. Sabol, \textit{Prisoners in 2011}, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS 1, 8 (Dec. 2012) (The imprisonment rates indicate that about 0.5\% of all white males, more than 3.0\% of all black males, and 1.2\% of all Hispanic males were imprisoned in 2011.)

\textsuperscript{15} Claire Suddath, \textit{Brief History: The War on Drugs}, \textit{TIME} (Mar. 25, 2009), http://content.time.com/time/world/article/0,8599,1887488,00.html ("And yet, within the past 40 years, the U.S. government has spent over $2.5 trillion dollars fighting the War on Drugs. Despite the ad campaigns, increased incarceration rates and a crackdown on smuggling, the number of illicit drug users in America has risen over the years and now sits at 19.9 million Americans.").


\textsuperscript{17} Marc Mauer & Nazgol Ghandnoosh, \textit{Can We Wait 88 Years to End Mass Incarceration?}, \textit{THE HUFFINGTON POST}, Dec. 20, 2013.

\textsuperscript{18} See infra pp. 23–28.

\textsuperscript{19} See infra pp. 40–45.

connection between drugs and violence lacks solid support. This revelation—that there is little evidence to support the assumption that drugs cause violence—is an important insight, because the assumed causal link between drugs and violence is the foundation of a significant amount of case law, statutes, and academic commentary. In particular, the assumed connection between drugs and violence underlies many judicial decisions reducing constitutional rights for drug defendants and statutes creating harsh sentences for non-violent drug offenses.

This Article demonstrates through an examination of independent empirical evidence, historical and arrest data, and a review of prior research, that the foundation for U.S. drug policy is fundamentally flawed. The link between drugs and violence that underlies much of U.S. drug policy lacks sufficient empirical support, but yet pervades modern day legislative statutes and judicial decisions. Part I provides a historical overview of drug crime legislation in the U.S., describing the origins of the link between drugs and violence and how this link misinformed public opinion and allowed for major drug prohibitions. Part II reveals that evidence of drug crime and empirical evidence does not match perceptions of the problem of drugs in America. It concludes, significantly, and for the first time using original empirical evidence that detaining drug criminals is not making us any safer. Specifically, it finds that drug defendants are the least likely to commit violent crimes of any other defendant released pretrial.21 Part III demonstrates that the assumptions underlying case law and statutes—that drugs make people violent, that people commit violent crimes to obtain drugs, and that the drug trade is inherently violent—are flawed and demonstrates the impacts of these flawed assumptions about drugs and violence. These include wasted resources, discrimination against minorities, and reductions in constitutional rights. This Article concludes that if drugs do not cause violence—which the evidence seems to support—then we should rethink the entire basis for American drug policy.

I. HOW DRUGS HAVE BECOME LINKED TO VIOLENCE: A HISTORY OF U.S. DRUG POLICY

Before the link between drugs and violence, Nineteenth Century Americans had a permissive attitude towards drug use for medicinal, or recreational purposes, with a lack of drug regulations. Despite the widespread use of drugs such as opium and cocaine, there was little demand to make opium, cocaine, or other drugs illegal because individuals who used those drugs were viewed as contributing members of society. Americans from all social and economic classes used drugs, which were not yet illegal. However, even from early on when there was a discussion about regulating drugs, there was discussion of the violent effects. The three main arguments made historically for the drug-violence connection include that drugs make people act violently, drug addiction makes people commit violent crime to get drugs and that the drug trade is inherently violent.

Early on, the only negative consequences discussed in relation to drugs were the consequences of addiction. Even though some worried about moral decay caused by the use of drugs, early Americans did not generally associate drugs with crime and violence. As time went on, public sentiment changed and regulators supported drug laws with exaggerated fears of violence or crime. Especially early on, drug laws passed were not a reflection of society’s view of narcotics or a reaction to the drugs themselves, but rather, were often the result of exaggerated fears of violence.

What follows here examines the connection made by the public between drugs and violence in select periods of U.S. history. Unlike prior work examining drug history, this Article starts from early American history to


25 Id.; LICIT AND ILLICIT, supra note 23, at 6–7 (“Addicts continued to participate fully in the life of the community.”).

26 Ironically, even “a noted temperance lecturer” was a steady user of opiates. Id. at 4–5.

27 Drug users were not a “deviant addict subculture, cut off from respectable society.” Id. at 7.
document the marked change in viewing drugs as a source of recreation and medicine to a cause of violence and crime. By examining drug laws, and their impetus, this section provides a glimpse into the public perception and legislative concerns around violence and crime that allows for today’s drug regime.

A. Pre-Harrison Act (1800s to early 1900s)

Drug use has not always been socially or legally condemned in the United States. When opium and cocaine were introduced into the states, they gained widespread popularity and medical usage. Cocaine, introduced into the U.S. in 1884 was hailed as an over-the-counter cure for common ailments such as hay fever. It was used in a variety of medicines, and by 1885, most drug stores in America had a supply of cocaine. Heroin, a trademark name of the Bayer Company for opium, entered the commercial market in 1898 as a cough medicine that could be drunk, sniffed, or injected. Patients were thus regularly prescribed medicines containing heroin and cocaine. Physicians faced no legal limits to prescribing these drugs. Upper and middle-class white women especially enjoyed the use of pharmaceutical products containing opium or cocaine to treat minor ailments. In addition, marijuana was also readily available and used for recreational purposes into the Twentieth century.

28 L.N. Robins, The Natural History of Drug Abuse, 62 ACTA PSYCHIATRICA SCANDINAVICA 7, 8 (Aug. 1980) available at http://www.rkp.wustl.edu/ESlit/RobinsActaPsyScand1980.pdf (“Few drugs have been illicit from the moment of their discovery or synthesis. . . . Many drugs now illegal have enjoyed a period of legal popularity with the upper and middle classes.”).

29 Duke, supra note 24, at 571.


31 LICIT AND ILLICIT, supra note 23, 275–76.

32 PARKE, DAVIS & CO., COCA ERYTHROXYLON AND ITS DERIVATIVES 2 (1885) (“every second rate drug store in America carried cocaine”).

33 Musto, supra note 30, at 571.


36 LICIT AND ILLICIT, supra note 23, at 20, 32 (quoting Anonymous, The Opium Habit, CATHOLIC WORLD 33 (1881) (“Opium-eating . . . is an aristocratic vice and prevails more extensively among the wealthy and educated classes than among those of inferior social position . . . .”).

37 Id. at 409.
Marijuana, like opiates and other narcotics was readily available through the 1800s, however it did not obtain the same level of popularity as opiates. Accordingly, there was very little public opposition in the Nineteenth century against drugs. Even as drug use increased rapidly across the country, public perception of drug users remained uncondemning. Early drug regulation aimed merely to provide consumers access to safe narcotics and protect them from the importation of adulterated drugs. In 1848, Congress passed the Drug Importation Act requiring U.S. Customs Service inspection to prevent adulterated drugs from entering the country. In 1906, Congress passed the Food and Drugs Act requiring labels to identify the contents of drugs for consumers. Thus, the public generally accepted drug users as a normal part of society in the 19th century, which is markedly different than the stereotypical drug user of today.

B. The Harrison Act Era (1910–1940)

The link between drugs and violence started with arguments that cocaine makes people commit violent crime in early Twentieth Century America. In the early 1900s, Southern states banned cocaine use due to the fear of the violent “Negro.” Southern states enacted anti-cocaine legislation in order to combat the dangers of “the cocainized black.” Politicians supporting drug regulation played on society’s fear of “drug-

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38 Id.
39 Id. at 275.
41 Id. at 4–5. Others who began recognizing the dangers of addiction advocated merely for a drug prescription system whereby an individual must consult a physician before receiving opiates from a drug store. See Virgil G. Eaton, How the Opium Habit is Acquired, 33 POPULAR SCIENCE MONTHLY at 663–67 (Sept. 1888).
42 See, e.g., the Drug Importation Act of 1848, and the Pure Food and Drug Act of 1906.
46 Cocaine Sniffers: Use of the Drug Increasing among Negroes of the South, N.Y. TRIBUNE (Jun. 21, 1903) (“I am satisfied that many of the horrible crimes committed in the Southern States by the colored people can be traced directly to the cocaine habit.”) (cited in Auerhahn, infra note 48, at 427).
crazed, sex-mad negroes.” A 1910 federal survey alleged that cocaine was a direct “incentive” to rape by “Negros” throughout the country. Southern sheriffs believed cocaine even rendered blacks immune to .32-cal. bullets. In this same period, several articles appeared in medical journals and news media linking violent attacks by black men on southern white women with cocaine use.

A report from 1911 asserts that it is the “unanimous opinion” of government entities that enforce pharmaceutical laws that “the misuse of cocaine is a direct incentive to crime.” Contemporary historians agree that “real incidents of violent and erratic behavior resulting directly from cocaine use almost surely did occur,” but there is also agreement that many accounts of violence resulted from fear and prejudice. The real effects of cocaine on the user were often exaggerated by media and politicians, due to the concern that young people and minorities had started using cocaine.

In addition to government reports lamenting the violence caused by drugs, local media in this time period also specifically asserted that drugs caused violence. Newspapers specifically stated that police traced the influence of drugs to many or all crimes of violence.

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49 As a result many police departments switched to .38-caliber bullets. Id.


51 DRUGS AND DRUG POLICY, supra note 40, at 32, 46.

52 Id. at 44.

53 Id.


55 Id. In fact, “violent cocaine fiends . . . appear to have been more a terrifying social fiction than an empirical reality, and one with a sharp racial overtone.” JOSEPH F. SPILLANE, COCAINE: FROM MEDICAL MARVEL TO MODERN MENACE IN THE UNITED STATES, 1884–1920, 121 (2000).

56 “All crimes of violence are committed while the author is either temporarily insane or under the influence of a drug . . . and in either case he is to be treated on the basis of a dangerous outlaw.” How I would Stop the Crime Wave, SIoux CITY J., June 7, 1925; “The direct results of habitual use of narcotics are terrible enough . . . Police trace to its influence many of the crimes of violence that have made the phrase crime wave familiar in many
reported that “reliable authorities [estimated] that 50% of the crimes of violence can be traced back to some form of drugs.”57 And even stated that most crimes of violence are committed to provide funds to buy drugs.58 Also, they reported that drugs supply criminals with courage to commit a robbery.59 And even as far as claiming that violence, including a “desire to mutilate or kill”60 is caused by drugs, including cocaine, heroin, morphine and opium.61

In the lead up to the Harrison Act, American media promulgated a condemnatory view of a link between drugs and violent crime.62 The Los Angeles Times, for example, ran a story in 1919 claiming “ninety-nine percent of the present series of holdups, burglaries, armed robberies and other deeds of violence . . . are the work of drug fiends seeking to get narcotics.”63 Thus, media and politicians relied on arguments that drugs make people act violently and that people commit crimes to obtain drugs. And many of the reasons for the enactment of the Harrison Act had nothing to do with drugs, but were the result of irrational fears. In the end, these parts of the country.” Novelist’s Plots Pale in Story on Federal Fight on Drugs, SYRACUSE HERALD, Oct. 1, 1922; Hemp is the Popular Source of Drunkenness in India, HAMILTON DAILY NEWS, Oct. 24, 1930 (discussing that marijuana leads to “psychomotor activity with tendency to [cause] willful damage and violence”).

57 Hamilton Fish, Government Control of Narcotics Urged As Crime Deterrent, SIMPSON’S LEADER-TIMES, June 10, 1931, at 4 (further arguing that “The crime wave which has assumed such terrible proportions in the United States is largely attributable to the use of smuggled heroin and cocaine and other vicious drugs. One-third of all the inmates of our federal prisons are addicts or violators of our narcotic laws.”).

58 Claiming that practically all professional criminals are drug addicts and most crimes of violence are committed to provide funds to buy drugs. Enough Narcotics in United States to Put Whole Country to Sleep for Week, SALT LAKE TRIB., Feb. 28, 1926.

59 According to an old detective, “the criminals who work in the open use drugs to supply him with courage. It is sort of a false courage, for it dies out with the effects of the opiate. Nevertheless without it your holdup man would never have the nerve to carry through a daylight robbery. A census of the drug addicts is a roster of the crooks in nine cases out of ten . . . .” Use Drugs to Gain Courage, ELGIN ECHO, Dec. 15, 1921.

60 “The addict, after five years of smoking, becomes violently insane, is seized with a strange desperation that leads to violence and later to a fiendish desire to mutilate or kill.” A Home-Grown New Drug that Drives its Victims Mad, SALT LAKE TRIB., Dec. 30, 1928.

61 “Dementia, melancholia and periods or states of violence necessitating restraint are characterized of the victims of cocaine, heroin, morphine and opium.” The Madhouse-The Dope Find Finished, OAKLAND TRIB., October 16, 1921.

62 Former American Psychiatric Association President Lawrence Kolb has accused the media of spreading “false propaganda about the nature of drug addiction.” DRUGS AND DRUG POLICY, supra note 40, at 208. LICIT AND ILLICIT, supra note 23, at 414;

fears of violence motivated greater action by the government in the form of drug prohibition.

Legislators responded by enacting the first federal act to penalize drug use: the Harrison Act of 1914. The Harrison Act, a flagship of U.S. drug policy, became the first piece of legislation validating the fears of violence caused by drugs. The Act was designed to limit the amount of narcotics dispensed by physicians and pharmacists; small amounts of heroin were to remain available over the counter while prescriptions would be required for larger amounts or for cocaine. The law taxed manufacturers, distributors, producers, and sellers of drugs, but allowed drugs to be available. But by 1918, executive, and judicial branches enforced the Harrison Act as a ban on drugs. As a result, drugs increased in price, and drug use became subversive and connected to a culture of crime. Many addicts, cut off from

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68 As one commentator noted, narcotics users were not viewed as criminals “until the furious blitzkrieg launched around 1918 in connection with the enforcement of the Harrison Act.” King, supra note 2, at 767.
69 Duke, supra note 24, at 572.
70 See Webb v. United States, 249 U.S. 96, 99–100 (1919) (discussing the prohibition of non-prescription narcotic sales); United States v. Doremus, 249 U.S. 86, 94 (1919) (“It is made unlawful for any person to obtain the drugs by means of the order forms for any purpose other than the use, sale or distribution thereof by him in the conduct of a lawful business in said drugs, or the legitimate practice of his profession.”); United States v. Jin Fuey Moy, 241 U.S. 394, 402 (1916) (Considering the implications of the Act and stating that “[o]nly words from which there is no escape could warrant the conclusion that Congress meant to strain its powers almost if not quite to the breaking point in order to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal.”).
72 For example, in New York City before the Harrison Act took effect, an ounce of heroin sold for $6.50, whereas after the bill passed an ounce sold for $96.00. Drugs and Drug Policy, supra note 40, at 56.
73 Jerome H. Gaff, Goodman & Gilman: The Pharmacological Basis of Therapeutics 292 (1965) (“Much of the ill health, crime, degeneracy, and low standard of living are the result not of drug effects, but of the social structure that makes it a criminal
drugs, resorted to criminal activity to support their habits. The price of narcotics increased dramatically, further provoking criminal activity. As a result, drug users were forced underground to purchase their previously legal drugs, which led to a host of other problems, cementing the perceived link between drugs and violence.

Due to a concerted effort by the federal government, drug convictions increased dramatically in the 1920s. As a result, from 1923 to 1930, there was an average of 5,000 narcotics convictions each year, and by 1928, almost one-third of prisoners in federal penitentiaries were Harrison Act violators. As such, the Harrison Act, initiated by fears of cocaine violence and minority violence, resulted in an increase in crime and incarceration rates.

C. Boggs Act and Public Awareness Campaigns (1940–1970)

In the period after the Harrison Act, states uniformly prohibited drugs due to a fear of crime and violence proffered in public awareness campaigns. Between 1940 and 1970, politicians and media cemented the view that drugs lead to violence and crime, supporting the Boggs Act and higher incarceration rates.

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74 Rufus G. King, The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick, 62 YALE L.J. 736, 767 (1953) (Narcotics users were “pushed out of society and relegated to the criminal community”).

75 DRUGS AND DRUG POLICY, supra note 40, at 56.

76 Bonnie & Whitebread, supra note 73, at 984.

77 Id. at 988.


79 DRUGS IN AMERICA, supra note 54, at 122.

80 THE AMERICAN DISEASE, supra note 20, at 184 (This was more than the combined total for the next two categories—liquor prohibition and car theft). See also King, supra note 74, at 738 n.12 (1953) (“As of June 30, 1928, of the 7738 prisoners in federal penitentiaries, 2529 were sentenced for narcotics offenses, 1156 for prohibition law violations, and 1148 for stolen-vehicle transactions.”).
1. 1940s

The federal government lobbied states to pass drug regulations and initiated public awareness campaigns demonstrating that drugs are linked to violence. By 1937, every state had passed legislation relating to marijuana, including thirty-five that had adopted the Uniform Narcotic Drug Act. Even though marijuana use was still limited to fringe groups and was not an issue to many citizens, these bills passed easily in each state due in part to the lobbying efforts of the Narcotics Bureau. Even though most middle-class Americans knew nothing about marijuana use during the 1930s, a public awareness campaign by the Narcotics Bureau and news reports of drug-related crime educated the public on the violence that could result from marijuana.

The public awareness campaign by the Narcotics Bureau was designed to educate the public about marijuana and its violent effects. The media publicized sensational reports from politicians such as Narcotics Bureau Commissioner Harry Anslinger of “pitifully crazed” drug addicts committing heinous crimes. For instance, one article published by the Narcotics Bureau described a “youthful addict” from Florida found by police “staggering about in a human slaughterhouse” after having killed his entire family with an ax due to his habit of smoking marijuana. During the hearings on the Marijuana Tax Act of 1937, Commissioner Anslinger testified before Congress and related horror stories about people who smoked marijuana and then committed atrocities. After hearing the one-sided testimony, both houses of Congress passed a bill which imposed taxes on drugs, like the Harrison Act.

News reports often connected crime to marijuana use and eliminated references to alcohol or other motivations behind the crime. Media asserted

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81 Bonnie & Whitebread, supra note 73, at 1034.
82 Id.
83 Id. at 1036.
84 Id.
85 Commissioner Anslinger himself authored an article attributing a particularly bloody murder to marijuana use. “With an ax he had killed his father, mother, two brothers, and a sister. He seemed to be in a daze. . . . He had no recollection of having committed the multiple crime. The officers knew him ordinarily as a sane, rather quiet young man; now he was pitifully crazed. They sought the reason. The boy said he had been in the habit of smoking something which youthful friends called ‘muggles,’ a childish name for marihuana.” LICIT AND ILLICIT, supra note 23, at 414.
86 LICIT AND ILLICIT, supra note 23, at 414.
87 Id.
88 Id. at 415–16.
that marijuana use “so often leads to violence.” 89 One news report related of a young man who killed another in a “vicious, marijuana-induced murder,” even though the murderers drank whiskey several times along with smoking marijuana before the shooting. 90 However, the newspaper emphasized the marijuana smoking and downplayed the significance of the whiskey drinking. 91 On this topic, the Narcotics Commissioner went as far as to say “[m]uch of the irrational juvenile violence and killing . . . . is traceable directly to this hemp intoxication.” 92 Marijuana use was also linked to Mexican criminality, 93 and marijuana opponents focused on the drug’s “capacity to induce violence in the users.” 94 Assertions of marijuana use causing violent crime was not based on sound science but on fears of government officials expressed through the media, and soon formed public opinion.

2. 1950s to 1960s

With the 1950s came harsh drug laws that increased prison time for drug use and instituted mandatory penalties, 95 partly justified on the belief that drugs increase violent crime. 96 The Boggs Act of 1951 increased

89 New Dope On Marihuana, INDIANA EVENING GAZETTE, Feb. 8, 1945 (“Treasury Enforcement officials are particularly perturbed about the spread of marihuana because it so often leads to violence.”).

90 Id.

91 Id.

92 HARRY J. ANSLINGER & W.C. OUSLER, THE MURDERERS 38 (1961). See also Paul J. Goldstein, Drugs and Violent Crimes, in PATHWAYS TO CRIMINAL VIOLENCE 16, 18–19 (Neil. A Weiner & Marvin E. Wolfgang eds. 1989) (quoting Anslinger). This body of thought continued to grow such that “[b]y the 1940’s, a body of literature had begun to develop that stereotyped drug users as sex-crazed maniacs, degenerate street criminals . . . and members of the living dead.” Id.

93 Kathleen Auerhahn, THE SPLIT LABOR MARKET AND THE ORIGINS OF ANTIDRUG LEGISLATION IN THE UNITED STATES, 24 LAW & SOC. INQUIRY 411, 432 (SPRING 1999) (“At the time of the passage of the Marijuana Tax Act of 1937, the first piece of federal legislation explicitly criminalizing the use of marijuana, few Americans were even aware of the drug’s existence.”).

94 Auerhahn, supra note 93, at 435 (“Another popular theme in the antimarijuana literature was the drug’s apparent capacity to induce violence in users.”).


96 During the Senate floor debate over the Boggs Act, Senator Boggs supported his bill by reading into record a number of newspaper articles that had been published during that time period and detailed sensationalized stories of crimes such as theft, robbery, forgery, and prostitution that were committed in connection with drug use or in order to procure drugs. 97 CONG. REC. 8198–204 (daily ed. July 16, 1951); see also LICIT AND ILICIT,
penalties for drug use by four times and included mandatory penalties. In 1954, President Eisenhower launched a “war on drugs” that resulted in new legislation creating even harsher penalties for narcotics possession and use. President Eisenhower, in his call for a new war on drugs, appointed a Cabinet committee to oversee the fight against narcotics. This committee issued their final report in 1956 calling for, among other things, an increase in the size of the Federal Bureau of Narcotics, and instituting even more severe sentences for first and repeating drug offenders.

Again, like with the Harrison Act, government reports of drugs leading to violent crime and other crime increases supported new harsher drug legislation. A 1954 government report stated that about half of all crime in U.S. cities, including violent crime, and twenty-five percent of all crime in the nation could be attributed to drugs. As a result of these committee reports, Congress in 1956 passed the Narcotics Control Act, and many states followed suit. This Act further increased the mandatory minimum sentences for many narcotics violations, and for the first time, imposed a possible death sentence for a drug crime.

In the 1960s, many Americans began viewing drugs more favorably as marijuana came into popular use by the middle class. Despite the popularity of marijuana, the harsh drug laws of the 1950s still worked to punish drug use and sale in an unforgiving manner, and media still

supra note 23, at 414 (quoting Commissioner Anslinger’s article written in the years leading up to the passing of the Boggs Act of 1951 which describes heinous crimes performed by drug users).

98 DRUGS AND DRUG POLICY, supra note 40, at 197.
99 Id. at 199.
100 Id.
101 Bonnie & Whitebread, supra note 73, at 1076.
102 Id. at 1074. By 1953, seventeen states, and the territory of Alaska, had passed legislation similar to the Boggs Act. By 1956, eleven other states had also passed similar legislation. Id.
103 Id.
104 DRUGS AND DRUG POLICY, supra note 40, at 203, 205. The law stated that if an individual at least eighteen years old, sold heroin to a minor (someone under the age of eighteen), he would be “fined not more than $20,000, shall be imprisoned for life, or for not less than ten years, except that the offender shall suffer death if the jury in its discretion shall so direct.” Id. at 205.
105 David F. Musto, Opium, Cocaine and Marijuana in American History, 265 SCIL AM. 40, 46 (1991) (stating that marijuana use became widespread in the 1960s, and further discussing the “shift to drug toleration in the late 1960s and early 1970s.”).
106 Bonnie & Whitebread, supra note 73, at 1098 (arguing that the marijuana use moving to the middle class prompted more medical inquiry into the effects of marijuana,
reported that doctors, legislators and prison officials all assert that drugs “induce violence and hostility.”107 The problem of youth in the 1960s was often discussed as drugs and violence.108 Overall, during the period between 1940 and 1970, the Boggs Act and other legislation led to increased prohibitions on drug use and a greater connection between drugs and violence, which justified increased incarceration.

D. The War on Drugs (1970–1980s)

During the war on drugs, the media and government officials strongly advocated that drugs cause violence and justified increased penalties for drug crimes on this assumption.

1. 1970s

Shortly after taking office, President Nixon declared a “national attack on narcotics abuse.”109 In 1971, he formally initiated a “war on drugs” and named drug abuse as “public enemy number one in the United States.”110 The impact on public opinion on drugs was quick. In 1957, only 5.6 percent of the U.S. population viewed crime-related problems, like drug use, as the most important problem facing the nation.111 By 1971, 37.9 percent of the population viewed crime as the most important problem facing the nation.112 And media similarly connected drugs and violence in claiming that marijuana and “knives[,] chains[,] and handguns” are commonplace in challenges to the constitutionality of narcotics laws, and that this has “spurred the passage of more lenient legislation”).


108 Drugs Create Violence, TIMES, Aug. 15, 1968 (“The American people have not been made conscious of just what stimulates so many teenagers to engage in acts of violence. Officials here blame much of it in the use of narcotics.”); The People’s Forum: Area School ‘Luck’, CEDAR RAPIDS GAZETTE, Mar. 18, 1969 (discussing the debauchery of our youth with drugs, sex, and violence); Decency Fights Losing Battle, Doctor Claims, BENTON HARBOR NEWS PALLADIUM, Apr. 23, 1969 (“decent society is fighting a losing battle against pandering of sex evils, drugs and violence…”).


112 Id.
American schools.\footnote{Drugs, Violence Together in Public Schools, Kingsport News, June 19, 1975. But some argued drug use in America peaked in 1979 with over 25 million Americans in one survey admitting they had used drugs within the last 30 days. 1994 National Household Survey on Drug Abuse, Department of Health and Human Services (September 1995) ("Drugs pervaded American life throughout the 1970s, reaching its zenith in 1979. In 1979, there were an estimated 25 million drug users, representing 13.7 percent of the population.").} Even though these laws were adopted across the nation, they were not effective at eliminating drug use or sales,\footnote{Gabriel Sayegh, After the Rockefeller Drug Laws: A New Direction in New York and the Nation, Drug Policy Alliance, Feb. 2010, available at http://www.drugpolicy.org/docUploads/AftertheRockefellerDrugLawsFeb_2010.pdf.} but rather, were used primarily as a means for politicians to appear “tough on crime.”\footnote{Brian Mann, The Drug Laws That Changed How We Punish, NPR, Feb 14, 2013, http://www.npr.org/2013/02/14/171822608/the-drug-laws-that-changed-how-we-punish.}

2. 1980s

Nixon’s War culminated in President Reagan’s War on Drugs,\footnote{David Schultz, Rethinking Drug Criminalization Policies, 25 Tex. Tech. L. Rev. 151, 165 (1993) (“President Reagan declared his war on drugs on October 2, 1982.”).} with a brief respite during the Ford and Carter administrations.\footnote{Formally announced by President Ronald Reagan in 1982, the War on Drugs was marked by deep public concern, bordering on hysteria, toward the nation’s drug problem. Under the leadership of President Reagan, the nation focused unprecedented energy and resources towards eliminating illicit drug use and trafficking.” (David M. Blanchard & Gabriel J. Chin, Identifying the Enemy in the War on Drugs: A Critique of the Developing Rule Permitting Visual Identification of Indescript White Powder in Narcotics Prosecutions, 47 Am. U. L. Rev 557, 600–01 (1998).} In 1980, Ronald Reagan became President of the United States and returned the federal government to a strict anti-narcotics stance.\footnote{Drugs and Drug Policy, supra note 40, at 284.} During his administration, illicit drugs were blamed for many of society’s ills,\footnote{Id. at 285.} and were viewed as the “most important component and cause of street crime.”\footnote{Id. at 305.} First Lady Nancy Reagan even went so far as to declare that “a casual drug user is an accomplice to murder.”\footnote{Beckett, supra note 111, at 427. President Reagan decried drug abuse as “a repudiation of everything America is. The destructiveness and human wreckage mock our heritage.” President Ronald Reagan, Campaign Against Drug Abuse (Sept. 14, 1986) available at http://www.pbs.org/wgbh/amex/drugpolicy/features/primary-resources/reagan-drug-campaign/.}
Admittedly, drug abuse had become a matter of substantial public concern by the time Reagan took office in 1980—even if the concern stemmed from political propaganda. Harrowing news stories of drugs and crime fostered the public’s “crisis mentality” toward drugs. Violence among drug dealers reportedly increased, and media asserted that violence rates would decrease if the profit were taken out of drugs. In sum, the national mood favored harsher penalties for drug crimes.

During Reagan’s tenure in office, two major anti-drug laws were passed, the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988. The 1986 bill continued the tradition of prior bills by mandating mandatory minimum sentences. In 1986, towards the end of Reagan’s presidency, drug use was viewed as the most important problem facing the nation by only three percent of the population, but that number climbed to sixty-four percent in 1989. This dramatic increase in the public’s perception of the severity of the drug problem over such a short period was not the result of an increase in drug use. Rather, it was the result of President Reagan,

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and later President Bush, “getting tough” on drugs, and framing drug use as America’s number one problem. The 1980s media was a critical partner for government in framing drug abuse as a universal American problem and the link between drugs and violence received an unprecedented amount of airtime. Media promulgation of the link between drugs and crime reached new heights during the War on Drugs. Major media sources during the 1980s devoted extraordinary amounts of airtime and newsprint to America’s “drug crisis.” For example, “in July 1986 alone, the three major TV networks offered seventy-four evening news segments on drugs, half of these about crack.” Time magazine called crack cocaine the “issue of the year” while Newsweek claimed that crack “was the biggest story since Vietnam and Watergate.” Countless local news reports recounted shocking tales of drug-related violence, robbery, and other crimes. One article, cited by Democratic Senator Lawton Chiles in support of the Anti-Drug Abuse Act of 1986, recounted how a drug-addicted teenager brutally murdered his own mother with a butcher knife in a “fight over cocaine.” Another news story recounted to Congress lamented the fate of a “pretty young girl with dirty-blonde hair, deep blue eyes, and a model’s figure . . . [who] started stealing in order to get drug money.”

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132 Id. at 427. Indeed, one study found that the percentage of people viewing drug use as the most serious problem facing the nation peaked “at the end of a period characterized by unprecedented media and state anti-drug activity.” Id. at 443.

133 Zinberg, supra note 24.


136 Reinarman, supra, at 18–51. In the months preceding the 1986 elections, Time, Newsweek, NBC and CBS each produced numerous headline stories about the drug “plague” or “epidemic.” Id.


138 Id.


140 132 CONG. REC. S4668 (daily ed. Apr. 22, 1986) (citing Paul Blythe, Police Fast Being Educated About Drug, PALM BEACH POST & EVENING TIMES); see also 132 CONG. REC. S4670 (daily ed. Apr. 22, 1986) (citing Paul Blythe, It’s Cheap, It’s Available, and It’s Ravaging Society, PALM BEACH POST & EVENING TIMES) (“Less than a block from where unsuspecting white retirees play tennis, bands of young black men pushing their rocks on passing motorists, interested or not.”)).
that increased under the Reagan administration’s social and economic policies. The majority of Congress overlooked government data that demonstrated that drug use in America peaked in 1978 and 1979 and declined slowly but steadily through 1984. Despite the drop in drug usage rates in the 1980s, public perception solidified that drugs were the major problem in America and that drugs were strongly linked to violent crime.

E. 1990s to the Present Day War on Drugs

During the 1990s, the link between drugs and violence was strong and demanded harsh treatment for users and sellers, though some demanded legalization of marijuana. Media claimed in the 1990s that 80% of violent crimes are drug-related, and continue to claim that drugs lead to violence. In recent years, states have treated marijuana differently and have moved towards legalization; but, federal laws still punish drug crimes severely based largely on the perceived drug-violence link. Nine states have legalized medical marijuana, six states have decriminalized marijuana, and eleven others have decriminalized and legalized marijuana. Indeed, twenty-six states have loosened regulation of marijuana. Further, in November 2012, Colorado and Washington voters passed ballot initiatives to legalize recreational marijuana use. Individual state legalization of marijuana presents legal challenges. The federal government still classifies marijuana as a Schedule I drug, and the Supreme Court has not viewed state initiatives contrary to federal law positively. And the federal and state groundwork—including legislation and case law—for maintaining a drug-violence connection and strict punishments for drug possession and trafficking is still in tact. In other words, despite some legalization efforts, the war on drugs is alive and well when it comes to statutes and case law.

In addition to extensive media and political support throughout U.S. history for the argument that drugs cause violence described in this section, the next section discusses the state of the current war on drugs and assertions in both case law and statutes that persist in propagating this flawed link.

143 Alan Whitehead, DA Says Give Drug War a Chance to Work, FARMINGTON DAILY TIMES, May 9, 1990.
144 Zinberg, supra note 24.
146 See e.g., Gonzales v. Raich, 545 U.S. 1 (2005).
II. CASE LAW AND STATUTES CONNECT DRUGS AND VIOLENCE

A long history of cases and statutory law support the view that drugs and violence are inseparable. Case law, from the Supreme Court down to lower courts, and as early as 1890 until today, assert that drugs cause violence and crime. Statutes rely on the presumption that drugs cause violence and defendants are punished more severely based on this presumption. These statutes and cases assume that drugs make people violent, that people commit violent crimes to obtain drugs, and that the drug trade is inherently violent. This is all without regard to the empirical reality and disconnected from the wealth of social science research discussed in the next section.

A. Case Law Support for Drug-Violence Link

The connection between drugs and violence starts from the Supreme Court asserting there is a direct nexus between drugs and violence. For instance, the Court relied on arrest evidence of individuals committing violent crimes while on drugs to support a direct nexus between drugs and violence. Many other courts and legislatures have directly cited the connection between drugs and violence and relied on it to reduce individual rights for defendants and support inferences in many cases.

From even as early as 1890, courts connected drugs with crime and violence. Courts have affirmatively held that drug sales or use leads to

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147 See United States v. Carter, 669 F.3d 411, 413 (4th Cir. 2012) (stating that disarming drug users might reasonably serve the objective of reducing gun violence); United States v. Williams, 81 F.3d 1434, 1441 (7th Cir. 1996) (finding that the leaders of a conspiracy to sell drugs would have had to know that their conspiracy would involve violence to anyone who threatened the work of the conspiracy); United States v. Edmonds, 718 F. Supp. 109 (D. D.C. 1989) (holding that an anonymous jury was warranted because of the “realist threat of violence” from the defendant’s involvement in violence to protect the drug conspiracy) upheld in 52 F.3d 1080 (D.C. Cir. 1995); People v. Hollingsworth, 79 Misc. 2d 468, 470–71 (Co. Ct. 1974) (stating the sale of drugs is potentially as dangerous, or more dangerous, than crimes of violence to persons or property).


149 Id. (discussing further that there is a direct nexus between illegal drugs and crimes of violence).

150 Ah Lim v. The Territory of Washington, 1 Wash 156 (1890) (Scott, J. dissenting) (conforming to the belief that drug use “may tend to the increase of pauperism and crime,” even while dissenting from the majority’s decision to legalize the use of opium).
DRUGS AND VIOLENCE

Courts have asserted that drug addicts need to commit crimes of violence to satisfy their demand for drugs; the drug trade inevitably involves violence, and individuals involved in drugs are more likely to be involved with violence based simply on the fact that these two things are connected, even if the defendant has never exhibited any violent behavior. The combination of drugs and guns equates to violence according to many courts. Courts have said that to decrease violence, the state must focus on decreasing drug abuse. Courts have relied on the foundation that violence is endemic in the sale of drugs.

Without any specific findings, courts have said that those who sell or use drugs are dangerous and risky people. In many cases, courts find there to be a very high correlation between trafficking contraband and violence, stating that this violence is “inevitable” when drugs are concerned. Courts often rely on anecdotal evidence of shoot-outs.

151 Anderson v. State, 512 S.W.2d 665, 671 (Tenn. Crim. App. 1974) (finding crimes of violence result from drug addicts’ needs to satisfy their demand); State v. Calhoun, 468 P.2d 908 (Or. Ct. Ap. 1970) (holding that using a defense that the defendant was not violent unless he was using drugs was not improper given the circumstances). State v. Quinonez, No. 2011AP1497–CR, at 1 (Wis. Ct. App. June 13 2012) (recognizing that selling drugs contributes to rampant violence); Panduro-Chanchabi v. I.N.S., 993 F.2d 884 (9th Cir. 1993) (upholding lower court ruling based on court’s reasoning that increased violence and crime is a consequence of drug abuse).

152 Anderson, 512 S.W.2d at 671.

153 Harmelin v. Michigan, 111 S. Ct. 2680, 2706 (1991) (finding that there is a direct nexus between drugs and violence).

154 State v. Stacey, 458 N.E.2d 403 (Ohio Ct. App. 1983) (stating that an officer couldn’t arrest a person for a misdemeanor based solely on hearsay unless it dealt with violence or illegal drugs, as drug users and violent offenders were categorized together).

155 United States v. Price, 13 F.3d 711, 734 (3d Cir. 1994) (finding that combining firearms and drugs causes a risk of violence); State v. Clark, 255 Conn. 268, 285 (Conn. 2001) (discussing a correlation indicative of increased potential of violence when drug dealing and firearms are jointly involved).

156 See, e.g., State v. Santini, C.A. IN-93-03-0136, 1998 WL 109844 (Del. Super. 1998) (finding that there is a close relationship between drugs and violence and the State can serve a legitimate interest of reducing violence by reducing drug abuse).

157 United States v. Fife, 624 F.3d 441, 447 (7th Cir. 2010) (stating “the association between drug dealing and weapons, and the corresponding violence inexorably linked to the drug trade, is well-documented in our opinions. . . . and the courts have recognized the indisputable fact that violence is endemic to the trade in drugs”).

158 United States v. Yancey, 621 F.3d 681, 683 (7th Cir. 2010) (reasoning that habitual drug abusers are presumptively risky people and keeping guns away from them would support the objective of suppressing armed violence); United States v. Dugan, 657 F.3d 998, 999 (9th Cir. 2011) (stating habitual drug users likely “have difficulty exercising self-control” and are thus as dangerous trafficking firearms as felons and mentally ill people).

involving drugs to support a direct cause and effect relationship between drug trafficking and violence.\textsuperscript{160} Further, courts typically allow expert testimony in criminal cases to support the link between drugs and violence. However, often the testimony is limited to the “general” connection and cannot be applied to whether it directly applies to the case at hand.\textsuperscript{161} Other courts have specifically supported the claim that drug offenses are crimes of violence with evidence.\textsuperscript{162} One district court explicitly stated: “There is an implied rationale that when drugs are traded and dealt, violence accompanies it.”\textsuperscript{163} Other courts have linked drug use with domestic violence.\textsuperscript{164} Many courts explicitly connect drugs and violence.

However, against the grain of the majority, some courts have recognized that drugs do not always lead to violence in either sales or trafficking and these links are weak at best.\textsuperscript{165} Other courts understand that some drugs may stimulate a defendant and encourage violence but others may have the opposite effect.\textsuperscript{166} Overall, the case law very strongly supports the assertion that drugs cause violence and that there is a link between the two. The research and data tells a much different story as discussed in Part III below.


\textsuperscript{161} See Roberts v. State, 220 S.W.3d 521, 531 (Tex. Crim. App. 2007) (concluding that an expert witness could use testimony about the connection between alcohol, cocaine, and violence to speak in generalities, but not to provide specific relation to the defendant’s behavior in the case).


\textsuperscript{165} See Duran v. Castro, 227 F. Supp. 2d 1121, 1126 n.12 (E.D. Cal. 2002) (stating statistics do not show that a given individual who possesses a controlled substance would resort to violence and crime); State v. Clark, 570 N.W.2d 195, 202 (N.D. 1997) (“drug use and trafficking do not necessarily go hand in hand with violence or a propensity for violence”); United States v. Moore, 486 F.2d 1139, 1228 (D.C. Cir. 1973) (stating crimes of violence are almost never committed by drug addicts).

\textsuperscript{166} United States v. Moore, 486 F.2d 1139, 1227–28 (D.C. Cir. 1973) (recognizing that heroin may produce a tranquil state where as other opiates, such as cocaine may stimulate the user to violence).
B. Legislatures rely on Drug-Violence link to Support Legislation

Statutes have similarly made assertions about the strong link between drugs and violence. Many federal statutes define a drug crime as a crime of violence. Due to the assumption that drug crime is violent crime, the federal sentencing guidelines do not make distinctions between violent crimes and non-violent crimes, so a drug defendant may have a higher sentence than a non-violent drug dealer. And statutes assume that the more drugs a person possesses, the more violent an individual is. Finally, pretrial detention laws presume dangerousness and require detention when a person is caught with a certain amount of drugs.

Definitionally, many statutes define a crime of violence as one where drugs are involved and the person is simply armed with a weapon, even if it is not discharged. For instance, to commit armed violence, a defendant must possess only drugs and a firearm, and must not even discharge the weapon. Indeed, the same sentence is often provided to an individual carrying a firearm in relation to a violent crime as a person carrying a firearm with a drug trafficking crime. Many drug crime penalty structures, under both federal and state statutes, include sentencing enhancements based upon the quantity of the drug in possession assuming that the more drugs you possess the more violent you are and the more you threaten the safety of others. For example, most states have sentencing ranges for illegal possession of marijuana that statutorily increase the term of the sentence as the amount of possession increases. In addition to


168 United States v. Garrison, 560 F. Supp. 2d 83, 88 (D. Mass. 2008) (“Indeed, the Guidelines’ scoring makes no distinction between violent and non violent offenses: an addict with a record of drug convictions could have a higher score than another defendant with a murder conviction.”).

169 See, e.g., 18 U.S.C.S. § 924 (c)(1) (2012) (suggesting the same sentence to a person carrying a firearm in relation to a crime of violence as a person carrying a firearm in relation to a drug trafficking crime).

170 See infra note 297 and accompanying text.

171 Id.

172 See 21 U.S.C. § 841(b) (providing a step up basis in sentencing for possessing greater amounts of drugs); 21 U.S.C. § 960(b) (same); GA. CODE ANN. § 16-13-31 (same); LA. REV. STAT. § 40:966 (same); NY Penal Law §§ 220.06, 220.09, 220.16, 220.18, 220.21 (same); S.C. CODE ANN. § 44-53-375 (same); TENN. CODE ANN. §39-17-417 (same).

lengthier sentences, many laws also allow for higher fines for greater amounts of possession of controlled substances.\textsuperscript{174} The more drugs a person possess, the more dangerous she is deemed to be, or at least more deserving of a longer sentence.\textsuperscript{175} This connection between drugs and violence in statutory law is also clear in federal and state law where sentences are at least double and quadrupled what they would be when an individual possessing drugs also possesses a gun.\textsuperscript{176} The inference is that a person who possesses drugs and is also armed will participate in violent behavior.

This connection between drugs and violence is quite apparent in relation to pretrial detention. Under certain circumstances, federal law provides for pretrial detention under a rebuttable presumption that certain drug offenses make a defendant a danger to the community.\textsuperscript{177} There is a presumption of dangerousness—such that a defendant is not safe to release before trial—if an individual is charged with a drug possession crime involving a large amount of drugs. Various state statutes also create a presumption of detention when drugs of a certain quantity are involved.\textsuperscript{178} Other states take into account drug offenses or dependency when considering whether release is reasonable.\textsuperscript{179} The assumption with all of these statutes is that the more drugs you are found with, the more likely you are to be a violent person and a threat to the safety of the community.

\textsuperscript{174}See, e.g., \textit{Cal. Health \\& Safety Code} § 11357 (permitting increased fines for increased amounts of marijuana possession); \textit{Mich. Comp. Laws} 333.7403 (starting fines at $25,000 for less than 25 grams and continuing up to $1,000,000 for 1,000 grams or more).

\textsuperscript{175}\textit{Ark. Code Ann.} §5-64-419 (2013) (punishing possession of controlled substances as a Class B to Class D felony level based on weight and substance); see also, \textit{Ark. Code Ann} § 5-4-401 (2013) (identifying minimum sentences for each class of felony).

\textsuperscript{176}18 U.S.C. § 924(c) (2006) (causing punishment of gun offenses to run consecutive to punishment for drug offenses which means that the two sentences cannot be served together but the sentence for the gun charge does not begin until the sentence for the drug offense has been completed. The statute also imposes a mandatory minimum of five years; type and number of firearm can also extend the sentence.).

\textsuperscript{177}18 U.S.C. § 3142 (creating a rebuttable presumption that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed [certain drug offenses].”).

\textsuperscript{178}See, e.g., \textit{Va. Code} § 19.2-120(B)(3) (providing a rebuttable presumption in cases involving controlled substances if “(i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a ‘drug kingpin’ as defined in § 18.2-248.”).

\textsuperscript{179}See, e.g., \textit{Mass. Gen. Laws} ch.276 § 58A (“[A] justice, shall, on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger posed to any person in the community . . . [if] any illegal drug distribution or present drug dependency. . . .”).
As a whole, large sentences for drug criminals result due to the link between drugs and violence. Congress has written legislation that specifically tries to punish violence that is allegedly “too often associated” with trafficking. And the courts often work hand-in-hand with legislators defending the creation of offenses like being addicted to narcotics in order to prevent the “grave threat of future harmful conduct” that drug users pose. Government bodies also lend support to drug legislation by strengthening the link between drugs and violence.

As demonstrated in Part III, none of these assumptions are supported by studies on this topic. For instance, it is unclear that people who carry a gun while transacting drug deals cause more violence than those who do not. It is also unclear that people who possess more drugs are more violent than those who possess less. Finally, it is unlikely that individuals who transact drugs commit more violent crimes than other defendants.

C. One way Ratchet Down on Rights

Courts seem to use the drug-violence connection as a one-way ratchet. Defendants lose Fourth Amendment and Second Amendment rights when they are suspected of having drugs because courts assume that

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180 Alice Ristroph, Criminal Law in the Shadow of Violence, 62 ALA. L. REV. 571, 614 (2011). “The long prison sentences distinctive to the United States are imposed primarily for drug offenses, offenses which are not formally labeled ‘violent.’ But support for severe penalties for drug offenses is unquestionably fueled by an association of drugs with violence. There is considerable evidence that political leaders have explicitly sought to link drug use to violent crime in order to win support for the war on drugs.” Id. (citations omitted).

181 United States v. James, 834 F.2d 92, 93 (4th Cir. 1987) (stating that “(t)he statute is obviously intended to discourage and punish the deadly violence too often associated with drug trafficking.”) (citing 18 U.S.C.S. § 924(c)).


184 See William J. Stuntz, The Pathological Politics of Criminal Law, 100 MICH. L. REV. 505, 554 (2001) (discussing how politics has turned criminal law into a one-way ratchet and considering, for example, hate crimes. “And there may be no organized interest group on the other side: no one is likely to lobby against a statute that ratchets up sentences for violent bigots.”).
they will participate in violence.\textsuperscript{185} Indeed, courts use the presence of drugs to reduce the right against unreasonable search and seizure and the right to privacy. However, when a defendant under the influence of drugs tries to claim that the drugs made him act violently, courts often do not allow it.\textsuperscript{186} Thus, the drug-violence connection acts as a one-way ratchet to reduce rights for defendants.

For instance, in cases in which the defendant wishes to claim self-defense because he assumed the opposing party carried a firearm due to their status as a drug dealer, the correlation is not strong enough. In other words, a previous drug conviction, without more, is not likely enough to be probative of the victim’s propensity to be violent despite the supposed strong connection between drugs and violent behavior.\textsuperscript{187} In contrast, federal and state statutes commonly give much greater sentences to individuals who carry a firearm and deal drugs.\textsuperscript{188} So federal statutes are allowed to assume that drug dealers are more dangerous when armed but individuals are not allowed to assume that drug dealers they encounter are armed. Again, the drug-violence connection only works as a one-way ratchet to reduce rights.

Also in cases in which drug use is being utilized as an excuse for violent behavior, relying upon a cause and effect relationship between the two, courts typically first look at whether or not there was evidence of the drug at the time of the incident. When there is not sufficient evidence that the drug levels were high enough to demonstrate being affected by the drugs, the relationship is mere speculation.\textsuperscript{189} This kind of careful inquiry is not

\textsuperscript{185} See infra note 207 and accompanying text.

\textsuperscript{186} Rizk v. Prelesnik, 2010 U.S. Dist. LEXIS 4128, at *14–15 (E.D. Mich. 2010) (considering whether or not evidence regarding the correlation between drug trafficking and violent crime and shootings in the area should be introduced at trial. The court recognized that there could possibly be this correlation of drug dealing and gun violence, but said that this specific exclusion of evidence that took place did not bear enough weight on the evidence for it to have made a difference to the outcome of the case).

\textsuperscript{187} See, e.g., State v. Abreu, 106 Conn. App. 278, 285 (Conn. App. Ct. 2008) (reviewing a case in which the defendant made an effort to plead self-defense and claimed he was scared of the victim and his violent nature. He thought the victim was about to use deadly force against him, and based his thought-process on the fact that he was a convicted drug dealer. The court held that this was an improper inference that was made, regardless of the correlation between drugs and violent behavior and the evidence was therefore excluded from being introduced to the jury).

\textsuperscript{188} See supra note 184 and accompanying text.

\textsuperscript{189} See Turner v. Wong, 641 F.Supp.2d 1010, 1074 (E.D. Cal. 2009) (reviewing a case in which a defendant charged and convicted of a gruesome murder, who claimed that he had been using multiple drugs went into a violent rage due to the drugs in his system. The expert doctor witness, Dr. Terrell, was aware of extensive medical literature that PCP, alcohol, marijuana and methamphetamine could cause severe behavioral changes,
required when a defendant is suspected of having drugs and is searched without a warrant or when police violate other individual rights.\textsuperscript{190} For instance, where there is a probable cause inquiry, courts assume the presence of a gun when a person is suspected of possessing drugs. When courts seek to justify the reasonableness for an investigatory search in a case involving drugs, they allow police to assume that firearms or weapons are present due to the allegedly strong connection between drugs and violence.\textsuperscript{191} Indeed, in some circumstances where there was an otherwise illegal search and seizure, courts have found the search valid due to the “strong” connection between drugs and violence.\textsuperscript{192} Some courts have gone as far as saying that those who sell drugs are “dangerous criminals”\textsuperscript{193} and guns should be seized in any drug investigation because guns are the “tools” in the trade of drug sales.\textsuperscript{194} Again, in this instance, there is a one way ratchet reducing rights for defendants based on the drug-violence connection rather than the dictates of the Constitution.

Similarly, in the context of no-knock warrants, courts assume that the safety of officers is threatened when drugs are involved. The United States Supreme Court has held that a no-knock warrant is constitutional if the officers have a reasonable belief that evidence would be destroyed or a reasonable belief that safety of law enforcement would be in jeopardy if an especially with regard to the distortion of reality, paranoia, and violent behavior. However, it was too difficult to trace whether there could have been a cause and effect relationship, especially without blood tests within a certain amount of time after the murder).\textsuperscript{190} \textit{But see} Bennett v. Madakasira, 821 So. 2d 794, 807 (Miss. 2002) (examining a case in which a husband is responsible for killing his wife and blames the psychiatrists for prescribing the drugs and the manufacturer for making the drugs which allegedly caused his violent behavior. The Court reversed and remanded and required a careful inquiry to determine whether the drugs were related to the act of violence in this instance).\textsuperscript{191} United States v. Mendenhall, 446 U.S. 544, 561–62 (1980) (Powell, J., concurring) (discussing the need for flexibility while searching for drugs); State v. Stevens, 511 N.W.2d 591 (Wis. 1994) (reasoning that no-knock warrants could reduce the risk of losing evidence, and due to violence associated with drugs, no-knock warrants could also lower violence towards officers).\textsuperscript{192} State v. Mann, 271 Conn. 300, 325 (2004) (considering a motion to suppress evidence gained after what the defendant thought was an unlawful search and seizure. The court looked at how drug deals are linked with weapons and violence and due to this strong connection determined that the police were justified in making the search and seizure).\textsuperscript{193} United States v. Korman, 614 F.2d 541, 546 (6th Cir. 1980) (stating that drug dealers are known to be dangerous criminals and usually carry weapons and holding that the district court did not err in denying the motion to suppress evidence, given the “emergency and exigent circumstances” of the case and the risk to officers).\textsuperscript{194} United States v. Ramirez, 45 F.3d 1096, 1103 (7th Cir. 1995) (finding a gun admissible into evidence because weapons are a tool of the trade in drug dealing).
announcement were made. In Wilson v. Arkansas, the Court held that the no-knock warrant was constitutional when a defendant had weapons that the search was meant for. In United States v. Singer, the Court held that when an officer has a reasonable belief that a firearm is in the house when conducting a search warrant for drugs, a no-knock warrant is constitutional. In Singer, the court also recognized that persons in possession of drugs and of firearms pose a significant risk to law enforcement. Overall, in executing drug warrants, courts assume that drugs and violence are linked, allowing officers more leeway in violating individual rights.

In general, there is no constitutional right to carry firearms for a drug user due to the nexus between violent crime and illicit drug use. In United States v. Yancey, for example, the court stated that keeping guns away from drug users that have been convicted was similar to withholding the right to firearms from felons, thus implying that drug users are violent. The court used several indirect sources to confirm its claim that drug use was connected to violent crime, that keeping firearms from drug abusers serves its goal of reducing violent crime. Also in United States v. Carter, without relying on any evidence the Fourth Circuit found merit in the argument that drug users do not have the right to bear arms. Examples that the government used to justify this restriction included that drug users tend to be involved in illegal activities that would cause violent run-ins with the police, they deal in a black market, the inflated price of drugs cause desperation, thus higher likelihood to be involved in other illegal activity,

195 Wilson v. Arkansas, 514 U.S. 927 (1995) (stating that common law analysis is part of whether a search is reasonable under the 4th Amendment).
196 Id.
198 Id. at 763.
199 United States v. Yancey, 621 F.3d 681, 686 (7th Cir. 2009) (assessing challenge to a statute prohibiting unlawful users of drugs from possessing firearms because it violated the Second Amendment. The court held that the statute was in fact constitutional, and in explaining its rationale, argued that academic research demonstrates a strong connection between drug and violence. The court makes the argument that habitual drug users, like the mentally ill, are much more likely to have difficulty exercising self-control and therefore, more dangerous when possessing firearms. In essence, the court creates a broad class of individuals that are “presumptively risky people” and considers drug users to be a part of that class).
200 United States v. Yancey, 621 F.3d 681, 684 (7th Cir. 2010) (discussing the constitutionality of a statute passed by Congress that stated when a person is convicted of a drug offense, that person loses his or her right to bear arms).
201 Id. at 686.
and that illegal drugs impair mental functions, causing irrational behavior. None of this was based on empirical or social science data but bare assumptions about the drug-violence connection that resulted in a reduction of constitutional rights.

Particularly during the height of the war on drugs, the Supreme Court emphasized flexibility for law enforcement and allowed a reduction in individual rights since drugs were one of the most serious problems for the “welfare of our population.” And some courts have specifically supported the war on drugs rhetoric and supported lengthy sentences to send a message to the community. Indeed, courts in cases dealing with a large quantity of drugs, have inferred that a large amount of drugs leads to violence and crime such that a sentence of life without parole is warranted. Thus, the war on drugs ratcheted down rights for defendants, increasing sentences and the ease with which officers could search individuals.

The next section demonstrates that despite connections made by media, politicians, judges and legislatures, the assertion that drugs cause violence is flawed.

III. DEBUNKING VIOLENT DRUGS

Many media reports, government accounts, as well as cases and statutes, assert a link between drugs and violence. The perception that

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203 Id.
205 See, e.g., Cantrell v. Commonwealth, 288 S.W.3d 291, 299 (Ky. 2009) (allowing the prosecutor to urge the jury to send a message during the sentencing phase, and stating that “[d]eterrence is clearly not intended for that defendant alone, but rather his sentence sends the message to all others so inclined that their crimes will be punished, and that a jury made up of local citizens will not tolerate such offenses.”); United States v. Carbonell, 737 F. Supp. 186, 187 (1990) (“Because during this period of the “war on drugs,” it is desirable to send a message to the community in which defendant lives that any association with drugs, no matter what the motivation, will lead to prison, a term of imprisonment is imposed.”).
206 See, e.g., Wigglesworth v. Mauldin, 195 Ariz. 432, 437 (1999) (dismissing a complaint and stating that the length of sentence was adequate based on the public interest in keeping individuals who have been arrested with significant amounts of drugs from coming back into society. Such large amounts of drugs are linked with violent crime and adverse economic effects and therefore, merit longer and more severe punishments from the government.).
207 See, e.g., Teenager Indicted on L.I. in Ritual Slaying of Youth, N.Y. Times, July 12, 1984 (discussing teen who confessed to a violent murder due to a belief that the other youth had stolen PCP from him); Michael Norman, Our Towns, N.Y. Times, July 12, 1984
Drug use causes violent crime is not supported by the evidence, but upon closer look appears to be a myth. There is no proof that drugs cause violence. Indeed, most drug offenders commit nonviolent offenses and at low rates. Studies do not support the commonly held belief that drug use results in the user’s involvement in predatory crime. Though certainly drug addicts commit more crimes, the connection between drugs and violent crime is complex and not conclusive. And empirical evidence (covering the story of youths involved in a violent murder “motivated in part by a dispute over a drug theft”).

Attorney General Janet Reno, Fighting Youth Violence the Future Is Now, CRIM. JUST. 30, 31 (Summer 1996) (“Drug abuse at any level has become one of the primary catalysts for youth violence. For many young offenders, drugs take away their sense of right and wrong, destroy their inhibitions against violence, and replace the process of growing and maturing with a dependency on dangerous and illegal substances. Moreover, drugs provide the fuel and the daily rationale for many of the violent gangs that lead young people into crime.”).

See supra notes 155 to 172.

See supra notes 175 to 191.

M. A. Zahn & M. Bencivengo, Violent Death: A Comparison Between Drug Users and Nondrug Users, 1 ADDICTIVE DISEASES 283 (1974) (finding that in Philadelphia in 1972, homicide was the leading cause of death among drug users, higher even than deaths due to adverse effects of drugs; and drugs accounted for 31 percent of homicides).


Richard J. Gelles & Mary M. Cavanaugh, Association Is Not Causation: Alcohol and Other Drugs Do Not Cause Violence, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE, 175, 180 (Donileen R. Loseke, et al. ed., 2d ed. 2005) (“The issue of a possible link between drug use and abuse and violence is emotion laden, and fact often is mixed with myth”).

Chaiken & Chaiken, supra note 212 at 69.

Id. at 76 (“Further, continued criminality is more predictive of future drug use than is drug use predictive of criminality. Although over two-thirds of youthful users of drugs are likely to continue use as adults, as they approach their late teens and early twenties, half of juveniles who commit crimes stop.”) (citing Delbert S. Elliott & David Huizinga, The Relationship between Delinquent Behavior and ADM Problems, in JUVENILE OFFENDERS WITH SERIOUS DRUG, ALCOHOL AND MENTAL HEALTH PROBLEMS (C. Hampton ed., 1989)); D. Kandel, et al., Risk Factors for Delinquency and Illicit Drug Use from Adolescence to Young Adulthood, 16 J. DRUG ISSUES 67 (1986).

Richard Dembo et al., The Relationship Between Cocaine Use, Drug Sales, and Other Delinquency Among a Cohort of High-Risk Youths Over Time, in DRUGS AND VIOLENCE: CAUSES, CORRELATES, AND CONSEQUENCES 112 (Mario de la Rosa, et al. eds. 1990) (Concluding that involvement in dealing drugs was largely related to violent and nonviolent crimes).

that I discovered, with Frank McIntyre, actually shows that drug defendants commit less violent crimes on pretrial release than any other group of defendants.

A. Connection between Drugs and Violence is Unclear

As an empirical matter, criminal activity—and violent crime particularly—is not an unavoidable consequence of drug use—nor is drug use necessarily a component of criminal activity.\footnote{Arthur J. Lurigio & James A. Swartz, The Nexus Between Drugs and Crime: Theory, Research, and Practice, 63 Fed. Probation 67, 69 (1999).} Approximately half of federal prisoners incarcerated for drug offenses in the 1990s, for example, were low-level offenders.\footnote{Eric L. Sevigny & Jonathan P. Caulkins, Kingspins or Mules: An Analysis of Drug Offenders Incarcerated in Federal and State Prisons, 3 Criminology & Pub. Pol’y 401, 404 (2006).} They had only “one criminal history point or less, no weapons involvement, and no organizational or supervisory role in their offense.”\footnote{Id.} They were merely drug users.\footnote{Id.} By 2009, more than 4 of every 5 drug abuse violation arrests was for possession or use.\footnote{U.S. Dept. of Justice, Arrests in the United States, 1980–2009, BUREAU OF JUSTICE STATISTICS 12 (Sept. 2011).} This may help explain why the incarceration of drug users has failed to actually diminish drug abuse rates.\footnote{Harry Hermans, War on Drugs, DRUG TEXT (Apr. 7, 2010, 1:00 AM), http://www.drugtext.org/International-national-drug-policy/war-on-drugs.html.} And also crime rates have stagnated while incarceration rates have soared due to the War on Drugs.\footnote{Id.} Violence rates have remained stable, if not lowered, as drug use rates have increased. The empirical connection between drugs and violence is not strong, and at the very least is not clear. The charts below illustrate this point.\footnote{For drug-related arrests and violent crimes data, see Uniform Crime Reporting Program, FEDERAL BUREAU OF INVESTIGATION, available at http://www.fbi.gov/about-us/cjis/ucr/ucr; for illicit drug use data (last visited Jan. 27, 2013); see also National Survey on Drug Use and Health (NSDUH), SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, OFFICE OF APPLIED STUDIES, available at http://www.samhsa.gov/data/NSDUH.aspx (last visited Jan. 27, 2014).}
Graph 1. National Survey on Drug Use (Current illicit drug use - Percentage by U.S. Region)

Graph 2. National Percentage of Drug-related Arrests
Graph 3. FBI Uniform Crime Reports – Violent Crimes Regionally (per 100,000 inhabitants)

Graph 4. National Comparison of Drug-related Arrests, Illicit Drug Use, and Violent Crimes (Percentages)
From the graphs above, it is clear that in the period from 1995 to 2012, drug use has slightly increased or stayed the same in all four regions of the United States according to a drug use survey.\textsuperscript{226} Also, in this same period, drug arrests have increased between 1995 and 2009.\textsuperscript{227} And violent crime has steadily decreased during the period between 1995 and 2012.\textsuperscript{228} Graph 4 puts the first three graphs together demonstrating that there may not be a relationship between drug-related arrests, drug use, and violent crime. If the drug-violence connection existed, the graphs should indicate that as drug use increases then violent crime should also increase, rather than steadily decline. Though, there can be an argument that because drug arrests have increased, this has caused the steady decline in violent crime. All of these assertions are not easily determined so at best the arrest data is inconclusive on a drug-violence connection.

\textbf{B. Empirical Association of Drugs and Violence}

Although a proper study of the interrelatedness between illicit drug use and violence is difficult with the lack of national level data linking drugs and violence, Paul Goldstein laid the theoretical foundation on this topic.\textsuperscript{229} In the seminal article on drugs and violence, Paul Goldstein asserts that drug use is related to violence in three ways.\textsuperscript{230} These are the same three ways that media and politicians historically supported the drug-violence connection, discussed in Part I above.\textsuperscript{231} First, Goldstein suggests that some individuals demonstrate violent behavior as a result of ingesting drugs.\textsuperscript{232} However, Goldstein admits that this cause of violence is “impossible to assess.”\textsuperscript{233} Second, Goldstein proposes that drug use and violence are connected economically, where drug users engage in crimes to support drug use.\textsuperscript{234} However, here also, Goldstein admits that there is little data to demonstrate what violent economic crimes are committed for drug related
reasons. Finally, Goldstein asserts that drug use and violence are linked due to the “traditionally aggressive patterns” involved in the distribution and use of drugs, or essentially that the drug trade tends to be violent. Goldstein’s work formed a theoretical foundation for the drug-violence link, but was nothing new. His work echoed what media and politicians reported in support of drug prohibitions since the early Twentieth Century.

Since Goldstein’s article was published, many researchers have made attempts to prove or disprove a causal link between drug use and violence. No researchers have been able to prove that drugs have a direct influence on the use of violence, though there is some limited support for a correlation or common causes of drug use and violent behavior. This is not for a lack of trying, as many researchers have tried to disentangle the relationship between drugs and violence. In fact, many researchers have found that although there is a link between drug use and violence, it is a rather weak and attenuated one.

There is no solid empirical support for a direct relationship between drugs and violence, but because the data on this topic contradicts common misperception, it is slighted. Indeed many scholars have advocated that

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235 Id.
236 Id. at 497.
237 See infra note 244 to note 252.
238 See, e.g., Goldstein, supra note 92, at 22–23 (citing localized studies performed in Philadelphia, Michigan, East Harlem, Miami, Baltimore, New York City, and Washington D.C. that support Goldstein’s theories); Amanda Atkinson, et al., Interpersonal Violence and Illicit Drug Use, WORLD HEALTH ORGANIZATION COLLABORATING CENTRE FOR VIOLENCE PREVENTION 1, 3–5 (2009) (Discussing studies performed worldwide which have shown a strong correlation between drug use and the perpetration of violence and which confirm Goldstein’s theory that the nature of illegal drug markets increases the use of violence.).
239 Jeffrey Fagan, Interactions Among Drugs, Alcohol, and Violence, 12 HEALTH AFFAIRS 65 (1993) (Finding that despite the accumulating evidence on the validity of the drugs-violence relationship, the persistent difficulty in establishing causal linkages remains.).
240 Eric J. Workorski, Criminal Violence and Drug Use: An Exploratory Study Among Substance Abusers in Residential Treatment, 37 J. OFFENDER REHABILITATION 109, 118 (2003) (“These findings reveal a weak relationship between substance abuse and violence among this addict population and, clearly, not all addicts are violent. In fact, most of this population is not.”); Robert Nash Parker & Kathleen Auerhahn, Alcohol, Drugs, and Violence, in ANNU. REV. SOCIOl. 291, 294 (1998) (“In general, little evidence suggests that illicit drugs are uniquely associated with the occurrence of violent crime.”).
241 See, e.g., Francisco E. Thoumi, The Relationship between Illegal Drugs and Violence: Is There a Cause and Effect?, in LLILAS PORTAL, 38 (2009–2010); Atkinson et al., supra note 238, at 1 (stating that violence and illicit drug use are strongly linked, however, whether the relationship is an association or causal is still debated).
drugs cause violent behavior, that drugs do not lead to violent behavior, violence leads to substance abuse, the relationship is reciprocal (drug use causes violence and violence causes drug use), and the relationship is coincidental and has common causes. It may be that violent people are attracted to drugs, for instance. However, the link between drugs and violence is complicated and the studies do not support any clear links. Thus, the studies conclude that criminal behavior does not result from drug use, nor does drug use cause criminal behavior. And indeed some have recognized that media and political figures are responsible for the strong link between drugs and violence.

For instance, there is very little research considering how drugs are actually related to violent crime, like murder for instance. One study of...
over 100 drug-related homicide cases found that the relationship between drugs and homicide was complex and identified 10 different types of drug-related homicide. 252 And some studies where drugs were used during a violent crime, the crimes were systemic rather than related to the use of drugs. 253 Yet other studies demonstrated that drug users are actually more likely to reduce violent criminal behavior after beginning drug use. 254 And another study states that it may not be obvious whether prohibiting alcohol and drugs reduces or increases violence, 255 and at a minimum that prohibition of drugs does not reduce violence. 256 And that the violence associated with drugs has more to do with conflict among groups of people than the drug trade itself. 257

Even in the area of drug trafficking, where courts assume a strong link, research shows that there is actually not as much violence associated with drug trafficking as is perceived. 258 In addition, to the extent drug trafficking

252 Id. at 177, 181, 183, 184, 187–88 (suggesting that multifaceted strategies are needed to appropriately understand the problem of drug related homicide as sometimes homicide may be related to ingestion of drugs, sometimes there are many reasons, sometimes the killing is incidental to drugs and other times the killing is related to the illicit drug market).

253 Parker & Auerhahn, supra note 240, at 306 (discussing a study in which although close to 90% of drug-related homicides in the sample group involved some form of cocaine, most (74.3%) were classified as systemic).


255 Bruce L. Benson, Escalating the War on Drugs: Causes and Unintended Consequences, 20 STAN. L. & POL’Y REV. 293, 350–51 (2009) (“Despite drug use among persons arrested for other criminal activity, however, drug policy reform advocates stress that: (1) most research testing the drugs-cause-crimes argument actually implies that there is only a loose connection between drug use and criminal activity, if there is one at all; and (2) substantial research also demonstrates that much (most) of the so-called drug-related violence actually results from the systemic factors arising because of drug prohibition, not from drug use itself.”).


257 Moore, infra note 280, at 171 (finding that gang-related violence is more frequently related to conflicts within the gang than to drug trade functions.).

is associated with violence it has little to do with the drugs and more to do with the illicit nature of it, as illicit markets in general are more prone to violence. Those who have studied this violence have shown it is targeted and selective rather than random or gratuitous, and sometimes it is actually associated with crackdowns on the drug market by police.

Overall, the drug-violence link is at the very least overexaggerated and lacks reliable empirical support.

C. Blaming Drugs for Other Causes of Violence

Several studies that connect drugs and violence may be missing the true causes of violence, which are often unrelated to drugs. Drug use and crime participation are weakly related, and more often linked to underlying factors like irregular employment or weak attachment to school or parents. Even among youth where the drug violence connection is perceived to be strong, researchers have shown that link is often spurious and may be based on the age of the individual, or associated with other problems like delinquency. A few courts have recognized these multi-faceted reasons for violence including money, family violence, employment problems and other environmental issues. For instance, in a study of drugs conducted with rats, researchers found that the rats that kept pressing the lever for cocaine were the ones raised in solitary environments with no

259 Id. at 225–26 (finding, moreover, that violence deployed for economic ends, as well as to redress violations of the moral order, is more common among groups of people whose social status limits their access to legal resources, and it is such lower-status groups from which illicit markets disproportionately recruit their participants.).

260 Id. at 226–27.

261 Id. at 227 (explaining that high-profile crackdowns often fuel the violence rather than stifle it, and that many times it causes violence to spike).

262 See Chaiken & Chaiken, supra note 212, at 90; see generally Atkinson, et al., supra note 238.

263 See Scott Menard, et al., Drugs and Crime Revisited, 18 JUST. Q. 269, 295 (2001) (concluding that the drug-crime nexus is different depending on ages and levels of involvement in illicit drug use and crime and finding a closer relationship between illicit drugs and crime in younger age groups).

264 See Phyllis Ellickson, et al., Profiles of Violent Youth: Substance Use and Other Concurrent Problems, 87 AM. J. PUB. HEALTH 985 (1997) (assessing that the drugs and violence nexus among adolescents may be spurious and is often associated with other concurrent problems such as poor mental health, school drop out, and delinquency).

265 See, e.g., Young v. County of Cook, 598 F. Supp. 2d 854, 867 (N.D. Ill. 2009) (finding that money and not drugs could lead to violence by detainees).

266 United States v. Caro, 597 F.3d 608, 641 (4th Cir. 2010) (Gregory, J., dissenting) (stating drug offenses’ association with violence are one of many factors including family conflict, poverty, community disorganization, and others).
other options.\textsuperscript{267} Those who were living in a more enriched environment with other rats to play with, when given access to sweets, stopped pressing the cocaine lever.\textsuperscript{268} Researchers concluded that the addictiveness of crack cocaine had more to do with environmental conditions than the actual influence of the drug.\textsuperscript{269} Extrapolating these results to humans, it seems that blaming drugs for an individual’s violent behavior may not be fair when there are likely many other factors at play. Thus the important factor in the drug-violence link may be the environment of the individual, rather than the drug.

Indeed, studies have pointed out that forces of violence are not necessarily within the individual offender but may come from economic hardship, poor intellectual capacity,\textsuperscript{270} an individual’s aggressive temperament,\textsuperscript{271} or other personality disorders,\textsuperscript{272} which has little to do with the drug abuse.\textsuperscript{273} Indeed, a study that separated the effects of drug use with personality disorders determined that the disorder was much more likely to cause violent crimes than the drug use.\textsuperscript{274}

As it turns out, research demonstrates that violence related to drugs may result more from environment, personality, or age than the drugs themselves.

\textsuperscript{267} Tierney, \textit{supra} note 229.
\textsuperscript{268} \textit{Id.}
\textsuperscript{269} \textit{Id.}
\textsuperscript{271} Torok, et al., \textit{supra} note 50, at 27 (finding that a childhood history of childhood conduct disorder “CD”—a childhood disorder diagnosed with behavior from mild antisocial behaviors such as truancy, lying, and shoplifting, to serious criminal behaviors such as physical assault, arson and sexual assault—was associated with an increased lifetime and past 12 month risk of violent victimization of drug users and a predictor of both substance misuse and violent criminal behavior and that “[t]he significant temporal stability between childhood conduct disorder and later violent behavior among this sample highlights that drug users’ risk of violence is not strictly dependent upon their drug use, but that individual psychopathology also moderates the risk of becoming a victim and offender of violence”).
\textsuperscript{272} Torok, et al., \textit{supra} note 50, at 27 (“Given the equivalence of their drug use histories, it appears that the presence of a personality disorder does to some extent affect both the likelihood of committing violence, and the nature of violence committed, comorbidly with other factors directly related to drug use.”).
\textsuperscript{273} White, \textit{supra} note 265, at 520 (“Most crimes result from a number of factors. Even when drugs are a cause, they are likely to be one among many causes.”).
\textsuperscript{274} Abram & Teplin, \textit{supra} note 270, at 222 (“Those with drugs or alcohol problems but without antisocial personality disorders were less likely to show involvement in violent crimes than those with antisocial personality disorders, whether or not they had drug use problems. Concluding that having substance abuse problems does not necessarily create a higher likelihood of committing violent crime than other offenders.”).
D. Some Drugs are Linked to Violence. Others are Not.

Pharmacologically, as well as intuitively, some drugs can make an individual more violent, and others have the opposite effect.275 While certainly some drugs have been linked to aggressive and violent behavior,276 other drugs may be linked to the likelihood of violence during withdrawal,277 and others are not associated with violence.278 Indeed, one study directly suggests that asking whether drugs in general are linked to violence is a mistaken approach, rather, the researchers suggest that drugs must be considered individually to determine their level of effect.279 Interestingly, a recent study shows that many legal drugs including antidepressants, ADHD drugs, and anti-smoking medications all are disproportionately linked with violent behavior.280 And, a link between alcohol and violence is much more supported by the data than a link between drugs and violence.281 And studies demonstrate that alcohol is a much bigger risk factor than drugs for violence,282 and even that alcohol use

275 Parker & Auerhahn, supra note 240, at 291–311. There are difficulties with making empirical distinctions between the association of particular illicit drug use and violent behavior because studies usually group all illicit drugs together. It also discusses the use of various drugs individually (e.g. marijuana is generally classified as producing a euphoric effect; hallucinogens such as LSD don’t trigger violent behavior, but may aggravate effects of preexisting psychopathology; violence associated with opiates may be due to committing crimes to pay for it rather than as a result from the use or withdrawal from the drug; cocaine use is associated with the perpetration of violent crimes, although there appears to be little evidence that it is causally related to aggression; etc.). Id. at 181. However amphetamines may be a potential cause of violence. Id.

276 Atkinson, et al., supra note 238, at 1 (summarizing links between illicit drug use and violence); Valdez, et al., supra note 34, at 109–21 (finding drug use interacts with an individual gang member’s risk for violence to affect violent behavior outcomes).

277 See Atkinson, et al., supra note 238, at 5 (discussing suggestions that withdrawal after long-term use is associated with aggression).

278 See, e.g., Gelles & Cavanaugh, supra note 213, at 181 (finding that marijuana, rather than having an impact on a person’s violent behavior, gives users a euphoric feeling).

279 Parker & Auerhahn, supra note 240, at 293 (discussing various studies that have found that some drugs, such as amphetamines and cocaine have a slight influence on violent behavior while other drugs, such as heroin and PCP do not).


281 See Jerry P. Flanzer, Alcohol and Other Drugs Are Key Causal Agents of Violence, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE, 163 (Donileen R. Loseke, et al. ed., 2d ed. 2005) (finding that the connection between alcohol use and violence is strong).

282 Brenda A. Miller, The Interrelationships Between Alcohol and Drugs and Family Violence, in DRUGS AND VIOLENCE: CAUSES, CORRELATES, AND CONSEQUENCES 177, 178
in the presence of drugs mitigated the violent effects of the alcohol. 283 And other legal activities are linked to delinquency, including tobacco, which is more significantly related to crime than alcohol or drugs. 284

Overall, the majority of illegal drug users do not become addicted and the vast majority never harm themselves or others. 285 There is even evidence with crack cocaine, which according to a recent study is linked with violence, 286 that there is not as much violent crime associated with crack as some assume. 287 In 2000, almost three quarters (74.5%) of federal crack cocaine offenders had no weapon involvement. Even when weapons were present, rarely were they actively used (2.3% of crack cocaine offenders). 288 There is also data that crack cocaine and even methamphetamine are not as addictive as once believed as eighty to ninety percent of people who use these drugs do not become addicted. 289

At the very least, different drugs must be treated individually as they do not have the same relationship with violent behavior. 290 The federal sentencing guidelines and courts do not disentangle the violent tendencies of individual drugs and simply make assumptions that drugs are linked to violent behavior. If drug policy is based on the assumption that drugs cause

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283 Id. at 185 (finding that alcohol abuse in the absence of drug abuse heightened risks of spousal abuse among parolees, but that when drug abuse was present, alcohol abuse decreased violence.).  
284 See, e.g., Parker & Auerhahn, supra note 240, at 304 (“[T]hese researchers found that tobacco use was significantly related to violent delinquency, while the use of alcohol and illicit drugs was not found to be so related.”) (Watts & Wright, supra note 36, at 136.  
286 Paim Kessler et. al, Crack Users Show High Rates of Antisocial Personality Disorder, Engagement in Illegal Activities and Other Psychosocial Problems, 21 AM. J. ON ADDICTIONS 370, 378 (2012) (concluding that this study corroborated findings of other studies showing a relationship between crack/cocaine, violence, and legal problems).  
287 See UNITED STATE SENTENCING COMMISSION, SPECIAL REPORT, MAY 2002, 9, available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200205_RtC_Cocaine_Sentencing_Policy/ch8.pdf (last visited October 30, 2013) (“Anecdotal evidence and Commission sentencing data indicate, however, that the violence [Congress initially perceived to be associated with crack cocaine] has abated considerably.”).  
288 See UNITED STATE SENTENCING COMMISSION, supra note 287, at 9.  
289 Tierney, supra note 229.  
290 Parker & Auerhahn, supra note 240, at 293, 295–98 (surveying literature on the relationship between specific illicit drugs and violence, and concluding that evidence of a link between various illicit drugs and violence is absent—“At best, we can characterize the available results as inconclusive.”).
violence, at the very least policy makers should carefully consider which drugs actually cause violent behavior and which do not.

E. Drug Defendants Are Not Necessarily Violent

Only a small percentage of drug defendants commit violent crimes. There are certainly statistics supporting the fact that individuals under the influence of drugs commit crime, and drug users are more likely than non-drug users to be involved in violence both as perpetrators and victims. However, as an overall percentage of those committing violent crimes, only a small percentage of them were under the influence of drugs. Indeed as Donald Dripps points out: [a]n estimated 5 percent of the U.S. population uses illegal drugs every year . . . the U.S. prison population has swelled to 1 percent of the population.” Most of these users “can—and do—refrain from extrinsic crime.”

Strict drug crime policies purport to protect citizens from drug-related violence. Yet most inmates incarcerated for drug offenses do not have a violent record. A 2004 study of state and federal inmates revealed, 22% of drug offenders had a prior violent offense while 16% of state inmates reported that all prior sentences were drug offenses, demonstrating that almost the same number of drug defendants had violent offenses as drug offenses. A 1997 survey of prisoners also indicated only 12% of federal and

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291 See, e.g., Nicholas S., Kershaw C., Walker A., Crime in England and Wales 2007/08, London, Home Office (2008) (showing victims of violent crime believed the offender to be under the influence of drugs in 19% of cases); Baskin-Sommers B., Sommers I., Methamphetamine Use and Violence Among Young Adults, 34 J. OF CRIM. JUST., 661–74 (2006) (finding that in L.A., 35% of methamphetamine users between 18–25 were found to have committed violence while under the influence of the drug).


293 H. Snyder & J. Mulako-Wangota, Arrest Data Analysis Tool, BUREAU OF JUSTICE STATISTICS (2013), available at http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm (finding that in 1990, only 5.6% of those arrested for violent offenses were under the influence of illicit drugs).


295 Id.

296 For example, in United States v. Meirovitz, the Court discussed how possession and distribution of illegal drugs was one of the gravest problems that face the nation. 918 F.2d 1376, 1381 (8th Cir. 1990).

297 This might be explained by the fact that crimes result from a variety of personal, cultural, economic and situational factors, with drug use being merely one of many potential contributing factors. Lurigio & Swartz, supra note 218, at 69.

298 Id. at 67.
24% of state drug offenders were ever convicted of a violent crime.\textsuperscript{299} It is thus not surprising that only 3.9% of homicides as of 2007, according to the Federal Bureau of Investigation, were drug related.\textsuperscript{300}

Against common perception and social science theories,\textsuperscript{301} prisoners incarcerated for violent offences do not generally commit violent crimes for drug money.\textsuperscript{302} In 2002, only 5% of violent and public order offenders claimed to have committed their crimes for drug money.\textsuperscript{303} The pattern was similar in 2004 among state prisoners, with 10% of violent offenders and 7% public-order offenders having committed their crimes for drug money. Additionally, most drug offenders do not report having used firearms in the commission of a drug crime.\textsuperscript{304} Despite the fact that most individuals do not use firearms in drug crimes and even though most drug users do not commit violent crime, as discussed in Part II.A. and B., case law and statutes include in them these presumptions.

Overall, and against the grain of public opinion, those convicted of drug crimes do not tend to commit violent crimes due to the influence of drugs, have a violent crime record, or commit violent crimes for drug money.

F. Violence May Result from Enforcement

Drug related violence may actually result from enforcement of drug laws, not the actual drugs. Studies confirm that many drugs may not actually be linked to violence, or that the link comes only as a result of the illegal drug market, and not the properties of the drug.\textsuperscript{305} Indeed, when drug crimes do involve violence, the violence often results from competition

\textsuperscript{299} Sevigny & Caulkins, supra note 219, at 404.
\textsuperscript{300} Tina L. Dorsey, Drugs and Crime Facts, BUREAU OF JUSTICE STATISTICS, NCJ 165148.
\textsuperscript{301} See generally Goldstein, supra note 230 (asserting that there are various ways drug use could be related to violence, including an economically compulsive model where drug users engage in crime to support drug use).
\textsuperscript{302} But see id. at 497–502.
\textsuperscript{303} Id.
\textsuperscript{304} “Only about one-quarter of federal and one-fifth of state drug offenders reported firearms involvement, defined as receiving a firearms sentence enhancement or ever being armed during a crime. Proportionally, more state offenders reported previous use of a firearm during a crime (17.9% vs. 13.6%) and more federal offenders acknowledged receiving a sentence enhancement for firearms (15.9% vs. 4.0%). Thus, although firearms activity plays a nontrivial role in characterizing drug offender dangerousness, most offenders do not self-report a connection to firearms.” Sevigny & Caulkins, supra note 219, at 413.
\textsuperscript{305} White, supra note 265, at 511.
among drug traffickers to establish their territory,\textsuperscript{306} which has more to do with the illegality of drugs than anything else. Those involved in manufacturing, selling, money laundering, debt collecting, or providing bodyguard services have higher violence rates than other drug criminals.\textsuperscript{307} That is, courts and scholars assume that drug crime may lead to at least two forms of violence—violence associated with intoxication, and violence arising from the transportation and sale of drugs. Violence arising from the transportation and sale of drugs is significantly more common, though still less common than assumed.\textsuperscript{308}

Though, drug trafficking does not necessarily have to be associated with violence. Even without protection of the state or courts, illegal drug markets generally run without violence.\textsuperscript{309} For instance, Mexico has trafficked drugs for a century but has only seen an extreme rise in violence in the illegal drug industry within the last decade.\textsuperscript{310} And indeed there is evidence that strong criminal organizations do not necessarily cause high rates of violence and in fact these organizations try to reduce violence to avoid government focus on them.\textsuperscript{311} Accordingly, the violence may result largely from the prohibition of drugs rather than drug use or even the nature of the industry.\textsuperscript{312}

A comprehensive review of over 15 studies demonstrates that increasing drug law enforcement actually does not reduce drug market violence but instead that gun violence and high homicide rates may be an inevitable result of the illegal drug market and that disrupting drug markets can

\textsuperscript{307} Sevigny & Caulkins, \textit{supra} note 219, at 413–14.
\textsuperscript{308} For example, when crack cocaine became a serious problem in the 1980s, violent and well-armed drug dealers struggled to protect and gain control of lucrative and unstable drug markets. Drug violence might thus be reduced by legalizing narcotics, providing drug dealers an open market in which to conduct business. Lurigio & Swartz, \textit{supra} note 218, at 68.
\textsuperscript{309} Thoumi, \textit{supra} note 241, at 38 (arguing that the “lack of formal social and economic controls in illicit drug markets facilitates the spread of violence”).
\textsuperscript{310} \textit{Id.}
\textsuperscript{311} \textit{Id.} at 39.
\textsuperscript{312} Jeffrey A. Miron, \textit{Violence, Guns, and Drugs: A Cross-Country Analysis}, 44 J.L. & ECON. 615, 617 (2001) (“In a black market, participants cannot resolve commercial disputes using lawsuits or battle over market share using advertising: they are thus likely to use violence instead. This means that the prohibition of drugs potentially causes increased levels of violence, even if prohibition reduces drug use and drug use itself causes violence. . . . the elevated rate of violence in the United States compared with Europe is perhaps due to greater drug prohibition enforcement.”).
actually increase violence levels.\textsuperscript{313} In addition, criminalization of drugs can increase prices because the supply of drugs is limited. As prices increase, criminals have a greater incentive to engage in the illegal activity and utilize violence to maintain their share of the market.\textsuperscript{314} In other words, drug violence is exaggerated and may be attributable to drug law enforcement and prohibition rather than drug use or the nature of the industry.

\textbf{G. Independent Empirical Data that Drug Defendants are Least Violent}

My own empirical analysis demonstrates that drug defendants are actually among the safest defendants to release pretrial.\textsuperscript{315} In an independent analysis of the largest dataset to examine the issue of drugs and violence, Frank McIntyre and I examined the arrest and charging records of over 100,000 defendants pretrial and discovered that drug defendants were less likely to commit a violent crime when released before trial than almost any of the other defendants.\textsuperscript{316}

Drug defendants were likely to be rearrested pretrial, but not likely to commit any violent crimes. We found that drug defendants were more likely to be rearrested while released before trial than other defendants. Those who were charged with drug sales had the highest pretrial rearrest rates (21%), tied with robbery but they were very unlikely to be charged with violent crimes.\textsuperscript{317} For instance, defendants with an initial murder charge were about six times more likely than drug defendants to be arrested on violent crime charges (6.4\% vs. 1.1\%).\textsuperscript{318} Further, those brought in on violent charges were two to three times more dangerous than those brought in on drug crimes.\textsuperscript{319} In fact, people charged with drug felonies are about as likely to be rearrested as those brought in on driving-related offenses (like

\textsuperscript{315} Baradaran & McIntyre, supra note 21, at 528.
\textsuperscript{316} Id.
\textsuperscript{317} Id. at 528, 536.
\textsuperscript{318} Id.
\textsuperscript{319} Id.
This completely contradicts presumptions in federal and state detention statutes that presume that the more drugs a person possesses, the more likely they are to be violent. Overall, we show that though defendants with drug felonies are presumed to be dangerous under both state and federal statutes, they are among the least likely to be rearrested for a violent crime. Thus, we demonstrate through independent empirical evidence that, at least pretrial, drug defendants are the least violent defendants of all.

Unfortunately, despite my empirical evidence and other studies debunking the drug-violence connection and demonstrating that at the very least drugs should be analyzed individually, it persists, and has had some negative results discussed in the next section.

IV. RESULTS OF CONNECTING DRUGS TO VIOLENCE

The overwhelming result of connecting drugs to violence is mass incarceration. Other impacts include criminal justice policies that have been ineffective in curbing either drug use or violence. Strict drug laws have punished individuals harshly for small roles in drug operations due to the fear of violence and other crimes. There has been a dramatic misuse of resources with a large proportion of funding targeting drugs when alcohol is much more directly linked to violence. Minorities have been unjustly treated and there has been a reduction in constitutional rights. All of this has resulted due to statutes and cases blaming drugs for violence caused by other social ills.

320 See id. at 561 (finding drug sales and possession felonies at between 11% and 14 %, while driving-related crimes come in at 13%).
321 See supra note 177–79.
322 Id. at 558.
323 Ristroph, supra note 180, at 614–15 (“In the 1990s, the United States Sentencing Commission established a ‘Drugs[] Violence Task Force’ to study the relationship between drug offenses and violence. . . . And the task force found no evidence that long prison sentences for drug offenders decreased either drug use or violence; indeed, some evidence suggested that these policies may increase violence. Notwithstanding these findings, some members of the task force resisted the implications of this research, finding that to concede that the punitive approach to drug use was ‘misguided’ would be ‘simply too politically risky . . . .’ In other words, the drugs-violence connection is a political truth in the United States, even if not an empirical one.”) (citations omitted).
DRUGS AND VIOLENCE

A. Ineffectiveness

U.S. drug policy has consistently failed to reduce drug use or violence. The drug confiscation “success rate” of state and federal drug enforcement agencies has consistently hovered around 10% since the 1960s regardless of how much additional funding is poured into the War on Drugs.\(^{324}\) Incarceration has proven ineffective in lowering recidivism rates for non-violent drug offenders or lowering the U.S. crime rate overall.\(^{325}\) What prompted Congress to establish and strengthen mandatory minimum provisions during the 1980s were the record increases in homicide rates and gang violence, which they attributed to drug trafficking.\(^{326}\) Mandatory sentencing schemes, starting with the Rockefeller drug laws, have simply increased arrests without decreasing drug use or sales.\(^{327}\)

Federal sentencing guidelines are ineffective in reducing drug crimes or targeting violent criminals. The guidelines have been ineffective in that lower level drug defendants receive harsh sentences while leaders have received lesser terms.\(^{328}\) Also, under the sentencing guidelines, sentencing for nonviolent drug crimes are as high or higher than violent offenders,\(^{329}\) which contradicts the justifications for harsh guidelines that were aimed at reducing violence.\(^{330}\) Judges have also famously opposed the crack-cocaine

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\(^{324}\) Hermans, supra note 223.

\(^{325}\) Lisa Rosenblum, Mandating Effective Treatment for Drug Offenders, 53 HASTINGS L.J. 1217, 1230 (2002).


\(^{328}\) United States v. Brigham, 977 F.2d 317, 318 (7th Cir. 1992) (affirming sentence of a low-level driver receiving a 120-month sentence, while the organization’s kingpin received only an 84-month sentence because of his “substantial assistance”).

\(^{329}\) See, e.g., United States v. Leviner, 31 F.Supp.2d 23, 33 (D. Mass. 1998) (“To treat this man [Leviner] as if he were only a point on a grid . . . . would do violence to the purposes of the Sentencing Guidelines. It would treat someone convicted of Felon in Possession of a Firearm [the defendant’s conviction] with a minor record, solely because he had a few sentences in the criminal history (1), (2), and (3) range, the same as someone with multiple violent crimes, and multiple ten to fifteen year sentences. It would create a new form of disparity, treating offenders that are completely different in a like way.”).

\(^{330}\) See supra note 175 to 191 and accompanying text.
disparities which were unfair and racially discriminatory. Some judges have specifically pointed out that they are mostly sentencing drug addicts, not dangerous drug kingpins with lengthy sentences, which was the intent of the guidelines. Another major impediment to supply-side drug control has been the “replacement effect,” where incarcerated drug dealers are easily replaced by others on the street and regulated drugs are replaced by other drugs. Some law enforcement efforts in the 1980s enjoyed more success in controlling substances like heroin and marijuana over others like cocaine. Yet success in controlling certain drugs led to an increase in the supply of others. Interdiction efforts designed to cut off narcotics supplies encouraged dealers to focus on alternative drugs, increasing the supply on the street. In Miami, for example, efforts to intercept marijuana led to an increase in cocaine, as cocaine was less difficult to conceal than marijuana. Also, as crack cocaine exploded in popularity, drug dealers became younger and more fungible. Most leading researchers now agree that incarcerating foot soldiers and drug users in gangs has a negligible impact on crime. It merely creates job openings in drug-dealing organizations. Indeed drug regulation seems to have had negligible effect

331 See United States v. Blewett, 12-5226, 2013 WL 2121945 (6th Cir. May 17, 2013) (“The old 100-to-1 crack cocaine ratio has led to the mass incarceration of thousands of nonviolent prisoners under a law widely acknowledged as racially discriminatory.”).

332 See, e.g., United States v. Saenz, 429 F. Supp. 2d 1081, 1084 (N.D. Iowa 2006) (“First, I wish to point out the simple truth that most of the individuals I sentence in drug cases are drug addicts ... [t]hey are almost never drug ‘kingpins’.”).


334 Rasmussen & Benson, supra note can’t find this reference, 700 (2003) (“[T]he U.S. drug war of 1984–1989 was more successful against marijuana than cocaine.”).

335 Id.

336 Id. at 699–700 (“Smugglers did not change their occupation. Instead they simply changed the product being smuggled, shifting to a lower risk commodity, cocaine. Successful interdiction of marijuana thus increased the supply of cocaine, and youth correspondingly reported that this drug was more readily available.”).

337 Id. (“Efforts to intercept drugs in the Miami area in 1984 were highly successful against the importation of marijuana, no doubt because this product is bulky and relatively difficult to conceal. Smugglers did not change their occupation. Instead they simply changed the product being smuggled, shifting to a lower risk commodity, cocaine.”).

338 See id.

339 Id.

340 Id.
DRUGS AND VIOLENCE

on reducing drug use or drug-related violence. And drug enforcement, may actually create more social harm and violence than good. 341

B. Escalating Incarceration Rates

Incarceration and arrest rates have soared to all-time highs in the past 30 years, partially due to misguided drug policy. 342 Indeed, the overwhelming majority of drug offenders in both federal and state prisons are nonviolent. 343 By 1997, drug offenders made up 60% of the federal prison population and 21% of the state prison population. 344 By 2011, more than half (55%) of federal prisoners are serving time for a drug offense, while only 11% are incarcerated for a violent offense. 345 Despite this data, many individuals serve long sentences including life without parole for drug crimes. The overwhelming majority of individuals serving life without parole sentences are serving for nonviolent drug offenses. 346

341 Tracey L. Meares, It’s a Question of Connections, 31 VAL. U. L. REV. 579, 589 (1997) (“High levels of drug-law enforcement, as currently implemented [], are likely to generate negative consequences for community social organization—family disruption, unemployment, and low socioeconomic status.”).

342 Fareed Zakaria, Zakaria: Incarceration nation, CNN WORLD (Mar. 30, 2012). (Consequently, in the words of the New Yorker’s Adam Gopnik, “Over all, there are now more people under ‘correctional supervision’ in America . . . than were in the Gulag Archipelago under Stalin at its height.”).


346 TURNER, supra note 50 at 2, 22–23 (finding that as of 2012 there are 3,278 serving life without parole (LWOP) sentences for nonviolent crimes in the U.S. This is over 12% of the total LWOP population. Almost two-thirds of these are in the federal system. Of those, an overwhelming majority (2,578) are serving for nonviolent drug offenses. “About 79 percent of the 3,278 prisoners serving life without parole were sentenced to die in prison for nonviolent drug crimes.”).
We as a nation incarcerate large numbers of people for non-violent drug offenses.\textsuperscript{347} About 1 in every 34 current U.S. residents in 2011 had been under some form of correctional supervision.\textsuperscript{348} By the end of 2011, 6.9 million drug offenders were under some sort of state or federal correctional supervision.\textsuperscript{349} Nearly 1.6 million of these were currently incarcerated in jails or prisons.\textsuperscript{350}

The War on Drugs more than doubled America’s prison population between 1981 and 1990, from 344,283 to 755,425,\textsuperscript{351} or 6% to nearly 25% of the state population, and from 25% to 60% of the overall federal inmate population.\textsuperscript{352} While the number of arrests for all crimes rose by 28% in the 1980s, the number of arrests for drug offenses rose 126%.\textsuperscript{353} The arrest rate for sale or manufacture of drugs specifically rose even more between 1980 and 1989,\textsuperscript{354} increasing 210%.\textsuperscript{355} Arrests for use or possession alone increased 89% between 1980 and 1989.\textsuperscript{356} Indeed, drug convictions account for much of the rise in incarceration rates.

Arrest rates peaked in the 2000s. More persons were arrested for drug-related offenses than for any other crime category.\textsuperscript{357} The overall U.S. prison population reached a record high in 2007 when 1,615,487 persons were incarcerated in either state or federal prison.\textsuperscript{358} By comparison, approximately 196,000 prisoners were incarcerated throughout the United

\textsuperscript{347} JAMES P. GRAY, WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT (2001).
\textsuperscript{348} BUREAU OF JUSTICE STATISTICS, infra note 358.
\textsuperscript{349} Id.
\textsuperscript{350} Carson & Sabol, supra note 14, at 1.
\textsuperscript{351} In Six Months U.S. Prison Population Sets Record for a Year, N.Y. TIMES, Sept. 11, 1989, at A18.
\textsuperscript{355} Id.
\textsuperscript{356} Id.
\textsuperscript{357} Id.
States in 1972. This number increased 650% by 2011, even though the general U.S. population has only risen 48%, and even though the crime rate has been dropping since the early 1990s. Courts and scholars recognize that much of this increase is attributable to arrests for possession of controlled substance.

These staggering numbers have prompted government leaders on the federal and state level to take action to decrease the amount of punishment administered to low-level, non-violent drug offenders. For example, in 2010, Congress passed the Fair Sentencing Act of 2010 which eliminated the mandatory minimum sentence for simple drug possession. This past year, a bipartisan group of senators proposed the Smarter Sentencing Act of 2013, which would extend the guarantees of the Fair Sentencing Act retroactively to persons that were convicted of a drug crime prior to 2010. President Obama and his administration have also taken strides towards limiting the incarceration rates of low-level, non-violent drug offenders. Recently, President Obama used his powers of clemency to commute the sentences, some of which were life sentences, for eight persons convicted of non-violent drug crimes. Additionally, Attorney General Eric Holder sent a memorandum to all United States Attorneys instructing them to ensure that low-level, non-violent drug offenders are not given unduly long sentences. Many states, including states such as Texas that are...

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363 Boldt, supra note 352, at 287–290 (internal citations omitted).

364 See supra note 16 and accompanying text.


367 See White House Office of Press Secretary, supra note 300.

368 See Memorandum from Att’y Gen. Eric Holder, supra note 16 (“We must ensure that our most severe mandatory minimum penalties are reserved for serious, high-level, or violent drug traffickers. In some cases, mandatory minimum and recidivist enhancement statutes have resulted in unduly harsh sentences and perceived or actual disparities that do not reflect our Principles of Federal Prosecution. Long sentences for low-level, non-violent...
traditionally viewed as very conservative, have also become involved in the effort to limit the punishments administered to such drug offenders.\textsuperscript{369} Despite these recent efforts, the incarceration rates in the United States remain unreasonably high and are not anticipated to drop to 1980 rates for another 88 years.\textsuperscript{370} Thus, drastic changes to the foundation of U.S. drug policy must be taken in order to see any marked decrease in incarceration rates. One such change would be the delinking of drugs and violence in legislation and case law.

\textit{C. Disparate Effects on Minorities}

U.S. drug policies and increased arrest rates have disproportionately affected minorities.\textsuperscript{371} More than half of all persons arrested in 1989 were black although whites disproportionately made up the largest segment of the overall population. Black and white arrest rates both increased overall between 1989 and 2009. Yet by the end of 2009, the black arrest rate for drug arrests was up 90\% and the white arrest rate was up 66\%.\textsuperscript{372} The white arrest rate for drug possession or use doubled between 1980 and 2009, the black arrest rate tripled.\textsuperscript{373} The black arrest rate for possession or use in 1980 was about double the white arrest rate.\textsuperscript{374} By 2009, black arrests for possession or use were three times higher than white arrests.\textsuperscript{375}

Racial discrepancies are even more pronounced in arrests for drug sale or manufacture.\textsuperscript{376} The white arrest rate for sale or manufacture increased 127\% between 1980 and 1989 while the black arrest rate increased 363\%.\textsuperscript{377}

\textsuperscript{369} Salvage, \textit{Trend to Lighten}, supra note 300 (discussing efforts to “reduce prison time for low-level drug offenders or divert[] them into treatment; grant[] early release to well-behaved or elderly inmates; expand[] job training and re-entry programs; and institute[] penalties other than a return to prison for technical violations of parole or probation, like missing a meeting”).

\textsuperscript{370} Mauer & Ghandnoosh, supra note 17.

\textsuperscript{371} DRUGS AND DRUG POLICY, supra note 40, at 334. See also Shima Baradaran, \textit{Race, Prediction and Discretion}, 81 GEO. WASH. L. REV. 157, 167–68 (2013) (discussing how racial disparities for drug crimes are significantly higher than for other offenses) (citing \textsc{Human Rights Watch, Targeting Blacks: Drug Law Enforcement and Race in the United States} 3 (May 2008)).


\textsuperscript{373} Id.

\textsuperscript{374} Id.

\textsuperscript{375} Id.

\textsuperscript{376} Id.

\textsuperscript{377} Id.
In 1980, the black arrest rate for sale and manufacture was 4 times greater than the white arrest rate. By the end of 2009, the black arrest rate was up 205% from its 1980 level and the white arrest rate was up 102% from its 1980 level. 

Black and Hispanic men and women are also incarcerated at higher rates than whites, even though white drug offenders report higher levels of drug dependence. In 2011, Black and Hispanic prisoners were generally imprisoned at a higher rate than white prisoners and were younger than white prisoners. Accordingly, U.S. prison populations do not racially represent the national population. More than 3% of all black males and 1.2% of Hispanic males were imprisoned in 2011, compared to .05% of all white males. The discrepancies are even greater when age is considered. Approximately 7% of all black males between the ages of 25 and 39 were imprisoned in 2011. Nearly 3% of all Hispanic males between the same ages were imprisoned in 2011.

Overall, increased drug targeting and arrests with the goal of reducing violence, disproportionately affects minorities, without any tangible effect on violent crime. And indeed, by some accounts, the U.S. war on drugs actually increases violence in bordering countries.

D. Misuse of Resources

The funding of drug policy and the focus on the link between drugs and violence is a misuse of government resources, given that proportionately alcohol and nicotine cause more harm and demonstrate a closer link with violent crime and this funding could be used for drug treatment or other alternatives to incarceration. The fear of the drugs-violence connection has fueled much of the national attention and funding towards drugs. Not

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378 Id.
379 Id.
380 Id.
381 Carson & Sabol, supra note 14, at 7.
382 Id.
383 Id.
384 Id.
385 Id.
only the media, but the government has explicitly linked drug trafficking to violence.\footnote{388}{\textit{Drug Control Strategy}, supra note 183, at 24 (“[D]rug trafficking and violence go hand in hand.”).} The government’s role in perpetuating the link between violence and drugs has been significant.\footnote{389}{Henry H. Brownstein, \textit{The Media and the Construction of Random Drug Violence}, 18 \textit{SOC. JUST.} 85 (1991).} For instance, during the 1980s the media perception was that random middle class individuals were being affected by drug violence when it was actually poor minorities who were affected, not middle or upper class individuals.\footnote{390}{\textit{Id.} at 96.} Police targeted these poor urban, often minority individuals by emphasizing random stops of drug users and traffickers, which may have actually exacerbated the violence in urban areas.\footnote{391}{\textit{Id.}}

The harm from drugs is grossly overestimated as compared to other substances. Each year nicotine reportedly results in 300,000 deaths; alcohol at least 30,000, but the other drugs kill fewer than 3,000.\footnote{392}{\textit{Morris}, supra note 7, at 549.} Nicotine and alcohol also may cause more harm to third parties who do not use them than illicit drugs, and both nicotine and alcohol are strongly linked to violence.\footnote{393}{\textit{See supra} note 287 to note 289 and accompanying text.} This results in the government fueling a disproportionate amount of money towards drug research than alcohol, based on the fear of violence, even though the connection between alcohol and violence has been substantiated.

Finally, the focus on punishing the drug-violence connection distracts from finding and funding innovative alternatives that may actually be effective in reducing drug crime, such as drug treatment,\footnote{394}{\textit{See, e.g.}, United States v. Ellefson, 419 F.3d 859, 868 (8th Cir. 2005) (complaining about the fact that imprisonment for drug crimes rather than treatment in the federal system is expensive and would be better if replaced by drug courts).} or other alternatives to incarceration,\footnote{395}{United States v. Jamel Dossie, 851 F.Supp.2d 478, 478 (E.D.N.Y. 2012) (stating that “lengthy mandatory prison terms sweep reasonable, innovative, and promising alternatives to incarceration off the table at sentencing . . . the government’s unreviewable decision to invoke the mandatory sentencing provision made the actual facts irrelevant”).} that have proven to have the most dramatic results on the control of drug abuse.\footnote{396}{David E. Smith et al., \textit{Methamphetamine Abuse, Violence and Appropriate Treatment}, 31 \textit{VAL. U. L. REV.} 661, 663 (1997).} In sum, the money spent on justifying and upholding the drug-violence connection could be better spent on alternatives and treatment for drug defendants or on substances like alcohol that have been directly linked to violence.
E. Injustice and Punishment Severity

U.S. drug policy has also socially ostracized drug addicts, reduced their rights to privacy and punished many who are undeserving of harsh sentences. Current drug laws have relegated drug defendants to society’s lowest class, when historically drug users were an accepted part of middle class society. 397 Adult drug offenders tend to become ensnared in a “criminal subculture,” 398 being involved in drugs and crime together when they have not historically been connected. 399

As discussed above, constitutional rights for drug defendants have been ratcheted down. Indeed, the Supreme Court adopted the view that the War on Drugs creates special circumstances which warrant different rules. 400 Eric Luna has entitled this concept “Drug Exceptionalism” and documented where drug offenders receive a lower expectation of privacy under the Fourth Amendment as well as have been subject to racial profiling based on the perception that drug use leads to more serious harm. 401 Lower privacy rights for a search as well as the presumption of violence only working against defendants are problematic loses of constitutional rights due to current U.S. drug policy. 402

Some courts have recognized that doling out harsh punishments for drug crimes is an injustice, 403 particularly in light of the fact that they are not

397 LICIT AND ILLICIT, supra note 23, at 22 (One commentator has noted, “By far the most serious deleterious effects of being a narcotics addict in the United States today are the risks of arrest and imprisonment, infectious disease, and impoverishment—all traceable to the narcotics laws, vigorous enforcement of those laws, and to the resulting excessive black-market prices for narcotics.”)

398 Criminal subculture theory, which posits that drugs and crime are part of a deviant lifestyle perpetuated by social problems, is one of the strong theories to explain the connection between crime and drug use for adult offenders. Lurigio & Swartz, supra note 218, at 68.

399 Id.

400 The majority opinion in Board of Education v. Earls, held that drug testing of students participating in extracurricular activities was constitutional because the “drug epidemic makes the war against drugs a pressing concern in every school.” Bd. of Educ. v. Earls, 536 U.S. 822, 834 (2002).

401 See generally, Erik Luna, Drug Exceptionalism, 47 VILL. L. REV. 753 (2002) (documenting the exceptions courts give to law enforcement agents in the enforcement of drug laws).

402 See supra Part II.C. for discussion.

sentencing dangerous kingpins but low-level drug sellers or users.404 A line of cases indicate a long and continuing history of this opposition towards harsh narcotic laws and sentencing, with many judges begrudgingly enforcing the guidelines though finding the results too severe.405 Some judges specifically noted that sentences for “just” drugs do not deserve unnecessary harsh sentences,406 some of which were designed to punish violent drug criminals. Other judges have complained that sentences vary by drug type and quantity rather than role in the crime.407 Overall, many judges have complained that drug sentencing is too harsh and does not capture the violent criminals it was intended to incapacitate, further necessitating the delinking of drugs and violence.

CONCLUSION

The link between drugs and violence forms the foundation of U.S. drug policy and underlies federal and state case law and statutes. Over time, political and media rhetoric recounting horror stories of drugs and violent crime sprees have shaped public perception on drugs. Legislation quickly followed rhetoric starting from the early Twentieth Century through several periods of U.S. history with the latest and most lasting era constituting the War on drugs of the 1960s until the 1990s. Today, statutes and case law cement the link between drugs and violence, resulting in harsh punishments.
for state and federal drug offenders in hopes of reducing violence. This link between drugs and violence has become the basis for U.S. drug policy.

This Article demonstrates that the link between drugs and violence is flawed and conflicts with empirical data, particularly new data, like that uncovered by my work with economist Frank McIntyre, that shows that drug defendants are the most non-violent defendants to release before trial. This link is also not supported by social science data that shows that indeed most drug defendants are not violent, drug possession and trafficking do not necessarily involve violence, and that the relationship between drugs and violence may be better explained by age, environment, and personality factors. Though the drug-violence link lacks proper empirical evidence, it is rarely challenged and forms the backbone of much of U.S. drug policy. Countless U.S. cases and statutes continue to rely on this link to justify trumped up mandatory sentences, presumptions of detention for state and federal defendants, and over time disproportionate increases in incarceration for non-violent defendants who pose little threat to public safety.

In recent years, however, the public’s perception of at least some drugs has shifted towards advocating a more nuanced approach to drug use. Many states now allow use of marijuana for a variety of legal uses.408 Scholars have advocated less severe punishments for non-violent offenders.409 These changes are not enough to make even a dent to reverse the prison growth we have faced due to the War on Drugs. But rather, these changes demonstrate that the time may be ripe to reconsider this flawed link between drugs and violence. Indeed, the entire framework of federal and state drug statutes must be reworked to remove the many presumptions that drugs cause violence. Divorcing drugs and violence may be the key to saving U.S. drug policy.

408 In addition, the federal government has changed how it approaches the drug problem, and even classifies drug addiction as a treatable disease instead of a criminal activity. See, e.g., Allison C. Colker et al., Treatment of Alcohol and Other Substance Use Disorders: What Legislators Need to Know, NATIONAL CONFERENCE OF STATE LEGISLATURES (Jan. 2004) (“The goal of the National Institute on Drug Abuse (NIDA) is to help the public replace its myths . . . about alcohol and other substance use disorders with scientific evidence that addiction is a chronic, relapsing and treatable disease.”).