

“Commentary on Skolnick: The Ambiguities of Harm Reduction in Crime and Drug Policy,” in Edward L. Rubin, ed., *Minimizing Harm as a Goal for Crime Policy in California*, Berkeley, California, California Policy Seminar, 1997.

Comment on Skolnick

THE AMBIGUITIES OF HARM REDUCTION IN CRIME AND DRUG POLICY

Mark A. R. Kleiman¹

Jerome Skolnick’s essay points out that existing drug policies are not the ones that would minimize (nondrug) crime. Agreed.

It further argues that those policies are built around the belief that drug use is bad in itself. That belief is attacked as both wrong and a source of bad policy. This analysis requires some unpacking.

First, it is worth reflecting on the odd way in which “drug” is defined, both in the essay and in the broader public discourse, to include all of the current controlled substances, more or less on an equal footing, but to exclude alcohol and nicotine. If by “drug” one means all psychoactive chemicals, then the belief that drug use is evil in itself remains distinctly a minority view, except as applied to minors, since most Americans drink, at least a little, and aren’t ashamed of it or worried about it.

One would never guess, either from the essay or from the broader public debate, that alcohol is the drug most frequently involved in crime, and the drug that accounts for by far the largest number of user arrests (on charges of public intoxication, open container, minor-in-possession, and driving under the influence). Nor would one guess, from either source, the extent to which this widely used and socially accepted drug, freed from the moralistic meddling of the temperance forces by Repeal and no longer subject to the adulteration of bootleg whiskey, nonetheless manages to create other forms of harm: not only crimes, but also accidents, derelictions of duty in the home, workplace, and neighborhood, and health damage and the costs of treating it.

Now of course there is no valid logical step from the proposition, “The widespread use of Substance X causes harm” to the proposition, “Substance X is evil, and so are the people who use it.” Nor is it obvious that all of the substances covered by the Controlled Substances Act—“drugs” in political parlance—are in fact as dangerous as alcohol. But marijuana is not the primary focus of current drug enforcement efforts, or the cause of much trafficking-related crime.

With respect to the illicit drugs that are the focus of the enforcement side of the anti-drug effort, and whose consumption and distribution are deeply implicated in serious crime—

¹ Mark A. R. Kleiman is a professor of policy studies at the University of California, Los Angeles.

cocaine, especially in the form of crack, heroin, and methamphetamine—the case for a generalized softening of policy on crime-control grounds is much weaker.

Whatever one believes about the wisdom of prohibition (I'm for it), once these drugs are prohibited their use is even more hazardous than it would otherwise be. Prohibition makes the drugs expensive, and poor people addicted to expensive drugs are likely to support their habits partly by theft. Prohibition also creates illicit markets, which lure teenagers away from school and give young men both reasons and dollars to arm themselves. Thus inner-city residents do lie awake worrying that their neighbors may be buying heroin and cocaine, because they fear the theft of their possessions, the seduction of their children into dealing, and the sound of gunfire.

The essay goes on to assert that a different set of policies—"harm minimization"—less hostile to drug use and drug users, would result in less crime. This is a case, it is said, where "crime policy analysts" have one (presumably correct) view and "real-world decision makers" and "the general public" a contrary one. I doubt it.

The actual picture is even more complex than the essay makes it out to be, and the details, as usual, are crucial. The crime-minimizing approach to drug-abuse control would not necessarily be less hostile to drug use than the current approach, at least not for some drugs, though the mechanisms through which that hostility was expressed would be somewhat different. Moreover, the crime-minimizing approach would not necessarily be the one that produced the minimum of total social harm, since there are noncriminal harms associated with drugs. It might be worthwhile to accept somewhat more crime in return for somewhat less intoxication, less addiction, and less damage to health.

There are some good candidates for policies to reduce the total social damage done by drug abuse, but they do not lie exclusively in the direction of less aggressive enforcement.

Reducing the number of cocaine dealers in prison would very likely be, on balance, a harm-reducing policy, whether considered from the narrow perspective of crime control or from a broader perspective incorporating other concerns about drug abuse. While the demand for cocaine (and heroin, for that matter) is far more elastic than either popular mythology or the subject essay allows, both the price of cocaine and its retail availability seem to be quite inelastic to changes in cocaine-related imprisonment around its current levels. Although enforcement still has value in preventing open retail markets from developing where they do not now exist, or as part of an attempt to eliminate them from specific neighborhoods, there is no reason to think that routine retail-level enforcement against the crack market pays its way either as drug-abuse control or as crime control. While most of those in prison for cocaine dealing also commit a number of nondrug crimes, on average they seem to be less active in predatory crime than the average nondrug prisoner, so shifting the composition of the prison population away from crack dealers and toward burglars would on balance tend to reduce the incidence of burglary.

Drug enforcement could also reduce aggregate harm by focusing on individuals and groups that engage in violence rather than simply those who are moving the most drugs or are the easiest to catch. Given the sheer volume of the trade in the inner cities, it is impossible for

the police to arrest every dealer, but it is still possible for them to arrest any dealer, or set of dealers, they choose to focus on. This is particularly relevant when, as is now often the case, drugs are dealt by identifiable youth gangs. Police in some gang-ridden areas of Chicago and Boston have explicitly told gang members that the full weight, not merely of the drug laws but of the laws against possessing weapons, driving unregistered cars, drinking in public, and violating probation terms, will be brought to bear on whichever group starts shooting, and the reported results have been dramatic.

Another approach to reducing aggregate harm would be to use the probation and parole systems to reduce the demand for heroin, cocaine, and methamphetamine among drug-involved offenders. Since the vast bulk of heroin and cocaine bought and sold is consumed by frequent, high-dose users rather than casual ones, and since most of the frequent, high-dose users of those drugs are arrested in the course of a year, a policy that enforced drug abstinence on parolees and probationers with frequent tests and automatic sanctions (a few days in jail) for each missed or "dirty" test could substantially shrink the heroin and cocaine markets without imprisoning a single additional dealer. It would also reduce user crime by effectively shrinking demand.

Overall, then, neither an undifferentiated toughness nor an undifferentiated soft-heartedness is a reliable guide to reducing drug-related harm. Every policy needs to be evaluated on its own merits.