

Due Process Model Perspective: War on Drugs

Executive Summary

The Crime Control model, which looks towards ‘assembly line justice’ and places the good of society above all else (Everett 10), that has been applied towards the War on Drugs has not worked. It has led to racial profiling, mass incarceration, and a growing overdose rate within the United States. Therefore, it is time to find a public health solution rather than law enforcement solution towards the War on Drugs. By utilizing the Due Process model, which employs ‘individualized justice’ and places the defendant’s rights above all else (Everett 10), in the War on Drugs, the United States can begin to manage the issues that have been created under the Crime Control model, while simultaneously fighting drugs abuse. First and foremost, law enforcement resources should be readjusted towards stopping drug traffickers’ efforts rather than arresting drug abusers (Sacco, Drugs). Furthermore, to allow police to aid in the public health fight on drugs, police officers should be equipped with the opioid overdose antidote Narcan, and Narcan training. Secondly, the US Government should move for nationwide implementation of drug courts to aid addicts in their fight against their own addictions. To further supply public health support to drug addicts, needle exchange programs must be implemented within correction facilities. These programs decrease the death and disease rates that are associated with drug use along with beginning to chip away at the stigma associated with it which will empower addicts to seek out help to fight their own addictions (Cohn). It is time that the War on Drugs is fought from the Due Process approach with the use of Narcan, more drug courts, and needle exchange programs in the criminal justice system.

Analysis

Since 1937, the United States government has realized the severity of drug abuse and has been taking measures to counter it, but in recent years it has become evident that these methods have not been successful (Sacco, Drug). Currently, the United States is experiencing both rising incarceration rates and rising drug abuse rates. In 2012, 1,358,933 individuals were arrested for drug related charges; 30,476 of those people were arrested by the Drug Enforcement Agency and 1,328,457 of those people were arrested by state and local law enforcement agencies (Sacco, Drug). This mass incarceration rate is a growing epidemic that is specifically targeting Black communities in the United States. Also concerning is the increase in heroin use seen in the past decade. From 2004 to 2013, there was a 300% increase in heroin abuse in the United States (Sacco, Drugs). Furthermore, from 2011-2014, the United States experienced a 132% increase in prescription opioid abuse (Sacco, Drugs). Just by a quick examination of these issues, it is clear the approach that has been taken in order to fight the War on Drugs has not worked (Sacco, Reauthorizing). Therefore, both the government and law enforcement bodies in the United States need to readjust their focuses in the fight against drugs. The United States Government must move towards a public health approach by focusing on passing legislation that limits access to prescription opioids, increase law enforcement access to Narcan, install drug courts nationwide, and implement needle exchange programs within the corrections systems.

When considering any issue within the criminal justice system, it is necessary to understand the two models that can be applied: the Crime Control model and the Due Process model. Everett and Peak define the Crime Control model as, “a model ... that emphasizes law and order and argues that every effort must be made to suppress crime, and to try to convict, and incarcerate offenders.” (Everett 10) This model situates the safety of society above the rights of

the defendant; the defendant is the individual who has been charged with a crime and is being prosecuted (Everett 27). When a Crime Control approach is taken, assembly line justice is experienced; cases move quickly through the system with little thought for the defendant and extreme focus on deterring crime. Often, this model is heavily focused on law enforcement intervention (Everett 10). In contrast, there is the Due Process model of the criminal justice system, which is much more focused on fairness and the rights of the defendant (Everett 10). This model is defined as the, “view that criminal defendants should be presumed innocent, courts must protect suspects’ rights, and some limits must be placed on police power.” (Everett 10) This model places fairness at the forefront of the process, acting with the presumption of innocence and ensuring the defendant’s constitutional rights. When the Due Process model is employed, individualized justice is administered, and the powers of the police are limited (Everett 10).

As with any issue that operates in the criminal justice sphere, the War on Drugs can be fought from either a Crime Control approach or a Due Process approach. The War on Drugs as addressed using the Crime Control model requires that all offenders, regardless of the severity of the crime, be arrested, prosecuted, and placed within the corrections system. This policy has led to the mass incarceration seen within America today and recently legislators have made efforts to remedy this problem through changes to the criminal justice system. For example, the US Government has worked towards the implementation of drugs courts to take mitigating circumstances, which are, “circumstances that would tend to lessen the severity of one’s sentence” (Everett 15), into account (“Drug Courts”). Despite these efforts, an increasing in overdose deaths continues to be seen in the United States (Bagalman). On the other hand, when examining the War on Drugs through the Due Process lens of the criminal justice system it is crucial to treat the issue as a public health crisis by focusing on programs that combat addiction.

It is necessary to dedicate funds towards resources that will provide health care to the defendant, rather than just locking them up in prison. Under the Due Process model, the government must begin to provide tools, such as Narcan, drug courts, and needle exchange programs, that will allow individuals to successfully fight their addictions. By providing the defendant with access to health care aimed at treating their addiction, it is possible to decrease the level of recidivism in regards to drug crimes.

Hence far in American history, the War on Drugs has been a losing battle and it is clear that the Crime Control model, taken on by the United States Government has not improved the situation. Currently, this is seen through the mass incarceration of the American population. Mass incarceration is defined as, "... America's disproportionately high rates of imprisonment of young, African American men ... (Everett 296). The mass incarceration being seen within the United States correction system today, began because of the War on Drugs' initial Crime Control approach's practice of mandatory minimums and the three-strikes rule (Waters). The three-strike rule is the concept where, "... an offender who commits three or more violent offenses will be sentenced to a lengthy term in prison, usually twenty-five years to life (Everett 5) and mandatory minimums are when judges are required to deliver fixed sentences regardless of the circumstances (Waters). Both of these concepts disproportionately effect poor, urban communities and especially target Black communities within the larger community (Waters). Black communities have been experiencing a greater effect from fixed sentencing policies because of racial profiling (Waters). According to Senator Maxine Waters, racial profiling happens because of where law enforcement efforts are focused (Waters). So far, the majority of law enforcement resources have been focused on the predominately Black communities. Despite this emphasis, these communities have not seen a decrease in drug use (Waters). Therefore, the government of

the United States needs to begin considering utilizing the alternative method of the Due Process Model in the War on Drugs; focusing on the health and the rights of the defendant, while pushing for change in national drug legislation.

The Due Process model comes with the inherent complications because of the principal goal of protecting the rights of the defendant. When examining the opioid epidemic through the lens of the Due Process model, it is necessary to understand the complexity of the issue. More often than not, opioid abuse begins through the legal means of a prescription, but ends through the illegal means of heroin abuse (Bagalman). To correct this dilemma, the legislative branch of the United States Government must be willing to pass laws that limit the public's access to prescription opioids ("The Negative Impact Of The War On Drugs On Public Health"). Through the proper channels, the government can simultaneously protect the rights of the addict and limit the access to the drug, ultimately alleviating the initial cause of the epidemic. A total ban of prescription opioids is unrealistic, in that they do possess legitimate medical capabilities; but by limiting the amount doctors can prescribe, abuse rates can begin to decrease. To further aid addicts, Congress can divert funds aimed towards the arrest, which is "the taking into custody or detaining of one who is suspected of committing a crime" (Everett 12), and sentencing of the drug abusers to offering health support to addicts ("The Negative Impact Of The War On Drugs On Public Health"). For example, these funds can support needle exchange programs within communities and the corrections systems, and an increase access to suitable rehabilitation facilities ("The Negative Impact Of The War On Drugs On Public Health"). Finally, with addicts being supported by the public health system, law enforcement agencies can place all their efforts towards limiting the movement of illicit substances into the United States. Furthermore, law enforcement agencies can to work in conjunction with the court system to build cohesive cases

against drug trafficking organizations without distraction from minor possession charges (Bagalman).

The police have been on the front-lines of the War on Drugs since its inception, given that the Crime Control approach calls for extreme enforcement of the law. With the growing threat of opioids and heroin on the streets, officers are still fighting this battle but in a different manner. Police Officer Seaward of the Seventh District of Washington DC stated that when he encounters heroin on streets, it is most commonly in the form of an overdosed addict (Seaward). When considering the idea of the Due Process model in conjunction with the War on Drugs, it is important to craft responsive methods that will take a public health approach to the issue. One method that could be implemented within policing would be to provide every officer with Narcan and Narcan training. According to Officer Seaward, Narcan is an extremely effective antidote to a heroin overdose that works in minutes; but currently officers in Washington DC, and elsewhere, do not carry it, paramedics do (Seaward). Given that often the police arrive first on the scene before EMTs, it is important for them to be able to quickly act and increase the chances of survival for the overdosed victim. Furthermore, once the addict receives medical treatment, the police should recommend rehabilitation methods rather than charging the addict.

By providing drug addicts with the necessary medical attention for their addiction, the police will be able to refocus much of their resources from low-level offenders to high-level offenders, like drug traffickers (Bagalman). With more officers focused on the cases of the drug traffickers, mens rea, the guilty intent (Everett 30) and actus reus, the guilty act (Everett 31) will more be thoroughly investigated, resulting in more constitutionally sound cases against the accused. If a case brought against a defendant is more constitutionally sound, it is more likely that the rights of the accused will be preserved.

Within the Due Process, the goal of the corrections system is no longer to provide deterrence but instead rehabilitation. Rehabilitation in regards to criminal justice is defined as the, “attempts to reform an offender through vocational and educational programming, counseling, and so forth, so that he or she is not a recidivist and does not return to crime/prison.” (Everett 266) In contrast, deterrence is known as, “the effect of punishment and other actions to deter other people from committing crimes.” (Everett 265) Therefore, in respect to the War on Drugs, the entire criminal justice system should have the goal of aiding addicts in overcoming their addictions. Drug courts, specialized courts focused on aiding those charged with drug offenses with rehabilitation methods, are institutions that can assist in the achievement of this goal (“Drug Courts”). These courts offer various resources that allows drug abusers to work through and hopefully overcome their addictions. These steps include: drug testing, rehabilitation services, judicial meetings, sanctions, and incentives (“Drug Courts”).

The goal of these specialized courts is to encourage a drug offender to overcome their addiction in order to avoid recidivism, and this system has seen positive results. The National Institute of Justice found that not only did drug courts lower recidivism rates, but they cost significantly less than incarceration (“Do Drug Courts Work?”). According to this study, in one United States county, re-arrest rates for drug offenses dropped from 40% to 12% after the implementation of drug courts. Furthermore, according to the same study, drug courts save about \$6,744 per participant than if they were to be incarcerated (“Do Drug Courts Work?”). Therefore, evidence proves the effectiveness of drug courts and the government of the United States should work towards nationwide implementation of these specialized courts.

If a drug addict does enter the criminal justice system, there is a need within corrections to supply medical support to aid addictions and lower recidivism rates. Under the Due Process

model, one method that must be implemented within prisons is needle exchange programs. Needle Exchange Programs are programs where drug users can safely administer drugs by receiving new, sanitized injection equipment and dispose of their old needles and syringes (Cohn). By participating in this, an inmate can lower their chances of contracting blood borne diseases, such as Hepatitis C. Furthermore, it will reduce the stigma around drug addiction allowing for more individuals to come forward and seek out help (“The Negative Impact Of The War On Drugs On Public Health”). These programs are needed because, contrary to popular belief, illicit drugs are easy to obtain within the American correction system. Therefore, inmates continue to fuel their addiction with little concern for needle sanitization within the walls of American prisons (“The Negative Impact Of The War On Drugs On Public Health”). Because of the availability of illicit drugs within prisons, these programs will allow inmates to safely administer the drugs and begin to move towards rehabilitation.

A similar program was implemented in Baltimore, Maryland in 1994 is now expanding to combat the growing opioid epidemic and the rising level of Hepatitis C cases (Cohn). This expansion was caused by an increased concern from governmental officials from both parties as the state of Maryland experienced a 66% increase in opioid related deaths from 2015 to 2016 (Cohn). The Maryland needle exchange programs do not only provide clean needles, but Narcan, counseling, disease testing, and rehabilitation referrals as well. Studies have been showing that programs like this do not increase drug abuse in an area, rather they decrease cases of blood borne illnesses (Cohn). Leana Wen, Health Commissioner of Baltimore, believes that these programs work. She said, “It’s not about condoning or supporting drug use. The first principal of public health is to protect the population from harm” (Cohn). Needle exchange programs are

excellent tools that should be used to decrease disease and overdose rates, and to expose drug addicts to various rehabilitation options.

The criminal justice system of the United States has been unsuccessfully fighting in the War on Drugs since it was declared by President Nixon. Since then, the criminal justice system has experienced mass incarceration, racial profiling, and a growing drug epidemic. These issues have been caused and worsened through the utilization of the crime control model in the American criminal justice system. Despite this, it is possible to correct these mishaps through the implementation of a Due Process approach to the War on Drugs. It is time to realize that to finally, win the War on Drugs a public health solution must be employed. Drug abuse is a problem that must be first managed before it can be tackled, and the Due Process model of the criminal justice system allows for management of that problem to begin.

Works Cited

- Bagalman, Erin, et al. *Prescription Drug Abuse*. Congressional Research Service, Feb. 2016.
- Cohn, Miranda. *Maryland Counties Expand Needle Exchange Programs to Protect Public Health*. The Washington Post, 19 July.
- “Do Drug Courts Work? Findings From Drug Court Research.” National Institute of Justice, 12 May 2008, www.nij.gov/topics/courts/drug-courts/Pages/work.aspx.
- “Drug Courts.” National Institute of Justice, 10 Jan. 2017, www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx.
- Everett, Pamela M., and Kenneth Peaks, *Introduction to Criminal Justice Practice and Process*. 2nd, ed., Sage, 2017.
- The Negative Impact Of The War On Drugs On Public Health: The Hidden Hepatitis C Epidemic*. Global Commission on Drug Policy, 2012.
- Sacco, Lisa N. *Drug Enforcement in the United States: History, Policy, and Trends*. Congressional Research Service, Oct. 2014.
- Sacco, Lisa, and Kristin Finklea, *Reauthorizing the Office of National Drug Control Policy: Issues for Consideration*. Congressional Research Service, 30 September 2014.
- Seaward, Wayne. Personal Interview. 11 November 2017.
- Waters, Maxine. “Testimony of Congresswoman Maxine Waters.” Federal Sentencing Reporter, vol. 18, no. 4, 2006, pp. 297–300. JSTOR, JSTOR, www.jstor.org/stable/10.1525/fsr.2006.18.4.297.