

*Chapter 9*

**Drug Policy Reform and Neutralizing  
the Third Rail of Politics**

Sanho Tree

**POLICY PROPOSALS**

- **Reduce the potential harms caused by drug abuse.**
  - **Make prevention a priority.**
  - **Fully fund treatment on request.**
  - **Promote evidence-based harm reduction strategies.**
- **Reduce the harms caused by the “War on Drugs.”**
  - **Promote alternatives to incarceration for low-level nonviolent drug offenders.**
  - **End major source country eradication programs.**
  - **End over-reliance on counter-productive crackdown policies such as the Merida Initiative.**
  - **Stop searching for easy answers.**

\* \* \* \* \*

Since President Richard Nixon first declared a “war on drugs” in 1971, the goal of a drug-free America is as remote as ever. Users who seek illicit drugs have little problem obtaining them cheaply, quickly and with ease. Indeed, the government’s own major indicators of success (measuring the price, purity and availability of drugs) show dismal trends. In 1969, the Nixon Administration spent \$65 million on the drug war at the federal level; in 1982, the Reagan Administration spent \$1.65 billion; in 2000, the Clinton Administration spent more than \$17 billion; and the Bush Administration is currently spending well over \$20 billion per year. We have had ever-harsher sentencing, and more people are employed to wage the drug war than ever before. The problem is not that we are

under-spending or not being tough enough, but that drug war *politics* constantly gets in the way of sound, evidence-based *policy*. Not only can some drugs have very harmful results on physical and mental health, but the drug war itself is now causing as much (if not more) harm than the drugs themselves. This is not an acceptable substitute for an effective drug control policy.

The policy recommendations outlined above fall into two categories. The first reduces the potential harms caused by the drugs themselves and the second deals with minimizing the collateral damage caused by the war on drugs. These recommendations are hardly unique, but they are a bit like the weather: everybody talks about it but nobody ever does anything to change it. This chapter is unique in that it lays out for the first time a viable method for legislators to challenge current drug policy while minimizing their own political risk in the age of “swiftboating.” Without this key component, there is little realistic hope for changing the status quo.

### **Reduce the Potential Harms Caused by Drug Abuse**

Drug prevention efforts such as the DARE program have failed miserably. We teach our children from an early age not to “cry wolf” and exaggerate claims, but then we turn around and allow police officers to use precisely the same tactics to frighten kids away from using drugs. This has increased cynicism, and children often throw the baby out with the bathwater. Hyperbole about the dangers of marijuana can lead kids to dismiss the very important messages about the dangers of other drugs like methamphetamine and heroin. We must also include the dangers of tobacco and alcohol in such education programs, for these “legal drugs” kill about thirty times more Americans each year than all illicit and prescription drugs combined.

The incoming Administration should support expanded implementation of proven effective programs, such as those evaluated by the Substance Abuse and Mental Health Services Administration’s own National Registry of Evidence-based Prevention Programs. Effective and honest prevention programs are, in addition, fiscally conservative investments.

Our nation’s drug problems are driven by demand, yet the lion’s share of federal funding has gone to supply reduction and law enforcement. It is time to re-order our priorities and funding patterns to match reality, instead of political posturing. It seems whenever “get tough” measures are requested, legislators have no problem finding money to appropriate, but when more effective demand reduction policies are requested, there never seems to be enough funding to go around. Those who champion prevention and treatment funding run the risk of being labeled “tax and spend liberals” who believe in throwing money at social problems. In fact, funding the “soft side” of drug policy is the fiscally conservative position.

A RAND Corporation study found that every additional dollar invested in substance abuse treatment saves taxpayers \$7.46 in societal costs, and that additional domestic law enforcement efforts cost fifteen times as much as treatment to achieve the same reduction in societal costs. It makes little sense to squander billions on futile illicit crop eradication measures when addicts who actually want help cannot obtain it. Trying to constrict supply without reducing demand only makes drugs more valuable, thus drawing more actors into this illicit economy.

Funding syringe exchange programs to prevent the spread of communicable diseases, expanding methadone programs, and making overdose prevention antidotes available to addicts have all been shown to reduce mortality, disease and crime without increasing the number of drug users. Even Iran's "drug czar" has come around on syringe exchange and methadone programs. For a nation not known for tolerance, Iran has even installed vending machines in Tehran to sell cheap condoms and syringes to drug addicts. It is unfortunate that his U.S. counterpart still stubbornly rejects such measures—as though the "wages of sin" ought to be death.

### **Reduce the Harms Caused By the "War on Drugs"**

At a time when the United States is falling behind in major global indicators of success, we are still number-one in one area. With less than one-twentieth of the planet's population, we have one-quarter of the planet's prisoners. Put another way, of the more than 9 million prisoners on earth, the United States has more than 2.3 million of them. Of those 2.3 million, nearly one-quarter of them are behind bars for drug offenses. These half million drug war prisoners (who are incarcerated solely for drug offenses and not violence) are greater than the entire U.S. prison and jail population in 1980. The draconian drug laws passed in the 1980s as a response to the spread of crack cocaine have mushroomed our prison population. In an effort to appear "tough on crime," legislators passed harsh mandatory minimum sentences, which left judges no discretion to consider mitigating factors. The most glaring inconsistency, however, is in the racially disproportionate application of our drug laws. African Americans and whites use and sell drugs at similar rates, but African Americans are ten times more likely than whites to be imprisoned for drug offenses.

In an era when we cannot even find a major political figure who can say he hasn't used illegal drugs (Bill Clinton, Al Gore, Newt Gingrich and George W. Bush to name but a few), we must ask a fundamental question of fairness: Would a good stiff prison sentence have helped them in their lives and careers? The same could be asked of the nearly one-third of all Americans who have used an illegal drug at least once in their lifetime. If the answer is no, then why is it such a good thing for all the poor people and people of color languishing in

prison? The main casualty of our war on drugs has been the concept of equal justice under the law.

The main driver of illicit crop cultivation in places like Colombia and Afghanistan is poverty, lack of access to credit and the absence of infrastructure for getting alternative crops to markets. Our current policies, however, focus on crop eradication rather than asking why farmers continue to plant illicit crops. This is an unsustainable policy. Eradication may succeed temporarily squeezing down cultivation one area, but then it balloons in another area because global demand continues unabated. We have been playing Whack-a-Mole with illicit crop cultivation at tremendous human, environmental and financial cost.

The Administration should reframe the issue as less of an illicit crop problem and more of a surplus human problem. The peasant farmers who grow these crops are not “narco-terrorists,” but rather, they are poor family farmers who lack economic alternatives. Like parents in any part of the world, they will do whatever it takes to feed their children. Since jobs in these rural regions are scarce and millions of people are already competing for limited relief aid, what do we expect these farmers to do once we eradicate their illicit crops? Do we simply expect this “human surplus” to melt away and disappear? Or are they replanting their fields or moving cultivation even deeper into remote areas? Moreover, our eradication policies have been driving many peasant farmers into the arms of our declared enemies like the FARC and the paramilitaries in Colombia and the Taliban in Afghanistan. To put it in the discourse of the Bush Administration, our policy seems to be creating “terrorists” faster than we can defeat them. We can eradicate for decades, but if we don’t figure out how these farmers are going to feed their families, they will go right back to replanting or, worse, join the armed groups simply to earn some money so their families can survive.

Supply reduction programs also have another serious unintended consequence. As long as there is undiminished global demand for drugs, reducing the supply through eradication and interdiction creates an artificial shortage thus causing prices to skyrocket astronomically. In other words, our drug war policies create an unintended price support for these minimally processed agricultural commodities, which would otherwise have very little monetary value. With nearly two-thirds of all Colombians living below the official poverty line (which means surviving on about \$2 per day), our fumigation planes are essentially giving a sort of crop subsidy to coca farmers because we try to make coca more scarce while there is still high demand. Given the widespread poverty in many drug-producing regions, we will never make these crops disappear by making them more valuable.

Of all the laws that governments can pass or repeal, the law of supply and demand is not one of them. Our planet has an inexhaustible reservoir of poor peasant farmers willing to risk growing illicit crops, and there is too much un-governed territory in the world in which to cultivate these plants. Trying to destroy illicit crops at the source has been as effective as shoveling water.

While there is certainly a need for effective law enforcement, our over-reliance on militarized drug policies has backfired. Though it may seem counter-intuitive, decades of escalating the drug war have produced a perverse result. The drug trade evolves under Darwinian principles (i.e., survival of the fittest). Our response of constantly increasing law enforcement ensures that the clumsy and inefficient traffickers are weeded out while the smarter and more adaptable ones tend to avoid detection and capture. We cannot hope to win a war on drugs when our policies see to it that only the most efficient operations survive. Indeed, these survivors are richly rewarded because we have constricted the supply of drugs while the demand remains. This increases prices and profits for the surviving traffickers while “thinning out the herd” by eliminating their competition for them. Through this process of artificial selection, we have been unintentionally breeding “super traffickers” for decades. Time after time, these super traffickers have been helped by the very same foreign law enforcement personnel we have trained. If there is no way to guarantee their loyalty, then we must question the wisdom of training foreign forces that can make many times their low government salaries by working for the cartels.

Ultimately, there is no substitute for building a healthy society. The root causes of drug abuse and illicit drug cultivation (as well as many other societal problems) can be traced back to poverty, despair and alienation. While poverty is easy to identify, alienation and despair cut across class lines in powerful ways. In 1965, testifying before a House Subcommittee of the Committee on the Judiciary, Sen. Robert F. Kennedy tried to promote an enlightened drug policy before our country declared war on its own citizens. He told Congress:

Now, more than at any other time in our history, the addict is a product of a society that has moved faster and further than it has allowed him to go, a society which in its complexity and its increasing material comfort has left him behind. In taking up the use of drugs, the addict is merely exhibiting the outermost aspects of a deep-seated alienation from this society, of a combination of personal problems having both psychological and sociological aspects. The fact that addiction is bound up with the hard core of the worst problems confronting us socially makes it discouraging at the outset to talk about “solving” it. “Solving” it really means solving poverty and broken homes, racial discrimination and inadequate education, slums and unemployment.

Forty-three years later, the preconditions contributing to drug abuse have changed little, but our response to the problem has become overwhelmingly punitive. The threat of harsh punishment, however, has done little to deter drug use. World Health Organization researchers, in a 2008 report on its just-completed mental health survey, concluded that “The U.S., which has been driving much of the world’s drug research and drug policy agenda, stands out with higher levels of use of alcohol, cocaine, and cannabis, despite punitive illegal drug policies as well as (in many U.S. states), a higher minimum legal alcohol drinking age than many comparable developed countries. The Netherlands, with

a less criminally punitive approach to cannabis use than the U.S., has experienced lower levels of use, particularly among younger adults.”

Restoring our social safety net is a much-needed first step in that direction. If people believe that their best days are behind them, the tendency to self-medicate will only increase. If we do not construct a society that gives average citizens reasons to look forward to tomorrow, then we will continue to pay a high social cost for that failure. The best path to building such a society is to adopt the other recommendations outlined in this book.

## How to Cut the Gordian Knot

### The Problem

The policy recommendations outlined above are neither new nor terribly controversial. Despite a chorus of legal, military, law enforcement and public health voices calling for fundamental reform of U.S. drug policies, their voices have largely fallen on deaf ears when it comes to elected officials. We do not need yet another blue ribbon commission or academic study to tell us our current policies are not working. Those who have worked on this issue know one of the most cynical secrets in Washington: many elected officials (if not an outright majority) are willing to acknowledge the fundamental failure of the drug war in private, but continue to vote in favor of it in public. Drug policy reform fails to get traction with elected officials because it is the quintessential “third rail”<sup>1</sup> political issue—thus, it is a subject to avoid unless one is declaring support for the status quo. As Jean-Claude Juncker, Prime Minister of Luxembourg, put it “We all know what to do, but we don’t know how to get re-elected once we have done it.” Although Juncker was referring to economic liberalization, the quote is even more applicable to the war on drugs. The following section offers a novel and counter-intuitive way out of this political dilemma and other third-rail controversies as well. Without such a solution, these recommendations will be as ineffectual as all the others that came before it.

The disconnect between private and public views of elected officials has to do with the difficulty in explaining why “get tough” measures sound attractive to voters but are often counter-productive. Politicians must hope that the voters will have some basic understanding of the economics of drug prohibition and how escalating the drug war only makes the drugs more valuable, thus attracting even more participants into the drug economy. This difficulty is compounded when political challengers can run negative smear ads relatively cheaply and repeatedly to decimate their opponent’s poll numbers. Moreover, elected officials have to hope that the voters—who saw those “swiftboat-style” ads air repeatedly—will tune in to the local news to hear their own sixty-second defense of why they opposed further escalation of the drug war. Very few politicians are able to convey successfully such a paradigm shift in a soundbite. After all, if drugs are bad, why *not* wage a war against them?

Since Congress installed an electronic voting system in 1973, the number of recorded votes has soared. The reason so many votes were on record (as opposed to a voice vote or simple head count) is not so that average citizens can hold their representatives accountable for their votes. After all, the overwhelming majority of voters have never looked up their representative's voting record. Those recorded votes are for the benefit of the political parties so that they can put their adversary's votes on record to spotlight at a future time—usually during election season (e.g., “He voted for war funding before he voted against it”). Thus, legislators who dare to vote in dissent on third-rail issues expose themselves to possible attack ads when they run for reelection.

The degeneration of our political discourse and campaign tactics has made reforming the drug war synonymous with political suicide. In recent years, campaign strategists like Karl Rove have taken traditional wedge issues and refined them into what he calls “anger points”—third-rail issues that have complex and often counterintuitive solutions, but are extremely easy to take out of context and twist into an effective attack ad. While being smeared as soft on drugs or soft on “narco-terrorism” alone may not be enough to destroy a politician's career, few elected officials are willing to risk adding another political liability to their reelection campaign. In this way, reforming drug policy is analogous to placing a loaded pistol on the table and praying your political challenger will not shoot you with it.

### **The Solution**

So how can politicians who care about getting re-elected make fundamental reforms without being electrocuted by the third rail? Just as the much-needed reforms of U.S. drug policy are counter-intuitive (where being tough is often the opposite of being effective), so too is the way out of this political stalemate. In order to get a more responsible legislature, it may be better to have less accountability—at least temporarily.

By utilizing a non-binding, anonymous straw poll, elected officials can express their true leanings without feeling the political backlash from myriad sources. While such a measure would have to be used as a “non-binding procedural aid” (the Constitution requires a *recorded* vote if one-fifth of the quorum requests it), an anonymous straw poll can produce surprising results and offer political cover during the debate over a binding recorded vote. Additionally, this temporary “veil of conscience” allows members of Congress to express their sentiments without crossing their party leadership, political donors, lobbyists and even their own electorate.

If the straw poll results show there is considerable dissension regarding a third-rail issue, then members who wish to vote against it can argue they represent the true majority of Congress. To be blunt, a great number of elected officials are essentially herd animals. When they detect significant movement, they

often follow because there is political safety in numbers. In this way, anonymous straw polls potentially can become the catalyst for a stampede.

As long as one member votes in the minority, nobody can prove which way each member voted. The concept is not unlike a traditional firing squad where one shooter is randomly given a rifle with a blank cartridge. In anonymity, honesty can emerge long enough for elected officials to realize they are in fact in a “closeted” majority. This exercise in distributed responsibility could provide the solution for Congress to address other polarizing issues such as economic restructuring due to climate change, national health care or authorizations for war. It can also be used to quickly dispense with election-year gimmicks such as anti-flag burning amendments.

### **The Benefits**

This process can be used to address a variety of third-rail issues besides the drug war. When significant appropriations, constituent jobs, campaign contributions or party loyalty are on the line, elected officials often cast votes that they know may not be in the best interest of the nation or their grandchildren’s generation.

Every politician understands what is in his or her short-term interest. They know what the party leadership wants, what their campaign contributors want, and what lobbyists want. At what point does the long-term interest of the nation as a whole come into play? Who represents the interests of future generations? Short-sighted interests and market forces have hijacked our broken political system.

The straw poll can also be used for association meetings of mayors or chiefs of police. Such prominent figures often think they are the only one in the room who believes the drug war to be a counter-productive disaster. An anonymous straw poll taken at the beginning of such meetings can allow a silent majority to come out of the closet and thus begin a more rational debate.

An anonymous straw poll can create a temporary firewall separating sound public policy from partisan politics—or what Scott McClellan, Bush’s former White House press secretary, calls the permanent campaign. Indeed, this may be the only viable way to undo the polarizing legacy of Karl Rove. With so many crises to address and such powerful interests opposing reforms, Washington cannot afford to play partisan games and conduct business as usual. Those who were elected based on a pledge of a “different kind of politics” in a year of “change” should consider this method of cutting the Gordian Knot and breaking the logjam in Washington.

## **Resources**

The Criminal Justice Policy Foundation: <http://www.cjpf.org>

The Drug Policy Alliance: <http://www.drugpolicy.org>

Drug War Facts: <http://www.drugwarfacts.org/index2.htm>

Drug War Facts is the best resource for quick, footnoted information on most aspects of drug policy. It is updated regularly and cites mainly government-funded studies and professional journals.

The Effective National Drug Control Strategy, 1999: <http://www.csdp.org/edcs/>

Families Against Mandatory Minimums: <http://www.famm.org>

The Washington Office on Latin America: <http://www.wola.org>

### **Notes**

1. The expression comes from the high-voltage third rail in a subway system and is used to refer to controversial issues that are thought to be political suicide for elected officials to engage. Other examples of third rail issues include U.S. aid to Israel, immigration reform, funding for law enforcement, gay marriage, military base closures, national health care, raising taxes, etc.