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## **Of Vice and Men: Technological Fetishism, Unintended Consequences and the Regulation of Human Desire**

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### **Abstract**

Most crime science and criminology ontologizes crime, treating it as a self-evident category, existing independently from human observation. Fetishizing scientific method, criminological research often employs crime as a dependent variable against one or more independent variables, reporting statistically significant results. But what constitutes crime (and how, and why) is rarely asked. Even when it is noted, such concerns are typically framed as beyond the scope of scientific criminology. Because most criminology uncritically accepts an ontology of crime, it reproduces existing power asymmetries, facilitating the subordination of marginalized members of society. Technological interventions in criminology tend to assume a natural, even inevitable, rate of crime, and frequently depend upon the persistence of the very crimes they hope to eradicate. But crime is dynamic. It innovates and adapts. Efforts to regulate criminal behavior can produce unintended consequences, driving conduct underground, creating profit motives and illegal markets, and leading to more virulent forms of crime. These outcomes can be easily discerned in vice crime. We survey the history of gambling laws, the prohibition of alcohol and drugs, and the legislative responses to prostitution. Although it would be possible to manage human vices through regulation, socialization, or education, or even to recognize that structural social arrangements create the conditions under which vice becomes irresistible, it is easier—and useful to reinforce

existing power arrangements—to frame vice as an individual failing.

**Keywords:** crime science, drugs, gambling, prohibition, prostitution, vice

## Of Vice and Men: Technological Fetishism, Unintended Consequences and the Regulation of Human Desire

Science seeks to identify the mechanisms that govern the universe, and through an understanding of such laws, to predict or influence the universe. This is true of chemistry and physics, of geology and biology, but it is also true of criminology. Thus, Lombroso's (1876/2006) positivist search for the "criminal type" is epistemologically consistent with other nineteenth-century examples of eugenic science, and those same early objectives of classification, measurement, and control can still be glimpsed in contemporary risk prediction measures (e.g., Harcourt, 2007; Oleson, 2021). Crime science—implying a commitment to active "crime reduction, not merely ... understanding and explaining crime" (Clarke, 2010)—understands crime as possessing an independent ontology. It understands crime as a real, external thing that can be measured, increased or decreased, and even—given the right deterrents—solved. Elsewhere (Kramer & Oleson, 2022), we have employed a constructivist epistemology to unpack some of the assumptions and limitations of crime science. That critique focused particularly upon biosocial criminology, risk prediction, security and terror, and environmental design. In this article, we attempt to extend our argument to examine vice (specifically, gambling, drugs, and prostitution). We first review our crime science critique, explaining the myopia of a criminology that understands crime as ontologically real. Second, we review the category of vice, looking at regulations used to regulate human desire. Third, we review legislative attempts to regulate gambling, drugs, and prostitution, especially through the application of modern technologies. Finally, we discuss the unintended consequences of these efforts: we note that instead of quelling vice, these initiatives frequently reinscribe, exacerbate, and inflame the problems they seek to alleviate.

### Re-Contesting Crime Science

In *Contesting Crime Science*, we argue that almost all crime science (and most mainstream criminology) ontologizes crime, treating it as a self-evident category. From that ontologizing of crime, it is a small step to a representational epistemology, in which the "crime scientist accepts that there is a 'real world' that transpires independently of the capacity to observe and, moreover, that it can be understood, theorized, and mapped, its 'laws' of 'cause and effect' discovered and exploited" (Kramer & Oleson, 2022, p. 191). This approach fetishizes the scientific method. A raft of variables are employed as independent variables and, usually, crime operates as a dependent variable, wrapped up in measures of statistical significance (Ziliak & McCloskey, 2008). But the more-fundamental question of what constitutes crime—and how some acts come to be criminalized by the state while others do not—is almost never asked. Even when these larger, structural problems are acknowledged, they are posited as irrelevant, or as beyond the purview of "scientific criminology."

Accordingly—and not coincidentally—crime science reproduces existing power asymmetries. "Crime science asserts that it cannot be anything other than a benevolent social force, a project that

seeks to address what common sense dictates is undesirable. Crime science never seems to entertain the possibility that it constitutes a problem, that it amounts to an exercise of power” (Kramer & Oleson, 2022, p. 202). But, as we explain, “Crime science is enlisted to serve the interests of those with wealth and power; to that end, it assists in the violent subordination of marginalized groups” (Kramer & Oleson, 2022, p. 7).

Crime science’s reliance on technological solutions to structural, social problems also creates powerful profit motives. Just as the US-led war on terror has funneled billions of taxpayer dollars into the coffers of private military-industrial corporations, so has the criminal justice system’s surveillance and control involved the transfer of public wealth into private hands (Schlosser, 1998). A robust body of evidence indicates that prisons breed—not reduce—crime (Petrich et al., 2021), but the US continues to incarcerate approximately 2 million people (Fair & Walmsley, 2021). The US now spends more than \$81 billion on corrections, and more than \$180 billion annually on crime control (Kramer & Oleson, 2022).

The taxpaying public is deeply invested in crime science, yet “it is not well served by it” (Kramer & Oleson, 2022, p. 8). Indeed, the strategies and technologies of crime science operate upon the assumption of the natural, inevitable rate of crime, and they depend upon the persistence of the very crimes they hope to eradicate. For example, before fingerprints and DNA can be used forensically, additional crimes must occur to construct a viable database. But the acts labeled as crime are not static; instead, they evolve, adapt, and overcome. Thus, crime control initiatives sometimes exacerbate the very “social evils” they seek to eliminate, producing more virulent forms of the undesirable behavior. As we wrote in *Contesting Crime Science* (Kramer & Oleson, 2022), this is true of biosocial criminology, risk prediction, security and terror, and environmental design. Here, we argue that it is also true of vice (e.g., gambling, drugs, and prostitution).

### Knowing Vice

Vice is appropriated from moral philosophy. In the *Nicomachean Ethics*, Aristotle described virtue as the opposite of vice, a golden mean that lies between the extremes of excess and deficiency. To be virtuous, a person must act with knowledge, must choose virtue for its own sake, and reflect a stable disposition. Nearly two thousand years later, Thomas Aquinas agreed that “vice is contrary to virtue” (1485/1915, p. 261). Nevertheless, Aquinas notes that vice is distinguishable from sin. Vice consists of a bad or vicious habit, while sin consists of a vicious act. Aquinas believed that many less serious, carnal sins stem from viciousness, while more serious, spiritual sins stem from a deliberate rejection of God. Therefore, in the *Inferno* (Alighieri, 1321/2002), when the seven deadly sins are represented, the more-serious lower terraces of Purgatory represent pride, envy, wrath, and sloth (all defects related to desire for inappropriate objects), while the less-serious, upper terraces represent greed, gluttony, and lust (all excesses of natural appetites).

These early philosophical views shape contemporary understandings of vice. Leitzel (2008) suggests that today, in addition to invoking themes of pleasure and iniquity, vices exhibit three characteristics: (1) they involve excess, (2) they involve a habit or pattern of immoral behavior, and (3) they involve ill effects that are borne directly by the vicious person. Thus, drinking is not a vice when alcohol is consumed in moderation, only when one drinks too much; it is not a vice when someone drinks to excess once, but it becomes vice when this becomes a habit; and while there can be external consequences to drinking (e.g., DUI accidents), the immediate and long-term consequences (e.g., hangovers and cirrhotic livers) are typically visited upon the drinker. Spooner (1875) distinguishes vice from crime, “Vices are simply the errors which a man makes in his search after his own happiness. Unlike crimes, they imply no malice toward others, and no interference with their persons or property.” Thus, vices fail Mill’s harm principle, who insisted that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (1869, p. 22). But it is not the victimless behavior of the rational actor that motivates the state to outlaw vice offenses; rather, it is the threat to public order that vice represents, especially with regards to children, addicts, and irrational actors. Thus, vices are not

criminalized in the way that murder, theft, and other *mala in se* crimes are. Rather, vices constitute *mala prohibita* offenses—things that are wrong because they violate social norms. Yet many potential vices (e.g., smoking cigarettes, eating junk food, video gaming, shopping, or consuming pornography) are not crimes. Leitzel explains:

A vice need not be, and often is not, a crime, though some vice, like heroin addiction in a society where heroin is prohibited and hence expensive, promotes criminal behavior as a secondary effect. When vice is criminalized, it is, to use a once-common phrase that has fallen out of favor, a victimless crime (2008, p. 5).

Efforts to suppress vice are sometimes restricted by law. In *Robinson v. California*, the United States Supreme Court struck down a California statute that made it a criminal misdemeanor to “be addicted to the use of narcotics.” The majority of the Court acknowledged that addiction is a disease, that it is possible to become an addict without criminal behavior, and therefore reasoned, “Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold” (p. 667). Employing a distinction analogous to the vice/sin distinction used by Aquinas, the majority distinguished between the status of addiction, which, as status, does not itself entail a criminal action (*actus reus*), and therefore does not qualify as a crime, from the act of consuming narcotics, which is a constitutional criminal offense. Thus, vice, itself, is not criminal under US law, but the overt expression of viciousness is the object of numerous criminal prohibitions. The United States employs a patchwork of federal, state, and local legislation—old and new—to establish regulatory limits on immorality. But vice is a tenacious thing, and it is abetted by rapidly changing social norms and constantly-evolving technologies. Criminal legislation, on the other hand, is—or should be—careful and deliberative. It cannot keep pace with the dynamic, rapidly evolving nature of criminalized behavior. Trying to suppress vice via legislation is like trying to crush a fly with a baseball bat: the tool is ill-suited to the task. More than three hundred years ago, Spinoza warned:

He who seeks to regulate everything by law, is more likely to arouse vices than to reform them. It is best to grant what cannot be abolished, even though it be in itself harmful. How many evils spring from luxury, envy, avarice, drunkenness, and the like, yet these are tolerated – vices as they are – because they cannot be prevented by legal enactments (1670/2007, p. 254).

Similarly, while law enforcement officials will inevitably employ available technology to prevent, investigate, and prosecute crime, they should also recognize the adaptive, creative nature of the behavior they seek to prevent, and should regard their own tools with skepticism rather than zeal.

### Three Vices

An analysis of vice offenses (including adultery, incest, and – when and where such conduct was illegal – abortion, interracial marriage, and consensual homosexuality) reveals recurring patterns of stigma, criminalization, and criminal adaptation. Three common vices – gambling, alcohol and drug trafficking, and prostitution – are described below, providing examples of the resilience of human vice.

### Gambling

Gambling is an ancient practice, predating recorded history. Early written accounts and archaeological evidence corroborate the suggestion that astragali (small, square heel bones) were used in the ancient world as randomizing agents for games and wagering (David, 1862). Cubic dice appear in the archaeological record by the third millennium BCE, and playing cards were invented in China during the first millennium CE. By the mid-fourteenth century, local ordinances were being used to regulate and prohibit card games in Western Europe.

In the American colonies, games of chance played an essential civic role. Between 1740 and 1865, state legislatures authorized more than 860 lotteries to fund public works and social institutions: roads, churches, libraries, and schools (Ezell, 1960). Early lotteries helped to finance some of America’s most prestigious universities: Harvard, Yale, Columbia, Dartmouth, Princeton, and

William and Mary. However, during the mid-nineteenth century, a current of moral opprobrium against gambling intensified. Moral entrepreneurs wanted to protect people—especially the poor—from exploitation by unscrupulous individuals, as well as from their own vice and cupidity. Therefore, by 1860, 30 of the then-33 states had enacted prohibitions against lotteries (Ezell, 1960). But the mounting opposition to gambling did not eliminate gambling. It displaced it.

While all this [suppression of lotteries and gambling] was going on, card sharps and professional gamblers were working the floating casinos on the river boats of the Mississippi or the settlements of California. Crude casinos were known to be working in New Orleans in 1827, Washington DC in 1932. In 1850, San Francisco had 1,000 gambling establishments. The frontier towns of the 'West' all had gaming houses as well as saloons (sometimes they were the same thing) (Munting, 1996, p. 30).

Findlay (1986) suggests that gambling flourished in the colonies and on the frontier because the same psychological qualities that drive some people to explore new realms—high expectations, opportunism, risk taking, and movement—are essential to gambling.

By the early twentieth century, most forms of gambling were prohibited: “only horse-racing remained as a legal gambling medium for most of the country” (Munting, 1996, p. 30). However, “[t]he prohibition did not eliminate gambling but drove it underground” (Dunstan, 1997). Organized crime syndicates opened cardrooms and casinos as well as speakeasies, and they prospered. Cities known for their permissive attitudes to vice became renowned as gambling centers, and they prospered, as tourist destinations. For example, in California, Mobster Anthony Cornero converted two massive barges (the SS Rex and SS Tango) into floating casinos and anchored them in international waters off the Santa Monica coast. He advertised in the Los Angeles *Times*, and excursion boats transported passengers to “the world’s largest and most luxurious casino” for 25¢ per round trip (Grace, 2009).

The 1929 stock market crash and the Great Depression forced several states to relax their restrictions on gambling. Drawing inspiration from the early American colonies, states employed gambling as a vehicle to stimulate their economies and to finance charitable organizations. Nevada, hit hard by the Depression, legalized most forms of gambling in 1931. Organized crime figures like Bugsy Malone invested heavily in Las Vegas and ushered in the modern gaming age. At the mid-point of the twentieth century, there were just a handful of commercial casinos in Nevada; today, there are 460 commercial casinos dotted across 25 different states. Another 508 tribal casinos exist in 29 states. State lotteries, prohibited during the twentieth century until 1964, now operate in 44 of 50 states and the District of Columbia. Legal gaming generated more than \$53 billion dollars in 2021 (AGA, 2022). Even intrastate sports betting, once prohibited by the Professional and Amateur Sports Protection Act of 1992, is now permitted under the Supreme Court’s 2018 ruling in *Murphy v. National Collegiate Athletic Association*. In fact, today, the only US states without any legal gambling are Hawaii and Utah.

Of course, non-governmental interstate and international gambling remains illegal, as regulated by the Federal Wire Act of 1961 (prohibiting sports betting) and the Unlawful Internet Gambling Enforcement Act of 2006 (prohibiting financial institutions from transferring funds to online gambling sites). But the practice is common. One 2002 analysis indicated that between 50% and 70% of the world’s online gamblers were U.S. citizens (GAO, 2002).

There are myriad reasons why prohibition efforts might be ineffective, but five warrant emphasis. First, most online gambling sites are licensed overseas, which limits US law enforcement efforts to regulate them. Moreover, because many operators are licensed in developing countries, these governments might be unwilling to throttle a stream of financial revenue by rigorously enforcing existing rules (Parke & Griffiths, 2004). Second, law enforcement efforts to repress demand side consumption is also ineffective because “illegal activity is virtually impossible to detect” (Parke & Griffiths, 2004, p. 298). Proxy servers, virtual private networks, and anonymous browsers (e.g., TOR) all make it extraordinarily difficult for law enforcement officials to police online activity. Decentralized online payment mechanisms like PayPal and cryptocurrencies further facilitate online

gambling (Brown, 2016). The extravagant costs of comprehensive enforcement are simply not justified by the marginal return in reducing the social and economic harms of online gambling. Third, attempts to legislate gambling out of existence by statute are also easily circumvented:

The inherent problem with statutes regulating telecommunication technology is that the nomenclature is not permanent. ... Technology will continue to develop in unforeseen ways. At best, Congress can only be reactive when trying to prohibit Internet gambling as the industry will continue to exploit the loopholes and phrasing of the statutes (Parke & Griffiths, 2004, p. 296).

Fourth, technological attempts to block online gambling content appear doomed. It is exceptionally difficult for regulators to distinguish the transfer of data associated with prohibited gambling from lawful data. Blocking technologies exist, but they always trail technologies that facilitate gambling. Even simple encryption of data packets could make it “fundamentally impossible” to regulate content (Parke & Griffiths, 2004, p. 298). One gaming industry expert opined “that the only way to restrict illegal data transfer into a country would be to unplug the Internet” (Parke & Griffiths, 2004, p. 298). Finally, fifth, even concentrating enforcement efforts on financial transactions (“follow the money”) might not produce the desired results. In 2009, when the US Department of Justice ordered several US banks to freeze \$34 million in payments to 27,000 US online poker players, the implicated companies simply reimbursed affected players (Goldman, 2009). The asset seizure was managed as a business expense, as a one-off cost in a \$9 to \$12 billion dollar-per-year industry. And while transaction codes can direct financial institutions to deny transfers to online gaming sites, these are easily circumvented if the provider creates an ancillary (ostensibly non-gambling) firm to process payments or if the payment is made through payment aggregators or cryptocurrencies.

The belief that legislation or blocking technologies will somehow eliminate the vice of gambling is flawed. Prohibition *does* change behavior, but rarely does so in a straightforward manner. In practice, “a ban exacerbates some problems, creates some others, and alleviates some others” (Leitzel, 2008, p. 17). Examination of the American history of gambling suggests that prohibition will not eliminate the behavior, but will likely displace it, either to concentrated pockets on the periphery or within an underworld of organized crime. Today, the prohibition against online gambling does *not* deter US citizens from playing poker or slots, but *does* direct them to foreign or illegal providers where consumer protections are weak (Parke & Griffiths, 2004).

To actually suppress gambling, public attitudes must change. In 1976, two years before casinos opened in Atlantic City and heralded the modern age of gaming, the Commission on the Review of National Policy toward Gambling said, “Gambling is inevitable. No matter what is said or done by advocates or opponents of gambling in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans” (p. 1). In a country where lotteries represent a longstanding form of civic support, where Las Vegas draws more than 40 million tourists each year, and where 48 of 50 states currently authorize—and depend upon—legal gaming, it would be strange—perhaps even un-American—to renounce games of skill and chance.

## Drugs

Drugs, defined as “any substance (other than food) intended to affect the structure or any function of the body” (FDA, 2017), have transformed modern life: anesthesia allows surgeons to perform open heart surgery; birth control enables women to manage their own fertility; and vaccines have eradicated smallpox and attenuated a raft of infectious diseases. But like the Mr. Hyde within Henry Jekyll (Stevenson, 1886), drugs also embody danger. The legal consumption of alcohol and tobacco costs an estimated 250,000,000 years of disability-adjusted life, worldwide, with tens of millions more lost to illegal drugs (Peacock et al. 2018). Sharing needles for IV drugs is a vector for HIV and hepatitis-C transmission. And addiction is commonplace. An estimated 46.3 million (16.5%) Americans over the age of 12 had a substance use disorder involving alcohol or illegal drugs in 2021 (SAMHSA, 2022). US rates of drug overdose are rising, especially for opioid analgesics. In fact, more than 100,000 people in the US died of overdose in a one-year period (CDC, 2021): this exceeds the

death toll of a 737 crashing and killing everyone on board, every day, for an entire year. Today, more people die in the US from overdose than from car accidents (Bach, 2019). The evidence that such hazards can be meaningfully curbed by focusing on supply-side enforcement is scant: it might be more productive to address the social and economic conditions that drive demand-side consumption.

While increased opioid prescribing for chronic pain has been a vector of the opioid epidemic, researchers agree that such structural factors as lack of economic opportunity, poor working conditions, and eroded social capital in depressed communities, accompanied by hopelessness and despair, are root causes of the misuse of opioids and other substances (National Academies of Sciences, Engineering, and Medicine, 2017).

The Drug Enforcement Administration operates a classification scheme in which substances with no currently accepted medical use and high potential for abuse are schedule I drugs, while substances with medical value and some risk of abuse are placed in schedules II through V (going from high to low risk of abuse). Notwithstanding the fact that 37 US states have legalized medical and/or recreational marijuana, cannabis remains a schedule I drug, while cocaine and methamphetamine are schedule II drugs (Lopez, 2016). This is because “medical value” is a criterion demonstrated through controlled clinical trials, but schedule I drugs are highly controlled, and so researchers require HHS, FDA, and DEA approval before conducting these studies. It “is a bit of a Catch-22. There needs to be a certain level of scientific research that proves marijuana has medical value, but the federal government's restrictions make it difficult to conduct that research” (Lopez, 2016). These restrictions are not apolitical and reflect longstanding social, economic, and political arrangements. When, in 1993, US Surgeon General Jocelyn Elders said that “we would markedly reduce our crime rate if drugs were legalized,” the Clinton White House first publicly opposed her, then removed her from office (Baum, 1997). In the UK, when the Chair of the Advisory Council on the Misuse of Drugs stated that alcohol is more harmful than cannabis (a claim supported by evidence), he was immediately sacked by the British Home Secretary (Nutt, 2012).

### **Prohibition**

The “noble experiment” of US prohibition (1920-1933) should serve as a cautionary tale to any lawmaker contemplating the control of drug-related vice through criminalization. Mobilized by *The Inquiry into the Effects of Ardent Spirits upon the Human Body and Mind* (Rush, 1811), temperance societies began to emerge in US cities in the nineteenth century. Individual states and municipalities experimented with prohibition, but it was the passage of the Volstead Act and 1919 ratification of the Eighteenth Amendment that established a national supply-side ban on the “manufacture, sale, or transportation of intoxicating liquors.” The ban included beer and wine, as well as distilled spirits. This presented a problem, since millions of Americans had deeply ingrained habits of alcohol consumption (Kleiman, Caulkins, & Hawken, 2011). Thus, although prohibition may have produced some beneficial consequences (e.g., declining rates of cirrhosis of the liver [Miron, 2004]), the historical consensus is that prohibition did far more harm than good.

Five effects of prohibition are especially noteworthy. First, prohibition was expensive. It stripped states and counties of tax revenues that alcohol sales previously generated. It eliminated jobs and shuttered businesses. At the same time, the law imposed significant enforcement costs. “Prohibition cost the federal government a total of \$11 billion in lost tax revenue, while costing over \$300 million to enforce” (Burns, n.d.). As the party of the roaring twenties turned into the hangover of the Great Depression (1929-1939), economic pressures proved to be a key driver in prohibition’s repeal.

Second, prohibition created a lucrative illicit market in alcohol. Because alcohol prices tripled (Kleiman, Caulkins, & Hawken, 2011), suppliers were highly motivated to meet a steady demand. Domestic stocks of illegal bathtub gin and moonshine were augmented by contraband supplies smuggled across borders. Bottles and barrels were transported by rum-runners and bootleggers (revered by some members of the public as audacious antiheroes) and were retailed in speakeasies.

It is estimated that by 1925, there were between 30,000 and 100,000 speakeasies in New York City alone (Kelly, 2017). While overall alcohol consumption fell to about half of what it had been before prohibition, consumption of spirits increased (since this was more profitable to produce and traffic). Because illegal alcohol represented such a valuable, clandestine commodity, it was secured by force. Organized crime syndicates dominated this economic niche (Hari, 2015). And while unreliable crime statistics and prohibition-era urbanization make it challenging to distinguish the actual relationship between prohibition and homicide rates, a careful study revealed “a strong, positive relation between enforcement of prohibition and the homicide rate” (Miron, 2004, p. 49).

Third, prohibition eliminated safeguards on alcohol. Black market distillers used available equipment to construct clandestine stills (which sometimes poisoned people). To increase the price of their products, they attempted to emulate the flavors of pre-prohibition spirits by adding adulterants. “They found they could simulate bourbon by adding dead rats or rotten meat to the moonshine and letting it sit for a few days. They made gin by adding juniper oil to raw alcohol, while they mixed in creosote, an antiseptic made from wood tar, to recreate scotch’s smokey flavor” (Miller, 2019). More harmful than rats or creosote, however, were the toxins that the US government deliberately added to industrial ethanol (frequently stolen to produce drinking alcohol) as a deterrent against consumption. Crime syndicates simply responded to this early crime science intervention by hiring chemists – the Walter Whites of the 1920s – paying them to redistill denatured alcohol back into a drinkable state. But the government responded to these innovations by regulating industrial alcohol to contain high concentrations of (difficult to remove) methyl alcohol. The consequences were lethal. By some estimates (Blum, 2010), deliberate adulteration killed more than 10,000 people during prohibition (almost all of them the undesirable poor, who could not afford a better grade of alcohol).

Fourth, prohibition undermined the rule of law. “Prohibition made criminals of millions of Americans” (Burns, n.d.), and so invited them all to become more cynical about crime and punishment. Why should people be punished for something many did not think was wrong? Moreover, because drinking generated so much untaxed, undisclosed income, corruption was a serious corollary. By 1929, about a quarter of federal prohibition agents had been fired for bribery, conspiracy, embezzlement, extortion, and false reports. When the Wickersham Report (1931) assessed the first decade of prohibition’s implementation, it focused in large part on corruption as a pervasive practice.

Fifth, prohibition expanded criminal justice. The Jones-Stalker Act of 1929, for example, enhanced the penalties for violating prohibition. Misdemeanor offenses became felonies (Burns, 1929). Although the law was intended to bolster penalties against repeat and commercial violators, it authorized a fine of up to \$10,000 (\$147,000 in today’s dollars) and/or five years in prison, per offense, even for first-time offenders. Between 1925 and 1930, the number of people convicted of prohibition violations increased by 1,000% (Thornton, 1991). The nation’s courts grew congested, with trials languishing for a year or more, and plea bargaining was used to clear dockets. Two-thirds of the people sent to prison in 1930 were convicted of alcohol and drug offenses (Thornton, 1991). Although laws might have been drafted with kingpins in mind, in practice, those who suffered the legal consequences of prohibition overwhelmingly came from the ranks of the poor, the working class, the immigrant community, and those from rural communities.

### ***The War on Drugs***

Prohibition was repealed in 1933 with the ratification of the Twenty-First Amendment. But instead of saying that prohibition ended, it might be more accurate to say that it changed direction, evolving into the contemporary war on drugs. Looking at the contemporary drug war, Hari sees direct parallels with prohibition:

[T]his happened—this exact process—when alcohol was prohibited in the 1920s. The government fought a war on alcohol, and this led inexorably to gangs tooling up, creating a culture of terror, and slaughtering as they went. I spent weeks reading over the histories of



alcohol prohibition, and there it was—this story, repeating right through history. When the government war on alcohol stopped, the gangster war for alcohol stopped. All that violence—the violence produced by prohibition—ended (2015, p. 80).

The parallels *are* compelling. A prehistory of America's modern war on drugs can be located within the passage of the Harrison Narcotics Tax Act of 1914, in the creation in 1930 of the Federal Bureau of Narcotics, and in Harry Anslinger's zealous leadership of that agency (Robinson & Scherlen, 2015). Anslinger believed that criminal deterrence was the only way to control drugs: "Strong laws, good enforcement, stiff sentences, and a proper hospitalization program are the necessary foundations upon which any successful program must be predicated" (Anslinger & Tompkins, 1953, p. 205). So zero tolerance is nothing new. But the current war on drugs should be traced to President Richard Nixon's 1971 declaration, "Drug traffic is public enemy number one domestically in the United States today and we must wage a total offensive, worldwide, nationwide, [and] government-wide" (Epstein, 1977, p. 178). This might sound altruistic, but just as temperance and prohibition had racist roots, so too does the war on drugs. In fact, Nixon advisor John Ehrlichman admitted as much, in unambiguous terms:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people.... We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did (Baum, 2016).

Just as prohibition was expensive, so, too, is the war on drugs. The fiscal year 2024 federal national drug control program budget is \$46.06 billion dollars (White House, 2023). This daunting figure—the equivalent of \$5.3 million dollars every hour—does not include unrealized tax revenues. The legalization of drugs would generate an estimated \$46.7 billion dollars or more each year (Miron & Waldock, 2011).

Just as the inflated prices of prohibited alcohol drove illicit markets during the 1920s and early 1930s, so has the current war on drugs incentivized new forms of trafficking. Drug arrests are frequent in the United States: someone is arrested for drug possession every 25 seconds (Human Rights Watch & ACLU, 2016). In response to increased surveillance and enforcement, the speakeasy of the 1920s has been reborn in the form of illegal cryptomarkets that operate out of view from traditional law enforcement. The most notorious of these online marketplaces was Silk Road (Bearman, 2015), created by free-market libertarian Ross Ulbricht in 2011. It operated on the dark web (that is, in the massive segment of the internet not indexed by search engines) and visitors used anonymous TOR browsers to access the site and used cryptocurrency (Bitcoin) to pay for the postal delivery of illicit goods. Silk Road generated approximately \$15 million in commissions per year, but was shut down by the FBI in 2013 when Ulbricht was arrested and charged with computer crimes, narcotics trafficking, and money laundering. Although criminologists have speculated that narcotics cryptomarkets have the potential to reduce violence (Martin, 2014), prosecutors in Ulbricht's trial alleged that he tried to secure Silk Road's market dominance by contracting the murders of six associates. These things happen. For example, in Mexico's drug war, it is estimated that more than 115,000 people were murdered between 2007 and 2018 alone (Calderon et al., 2021). More than 100 Mexican politicians were assassinated during the run-up to the 2018 national election (Turak, 2018). Many people get killed because the money is so good: cartels pocket between \$19 and \$29 billion dollars each year (ICE, 2010).

Although Silk Road was shut down in 2013, the site was resurrected as Silk Road 2.0, then—after more arrests during the government's Operation Onymous—as Silk Road 3.0. In 2015, the Global Drug Policy Observatory warned that "forms of interdiction may be successful in closing down a particular site, but at the cost of proliferating hidden drug markets and incentivising technological innovation" (Buxton & Bingham, 2015, p. 1). The observation was prescient. Today, darknet markets

are increasingly decentralized, and almost all of them use PGP encryption, making enforcement difficult.

But it is not only distribution networks that innovate. Production lines also evolve when confronted with changing enforcement pressures. When Mexican law enforcement restricted the availability of pseudoephedrine, the precursor chemical used to synthesize methamphetamine, criminal cartels simply changed formulas, resorting to “old school” production techniques (Koop, 2009). The author of a leading book on clandestine methamphetamine production observed, “Chemical restrictions are like squeezing mud, the stuff just comes out between your fingers....They make life difficult for the smurfers (home producers) but for people with connections, well, they find it to be no problem at all” (in Koop, 2009). The metaphor of a balloon is frequently invoked in drug policy circles, suggesting that a law enforcement “squeeze” in one place will simply shift production and distribution to somewhere else:

Just as attempting to flatten an inflated balloon will cause the air to spread out in all directions, successful eradication in one area temporarily lowers the supply, thereby raising the price for the illicit crop and stimulating production elsewhere. For example, when Mexico suppressed marijuana production it blossomed in Colombia. When Turkey suppressed opium production, it sprang up in Mexico.... When Bolivia and Peru suppressed coca cultivation, production migrated north to Colombia (Marsh, 2004).

Thus, the success of one country becomes the problem of another (UNODC, 2012). Although the balloon metaphor oversimplifies what is actually a complex set of relationships (Friesendorf, 2005), it underscores the dynamic and adaptive nature of narcotics production.

Just as the clandestine production of moonshine led to cases of contamination and alcohol poisoning, the current war against drugs also creates serious public health risks. Because addicts fear arrest, and because needles and syringes are not always available without a prescription—in fact, their possession, as drug paraphernalia, is a criminal offense—IV drug users share dirty needles. Because of this, IV drug use accounts for one third of new HIV cases in most of the world. The Global Commission on Drug Policy concludes that “where addiction is treated as a health issue, the fight against HIV is being won” while “where public health approaches are ignored, the HIV epidemic is out of control” (GCDP, 2012, p. 10). Illegal drugs are also dangerous because of potential adulterants: it is not uncommon for traffickers to increase their profit margins by adding bulking agents or less expensive drugs with analogous effects (e.g., diazepam in heroin). When consumers buy illegal drugs, they do not know their purity levels or the nature of any additives. Not enough, and you might not get high; too much, and you might overdose. Some jurisdictions have responded by allowing free drug testing, especially at music festivals and similar events (Schneider et al., 2016), but without an underlying legislative framework, serious questions about criminal and civil liability remain unanswered.

Prohibition produced rampant corruption among politicians and law enforcement agents. The current war against drugs has done the same thing. Philippines President Duterte’s regime of extrajudicial assassinations for drug dealers and addicts—sanctioning more than 6000 deaths in 2016 alone (Reyes, 2016)—represents an extreme vision of law enforcement corruption—police and vigilantes using lethal force without benefit of trial—but since Frank Serpico recounted his story about systematic police corruption among Brooklyn’s vice squad (Maas, 1973), the problem has plagued US law enforcement agencies conscripted into the war against drugs. In the 1980s, Miami’s “River Gang” showed how easy it was for police officers to extort and rob drug traffickers (Sechrest & Burns, 1992); in the late 1990s, the LAPD’s Rampart scandal repeated the lesson (Cannon, 2000). LAPD officers stole money, stole and sold drugs, planted drugs on defendants, shot unarmed defendants, and perjured themselves under oath. Some officers engage in acts of drug-war corruption (e.g., extortion, robbery, and accepting bribes) for illegitimate reasons, such as profit. This is the *Training Day* vision of police corruption: crime for personal gain. Other drug war officers commit criminal acts (e.g., perjury, planting evidence, or violating criminal procedure) for legitimate institutional reasons, such as bringing down an untouchable offender. This is the *Sicario* vision of

corruption: a necessary evil to achieve a noble (and otherwise unobtainable) end.

Yet what has perhaps changed since the prohibition of the 1920s and 1930s is that, in the modern war on drugs, corruption has been formally institutionalized. When Miller and Selva (1994) used covert ethnography to study police asset forfeiture practices within a US city, they were shocked to discover that officers waited to seize drugs so there would be more cash in asset seizures. This was not an aberrational finding: another study (Worrall, 2001) reported that more than 60% of law enforcement administrators identified forfeiture as an essential part of their operating budgets, leading the study's author to describe law enforcement's addiction to the war on drugs.

Finally, just as prohibition led ineluctably to increasing levels of tough-on-crime deterrence, so, too, has the modern war on drugs. The US Supreme Court has observed, "The history of the narcotics legislation in this country 'reveals the determination of Congress to turn the screw of the criminal machinery—detection, prosecution and punishment—tighter and tighter'" (Albernaz v. U.S. at 343). It is no coincidence that the US experiment in mass incarceration began shortly after Nixon declared war on drugs (Oleson, 2002). In 1980, about 40,900 Americans were incarcerated for drugs; in 2019, that number had increased tenfold to 430,926 (Sentencing Project, 2021). Today, the United States is the world's leader in incarceration (Fair & Walmsley, 2021).

## **Prostitution**

Like drug policies, the regulation of prostitution varies dramatically over time and across space. In some places, exchanging sex for money is wholly decriminalized; in other locations, it is punished with lengthy prison sentences or corporal punishment. In his genealogy of sex work, Ringdal (2003) traces the origin of prostitution to ancient Mesopotamian temples. From there, the practice spread throughout the ancient world: Greece, India, Rome, China, and beyond. Prostitution did not exist in all societies, but appears to have flourished under particular historic conditions: "a rapid upsurge in the population, urbanization, migration, and economic transformation. Prime examples have been the emerging Roman Empire, Western Europe in the 1800s, the Wild West era of the United States, Japan in the 1700s, and Southeast Asia today" (Ringdal, 2003, pp. 6-7).

The definition of prostitution seems obvious – sex for money (or its equivalent) – but commercial sex exists in many forms. The production of pornography, for example, might seem like it constitutes prostitution since it involves paying performers to engage in sex, but pornography is not a bilateral exchange of sex for money, so is typically distinguished on First Amendment speech grounds. Nude dancing also implicates First Amendment symbolic speech (Barnes v. Glen Theatre, 1991). This is true, even if there is contact between a performer and a paying client, as during a "lap dance" (during which semi-nude or nude dancers perform near or on seated clients, sometimes leading to orgasm), although it is not protected speech if a massage includes a "happy ending" (orgasm through manual manipulation).

In many jurisdictions, lawmakers have responded to the "social evil" of prostitution by enacting blanket prohibitions. Under prohibition, the exchange of sex for money is criminalized, and both the seller (the prostitute) and the buyer (the client) are criminally liable. Collateral activities, such as advertising sexual services, operating a brothel, pimping, or coercing someone to work as a prostitute are usually offenses, as well. In some locations, the actual exchange of sex for money is legal, but collateral activities (such as solicitation) are prohibited; this can protect sex workers who work through an agency, but exposes streetwalkers to prosecution. Although prohibition might have a deterrent effect (as in the case of drug policy), it also often produces unintended consequences. The threat of punishment reduces access to health care and thereby increases rates of sexually transmitted diseases (Day & Ward, 1997). Sex workers who face criminal sanctions for their activity are often unwilling to report acts of harassment, assault, rape, robbery, and extortion (Farley, 2006). Clients, too, can be extorted, assaulted, and robbed (e.g., Wortley, Fischer, & Webster, 2002). Lack of legal recourse creates a high-risk, high-reward market in organizing and enforcing commercial sex: the same dynamic that leads to organized syndicate involvement in the prohibition of alcohol or drugs.

Increased protection for sex workers and their clients exists under legalization models, in which prostitution is legal (and therefore taxable) but carefully regulated (Brents, Jackson, & Hausbeck, 2010). This is the approach followed in Nevada brothel prostitution. Brothels may operate only in rural counties (populations of 700,000 or less); sex workers must register with the county, undergo regular medical checks, and use condoms. Analogous models operate in other countries such as the Netherlands, Germany, and Australia. Such regulation, however, produces its own set of unintended consequences. First, the registration requirements will drive some prostitutes, such as those who wish to work anonymously, who are not old enough to register, or who have disqualifying medical conditions (such as drug abuse or HIV) to illegal sex work. Second, such regulation is asymmetrical, focusing on sex workers, while leaving unvetted and unregulated the customers of commercial sex. Third, it legitimates a power differential between the brothel owners, who control monopoly access to lawful sex work, and brothel sex workers. Decriminalization, such as in New Zealand, puts sex work on the same level as any other form of employment, with no special regulations in place for sex workers.

An increasingly popular regulatory model is neo-abolitionism. This is also known as the Nordic model (Johnson & Matthews, 2016). Under this approach, the selling of sex is legal but the buying of sex is criminal. First established in Sweden, demand-side prohibition has spread to Norway, Iceland, Northern Ireland, Canada, France, Ireland, and Israel (Nordic Model Now, n.d.). The approach is based on a view that prostitution is a serious form of violence against women, fundamentally unsafe, incommensurable with human rights, and analogous to slavery (i.e., buying the bodies of other people). It rejects both legalization and decriminalization as condoning an affront to human dignity, but it also rejects traditional prohibition's focus on the prostitute. Sex workers, under the Nordic model, are victims of coercion, trafficking, and – frequently – abuse, who deserve to be provided with help to exit a life of prostitution. The unavoidable convergence of prostitution and human trafficking, through the Nordic lens, has allowed campaigners for legislative change to parry claims that consensual prostitution is a victimless crime: “To the extent that any woman is assumed to have freely chosen prostitution, then it follows that enjoyment of domination and rape are in her nature” (Melissa Farley, in Weitzer, 2006, p. 34). In response to anti-trafficking efforts, the major classified advertiser, *Backpage*, was shut down by the FBI; the online site, Craigslist, voluntarily eliminated its personals ads. These actions certainly reduced the visibility of prostitutes and helped to protect individuals who had been coerced into sex work by pimps and traffickers. But for others, who voluntarily chose sex work, the shuttering of *Backpage* and Craigslist eliminated a major source of revenue and forced them to engage in riskier behavior: pimps, street prostitution, and seeing clients who are known to be problematic (Glaser, 2019). Paternalism sits in tension with agency. When researchers interviewed Vietnamese sex workers who had been trafficked to Cambodia, they found that more than 90% of the interviewed workers understood that they would be employed as brothel prostitutes in a system of debt bondage. They *chose* to be trafficked, “citing economic incentives, desire for an independent lifestyle, and dissatisfaction with rural life and agricultural labour” (Busza, Castle, & Diarra, 2004, p. 1370). And attempts to liberate them produced counterproductive results, simply driving the practice underground and increasing exploitation:

Local and international non-governmental organisations conducted raids on brothels during which sex workers were taken to “rehabilitation centres,” often against their will. Police sometimes assisted in these raids, although they also conducted arrests independently. Our research found that “rescued” women usually returned to their brothel as quickly as possible, having secured their release through bribes or by summoning relatives from Vietnam to collect them. Furthermore, police presence in the raids scared off custom, thus reducing earnings, increasing competition for clients, and further limiting sex workers’ power in negotiating improved work conditions. Bribes and other costs were added to sex workers’ debts, increasing their tenure in the brothel and adding pressure to take on additional customers or agree to condom-free sex to maximize income. Raids and rescues could also damage the relationship between service providers and brothel managers, who restricted sex

workers' mobility, including access to health care, to avoid arrest (Busza, Castle, & Diarra, 2004, p. 1370).

Unless sweeping, systemic changes can be made, democratizing opportunity in meaningful ways, the harsh conditions of social life will lead some people – often society's most vulnerable – to “choose” to participate in human trafficking. Others researching the Nordic model have suggested that the inspirational rhetoric of equality and human rights has not translated into practice (Kingston & Thomas, 2019). Migrants, for example, might be excluded from legal protections (Skilbrei & Holmström, 2013). In some jurisdictions, it is claimed, prostitution has become more dangerous (Casey, 2021).

Prostitution, like other vice offenses, has co-evolved with technology. Cell phones, for example, allow some prostitutes to speak with potential clients by video chat, allowing them to see and evaluate each other without standing on street corners and slow-cruising. While 1-900 telephone sex chat services still exist and continue to thrive, that industry has been overtaken by webcamming. Today, as magazines and DVDs become obsolete, this is the new “engine of the porn industry” (Song, 2016). Typically, performers work for tips on hosting sites, where models engage in live-time performances. Some of the streams are public and free, in which viewers voluntarily tip, and some of the streams are more intimate, in which the model's private (and usually more explicit) performance is paid by the minute, possibly involving two-way audio and webcam video. Performers accumulate fan followings. Some use electronic vibrators, allowing viewers to control the intensity and duration of vibration according to the size of the donated tip.

There are many advantages to this form of commercial sex. Webcamming combines the interactivity of telephone sex with the visual power of pornography, while allowing these online models to work from their homes, anonymously, without physical contact (and therefore without risk of STDs) with their audiences. But online sexual behavior can be recorded and can be used for stalking and blackmail. And, at present, webcam performers must share the majority of their income with payment services companies (taking approximately 5% to 10%, similar to online gambling sites) and cam hosting sites (taking approximately 50% to 75%) (Stuart, 2017). The current webcamming model, then, exhibits many of the same financial inequalities as brothel-based prostitution.

## **Discussion and Conclusion**

Among the human vices, we can glimpse highly resilient forms of resistance to crime control measures. Because gambling, the consumption of alcohol and drugs, and prostitution are all widely regarded as victimless offenses (at least when restricted to consenting adults), there is often widespread social resistance to efforts to suppress and eliminate these behaviors. Legislative efforts are defied (e.g., US prohibition of alcohol) and technological interventions are circumvented (e.g., anonymous darknet sites for trafficking narcotics). The recent success of the Nordic model in prostitution is an interesting exception, and likely derives from its successful framing in policy making circles as a human rights issue. In any case, the logic of John Stuart Mill's harm principle (1869) is sometimes invoked as a limit upon the right of the state to intervene in private affairs. But the harm principle is a very flexible tool and can be used to justify intervention as well as restrict it. “Today, the harm principle is being used increasingly by conservatives who justify laws against prostitution, pornography, public drinking, drugs, and loitering, as well as regulation of homosexual and heterosexual conduct, on the basis of harm to others” (Harcourt, 1999, p. 139).

A number of options exist for societies that would like to minimize the harms associated with vice. Prohibition is one option, and criminal penalties can deter casual users from engaging in outlawed behavior. But prohibition also entails serious costs. It stimulates criminal innovation, and can make a bad situation worse (e.g., turning users to synthetic cannabis as an alternative to marijuana). It increases the risk associated with the conduct, driving up profits and establishing organized crime markets. It eliminates regulation and taxation revenues. Simultaneously, it imposes enormous economic (and social) costs in terms of law enforcement, prosecution, and incarceration. Moreover, addiction research suggests that reward circuits in the brain make it extraordinarily

difficult for some people to abstain from prohibited activities involving alcohol, drugs, sex, gambling, and the like. Like flowing water blocked by obstacles, the vices simply carve out new paths of expression. Confronted by criminal prohibitions, those with a propensity to addiction usually do not stop. They merely turn to illicit channels for relief. This, however, necessarily involves making subterranean the behavior that was once visible, which makes it more difficult to detect. It also implies cutting off access to counseling and medical care, and positions the addict in risky environments. And, when they are caught and punished, addicts are further destabilized. The individuals who are most at risk are walled off from help. Punishment does not help. As Shaw noted, "Now, if you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him. And men are not improved by injuries" (1977, p. 287).

Other options exist to ameliorate vice, such as regulation and education. But it is much easier to declare war on drugs and to put 450,000 people in prison than to address the root causes for the consumption of drugs. Why worry about failing infrastructure, stagnant working conditions, pockets of concentrated poverty, hopelessness, and a yawning gulf between rich and poor (National Academies of Sciences, Engineering, and Medicine, 2017) when these problems can be reframed as a matter of individual moral failing? The question is especially apt if those in power wish to maintain the status quo, reinforcing existing power arrangements. Perhaps the emperors of the late Roman empire asked the same thing. To grapple with the fundamental, structural arrangements that produce increased demand for vice is to open a Pandora's box. Most officials are simply unwilling or unable to entertain the possibility that modern institutions create the material conditions under which vice crimes become irresistible.

## References

- Albernaz v. United States, 450 U.S. 333 (1981).
- Alighieri, D. (2002). *The inferno* (R. Hollander & J. Hollander, Trans.). Anchor. Original work published 1321.
- American Gaming Association (AGA) (2022). *State of the states 2022*. Retrieved from <https://www.americangaming.org/wp-content/uploads/2022/05/AGA-State-of-the-States-2022.pdf>
- Anslinger, H. J., & Tompkins, W. F. (1953). *The traffic in narcotics*, Funk & Wagnalls.
- Aquinas, T. (1915). *Summa theologica*, part II (Fathers of the English Dominican Province, Trans.), Benziger Brothers. Original work published 1485.
- Bach, N. (2019). Opioid overdoses kill more each year in the US than car accidents. *World Economic Forum* (Jan. 17). Retrieved from <https://www.weforum.org/agenda/2019/01/opioid-overdoses-now-claim-more-u-s-lives-than-auto-accidents/>
- Barnes v. Glen Theatre Inc., 501 U.S. 560 (1991).
- Baum, D. (1997). *Smoke and mirrors: The war on drugs and the politics of failure*, Back Bay Books.
- Baum, D. (2016). Legalize it all. *Harper's Magazine*, 24, 21-32.
- Bearman, J., & Hanuka, T. (2015). The rise and fall of Silk Road (part 1): Ross Ulbricht's journey from libertarian idealist to savage kingpin. *Wired*, 23(5), 90-97.
- Blum, D. (2010). The chemist's war. *Slate* (Feb. 19). Retrieved from <https://slate.com/technology/2010/02/the-little-told-story-of-how-the-u-s-government-poisoned-alcohol-during-prohibition.html>
- Brents, B., Jackson, C., & Hausbeck, K. (2010). *The state of sex: Tourism, sex and sin in the new American heartland*. Routledge.
- Brown, S. D. (2016). Cryptocurrency and criminality: The Bitcoin opportunity, *The Police Journal: Practice and Principles*, 89(4), 327-339.
- Burns, J. J. (1929). Jones-Stalker Bill discussed by Burns. *Harvard Crimson* (Mar. 23). Retrieved from <https://www.thecrimson.com/article/1929/3/23/jones-stalker-bill-discussed-by-burns-pbthe/>
- Burns, K. (n.d.). Unintended consequences of prohibition. Retrieved from <http://www.pbs.org/kenburns/prohibition/unintended-consequences/>
- Buxton, J., & Bingham, T. (2015). The rise and challenge of dark net drug markets: Policy Brief 7 (Jan.). Retrieved from <https://www.drugsandalcohol.ie/23274/1/Darknet%20Markets.pdf>
- Calderón, L. Y., Heinle, K., Kuckertz, R. E., Ferreira, O. R., & Shirk, D. A. (Eds.) (2021). *Organized crime and violence: 2021 special report: Justice in Mexico*. University of San Diego.
- Cannon, L. (2000). One bad cop. *The New York Times Magazine* (Oct. 1).
- Casey, R. (2021). Does the Nordic model work? What happened when Ireland criminalised buying sex, *New Statesman* (9 Sep.). Retrieved from <https://www.newstatesman.com/politics/2018/03/does-nordic-model-work-what-happened-when-ireland-criminalised-buying-sex>
- Centers for Disease Control and Prevention (CDC) (2021). Drug overdose deaths in the U.S. top 100,000 annually. Retrieved from [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2021/20211117.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm)
- Clarke, R. V. (2010). Crime science, *Sage handbook of criminological theory* (McLaughlin, E., & Newbern, T., Eds., pp. 271–83). Sage.
- Commission on the Review of National Policy toward Gambling (1976). Retrieved from <https://web.archive.org/web/20091012172122/http://www.library.ca.gov/CRB/97/03/Chapt1.html>
- David, F. N. (1862). *Games, gods and gambling: The origins and history of probability and statistical ideas from the earliest times to the Newtonian era*. Hafner.
- Day, S., & Ward, H. (1997). Sex workers and the control of sexually transmitted disease. *Sexually Transmitted Infections*, 73(3), 161-168.

- Dunstan, R. (1997). Gambling in California: History of gambling in the United States. Retrieved from <https://web.archive.org/web/20091012172449/http://www.library.ca.gov/CRB/97/03/Chapt2.html>
- Epstein, E. J. (1977). *Agency of fear: Opiates and political power in America*. G. P. Putnam's Sons.
- Ezell, J. S. (1960). *Fortune's merry wheel: The lottery in America*. Harvard University Press.
- Fair, H., & Walmsley, R. (2021). *World prison population list* (13<sup>th</sup> ed.). International Centre for Prison Studies.
- Farley, M. (2006). Prostitution, trafficking, and cultural amnesia: What we must not know in order to keep the business of sexual exploitation running smoothly. *Yale Journal of Law & Feminism*, 18, 109-144.
- Findlay, J. M. (1986). *People of chance*. Oxford University Press.
- Food and Drug Administration (FDA) (2017). Drugs @FDA glossary of terms. Retrieved from <https://www.fda.gov/drugs/drug-approvals-and-databases/drugsfda-glossary-terms#D>
- Friedman, L. (1994). *Crime and punishment in American history*. Basic Books.
- Friesendorf, C. (2005). "Squeezing the balloon?" *Crime, Law & Social Change*, 44(1), 35-78.
- General Accounting Office (GAO) (2002). *Internet gambling: An overview of the issues*. U.S. General Accounting Office.
- Glaser, A. (2019). There is no new Backpage. *Slate* (Feb. 13). Retrieved from <https://slate.com/technology/2019/02/backpage-sex-workers-fosta-sesta-swifter-tryst-trafficking.html>
- Global Commission on Drug Policy (GCDP) (2012). *The war on drugs and HIV/AIDS: How the criminalization of drug use fuels the global pandemic*. GCDP. Retrieved from [https://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/GCDP\\_HIV-AIDS\\_2012\\_REFERENCE.pdf](https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/GCDP_HIV-AIDS_2012_REFERENCE.pdf)
- Goldman, R. (2009). Feds freeze poker champ's winnings, ABC News (Jun. 11). Retrieved from <https://abcnews.go.com/Business/story?id=7808131>
- Grace, M. (2009). The other S.S. Rex – a gambling ship off Santa Monica, California in the 1930s and early 1940s. Cruise Line History. Retrieved from <https://www.cruiselinehistory.com/the-other-ss-rex-a-gambling-ship-off-santa-monica-california-in-the-1930s-and-early-1940s/>
- Harcourt, B. (1999). Criminal law: The collapse of the harm principle. *Journal of Criminal Law & Criminology*, 90, 109–194.
- Harcourt, B. (2007). *Against prediction: Profiling, policing, and punishment in an actuarial age*. University of Chicago Press.
- Hari, J. (2015). *Chasing the scream: The first and last days of the war on drugs*. Bloomsbury.
- Human Rights Watch & ACLU (2016). Every 25 seconds: The human toll of criminalizing drug use in the United States. Retrieved from <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>
- Immigration and Customs Enforcement (ICE) (2010). United States of America Mexico bi-national criminal proceeds study. Retrieved from <https://www.ice.gov/doclib/cornerstone/pdf/cps-study.pdf>
- Johnson, H., & Matthews, R. (2016). Addressing prostitution: The Nordic model and beyond (pp. 281-308), R. Matthews (Ed.), *What is to be done about crime and punishment? Towards a 'public criminology'*. Springer.
- Kelly, K. C. (2017). The Volstead Act. Retrieved from <https://www.archives.gov/education/lessons/volstead-act>
- Kingston, S., & Thomas, T. (2019). No model in practice: A 'Nordic model' to respond to prostitution? *Crime Law & Social Change*, 71, 423–439. <https://doi.org/10.1007/s10611-018-9795-6>
- Kleiman, M. A. R., Caulkins, J. P., & Hawken, A. (2011). *Drugs and drug policy: What everyone needs to know*. Oxford University Press.
- Koop, D. W. (2009). Old school meth method: Mexican drug cartels go back to basics, adapt to restrictions. *Cleveland* (Dec. 15). Retrieved from



- [https://www.cleveland.com/world/2009/12/old\\_school\\_meth\\_method\\_mexican.html](https://www.cleveland.com/world/2009/12/old_school_meth_method_mexican.html)
- Kramer, R. & Oleson, J. C. (2022). *Contesting crime science: Our misplaced faith in crime science technology*. University of California Press.
- Leitzel, J. (2008). *Regulating vice: Misguided prohibitions and realistic controls*. Cambridge University Press.
- Lombroso, C. (2006). *Criminal man* (M. Gibson, N. Raft er, & M. Seymour, Trans.) Duke University Press. Original work published 1876 as *L'uomo delinquent*.
- Lopez, G. (2016). The federal drug scheduling system, explained. Vox (Aug. 11). Retrieved from <https://www.vox.com/2014/9/25/6842187/drug-schedule-list-marijuana>
- Maas, P. (1973). *Serpico: The cop who defied the system*. Viking.
- Marsh, B. (2004). *Going to extremes. The U.S.-funded aerial eradication program in Colombia*. Latin America Working Group Education Fund.
- Martin, J. (2014). Lost on the Silk Road: Online drug distribution and the 'cryptomarket'. *Criminology & Criminal Justice*, 14(3), 351-367.
- Mill, J. S. (1869). *On liberty*. Longmans, Green, Reader, & Dyer.
- Miller, J. (2019). The foul bootleg liquor of Prohibition gave us today's craft cocktails, *Quartz* (Jan. 15). Retrieved from <https://qz.com/quartz/1524394/prohibitions-speakeasies-and-moonshine-gave-us-the-modern-cocktail>
- Miller, J., & Selva, L. (1994). Drug enforcement's double edged sword: An assessment of asset forfeiture programs. *Justice Quarterly*, 11, 313-335.
- Miron, J. A. (2004). *Drug war crimes: The consequences of prohibition*. Independent Institute.
- Miron, J. A., & Waldock, K. (2011). *The budgetary impact of ending drug prohibition*. Cato.
- Munting, R. (1996). *An economic and social history of gambling in Britain and the USA*. Manchester University Press.
- Murphy v. National Collegiate Athletic Association, 584 U.S. \_\_\_\_ (2018).
- National Academies of Sciences, Engineering, and Medicine (2017). *Pain Management and the Opioid Epidemic: Balancing Societal and Individual Benefits and Risks of Prescription Opioid Use*. Washington, DC: National Academies Press; 2017.
- Nordic Model Now (n.d.), What is the Nordic model? Retrieved from <https://nordicmodelnow.org/what-is-the-nordic-model/>
- Nutt, D. (2012). *Drugs—without the hot air: Minimising the harms of legal and illegal drugs*. UIT.
- Oleson, J. C. (2002). The punitive coma. *California Law Review*, 90(3), 829-901.
- Oleson, J. C. (2021). Evidence-based sentencing. *Oxford Bibliographies in Criminology*. Retrieved from <https://www.oxfordbibliographies.com/view/document/obo-9780195396607>
- Parke, A., & Griffiths, M. (2004). Why internet gambling prohibitions will ultimately fail, *Gaming Law Review*, 8(5) 295-99.
- Peacock, A., Leung, J., Larney, S., Colledge, S., Hickman, M., Rehm, J., Giovino, G. A., West, R., Hall, W., Griffiths, P., Ali, R., Gowing, L., Marsden, J., Ferrari, A. J., Grebely, J., Farrell, M., & Degenhardt, L. (2018). Global statistics on alcohol, tobacco and illicit drug use: 2017 status report. *Addiction*, 113(10), 1905–1926. <https://doi.org/10.1111/add.14234>
- Petrich, D. M., Pratt, T. C., Jonson, C. L., & Cullen, F. T. (2021). Custodial sanctions and reoffending: A meta-analytic review. *Crime and Justice*, 50(1), 353-424.
- Reyes, D. A. (2016). The spectacle of violence in Duterte's "war on drugs." *Journal of Current Southeast Asian Affairs*, 35(3), 111–137.
- Ringdal, N. J. (2003). *Love for sale: A world history of prostitution* (R. Daly, Trans.). Grove/Atlantic.
- Robinson, M. B., & Scherlen, R. G. (2014). *Lies, damned lies, and drug war statistics* (2<sup>nd</sup> ed.). SUNY Press.
- Robinson v. California, 370 U.S. 660 (1962).
- Rush, B. (1811). *An inquiry into the effects of ardent spirits upon the human body and mind: with an account of the means of preventing, and of the remedies for curing them* (6<sup>th</sup> ed.). Cornelius Davis. Retrieved from <http://resource.nlm.nih.gov/2569025R>

- Schlosser, E. (1998). The prison-industrial complex, *The Atlantic Monthly*, 282(6), 51-77.
- Schneider, J., Galettis, P., Williams, M., Lucas, C., & Martin, J. H. (2016). Pill testing at music festivals: Can we do more harm? *Internal Medicine Journal*, 46(11), 1249-1251.
- Sechrest, D. K., & Burns, P. (1992). Police corruption: The Miami case. *Criminal Justice & Behavior*, 19(3), 294-313.
- Sentencing Project (2021). Trends in US corrections. Retrieved from <https://www.sentencingproject.org/app/uploads/2022/08/Trends-in-US-Corrections.pdf>
- Shaw, G. B. (1977). Imprisonment. In G. Ezorsky (Ed.), *Philosophical perspectives on punishment* (pp. 281-299). State University of New York Press.
- Skilbrei, M.-L., & Holmström, C. (2013). The 'Nordic model' of prostitution law is a myth, *The Conversation* (16 Dec.), Retrieved from <https://theconversation.com/the-nordic-model-of-prostitution-law-is-a-myth-21351>
- Song, J. (2016). As L.A. porn industry struggles, 'web camming' becomes a new trend. Los Angeles Times (Aug. 3). Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-porn-camming-20160803-snap-story.html>
- Spinoza, B. (2007). *Theological-political treatise* (J. Israel, Ed.; M. Silverthorne & J. Israel, Trans.). Cambridge University Press. Original work published 1670.
- Spooner, L. (1875). Vices are not crimes—A vindication of moral liberty. *Online Library of Liberty*, Retrieved from <https://oll.libertyfund.org/page/works-of-spooner-5#T27>
- Stevenson, R. L. (1886). *Strange case of Dr. Jekyll and Mr. Hyde*. Charles Scribner's Sons.
- Stuart, R. (2017). Webcamming: the sex work revolution that no one is willing to talk about. *The Conversation* (Jan. 11), Retrieved from <https://theconversation.com/webcamming-the-sex-work-revolution-that-no-one-is-willing-to-talk-about-69834>
- Substance Abuse and Mental Health Services Administration (SAMHSA) (2022). *Key substance use and mental health indicators in the United States: Results from the 2021 National Survey on Drug Use and Health*. Retrieved from <https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHNNR122322/2021NSDUHNNR122322.htm>
- Thornton, M. (1991). *Alcohol prohibition was a failure*. Cato.
- Turak, N. (2018). More than 100 politicians have been murdered in Mexico ahead of Sunday's election, *CNBC* (Jun. 26). Retrieved from <https://www.cnn.com/2018/06/26/more-than-100-politicians-murdered-in-mexico-ahead-of-election.html>
- UN Office of Drugs and Crime (UNODC) (2012). *Transnational organized crime in Central America and the Caribbean: A threat assessment*. UNODC.
- White House (2023). *National drug control budget: FY 2024 funding highlights*. Retrieved from <https://www.whitehouse.gov/wp-content/uploads/2023/03/FY-2024-Budget-Highlights.pdf>
- Wickersham Commission (1931). *Report of the National Commission on Law Observance and Enforcement*.
- Worrall, J. (2001). Addicted to the drug war: The role of civil asset forfeiture as budgetary necessity in contemporary law enforcement. *Journal of Criminal Justice*, 29, 171-187.
- Wortley, S., Fischer, B., & Webster, C. (2002). Vice lessons: A survey of prostitution offenders enrolled in the Toronto John School Diversion Program. *Canadian Journal of Criminology*, 44(4), 369-402.
- Ziliak, S. T., & McCloskey, D. N. (2008). *The cult of statistical significance: How the standard error costs us jobs, justice, and lives*. University of Michigan Press.