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Manuscript submitted to the Journal of Drug Issues

Title:

Drug Law Enforcement Revisited: The 'War' Against the
War on Drugs

Abstract

From the closure of London's nightclub Fabric to Duterte's drug war, law enforcement has become the policy choice par excellence for drug control by stakeholders around the globe, creating a rift between theory and practice, the former vehemently dismissing most of its alleged benefits. This paper provides a fresh look on the said regime, through examining its implications in the key areas of illicit drug markets, public health and broader society.

Instead of adopting a critical stance from the start, as much of the literature does, the issue is evaluated from the perspective of a focus on the logic and rationality of drug law enforcement approaches, in order to showcase from within how problematic the latter are. The paper concludes by suggesting at least a re-conceptualisation of the concept, to give way to more sophisticated policies for finally tackling the issue of illegal drugs effectively.

Keywords

Drug Policy, War on Drugs, Law Enforcement, Drugs, Illicit Substances

Main Text

1. INTRODUCTION

Law enforcement has been proclaimed as the most prevalent policy choice insofar as drug control is concerned. Few countries are more tolerant and put emphasis on a medical approach, through treatment provision (Bennett and Holloway, 2005). Instead, it seems that the majority supports a harm-minimisation model based on coercion, prohibition and criminalisation as *panacea* in limiting the supply and use of illegal drugs (Kerr et al, 2005). This view comes in direct confrontation with a considerable part of the academic community that perceives law enforcement as inadequate –or failed- in achieving the said objectives (Wodak, 2001). Furthermore, those scholars strive for drug use to “*be regarded as primarily a health and social issue, with funding raised for these measures to the level of drug law enforcement*” (Ibid: 866). Thus, another perspective is forged, challenging the long-standing policy of enforcement. In addition, the latter’s criticism also highlights its shortcomings in dealing with the issue of illegal drugs and their misuse; had it been successful, not many voices to the contrary would have been heard. Law enforcement’s adverse effects seem to spread across multiple fields, outweighing its potentially beneficial outcomes.

The present paper is an attempt to investigate this viewpoint, starting with a general overview of the concept of law enforcement, its underpinnings and the rationale behind it. Next, the *problématique* surrounding it is to be presented, in order to continue with its potential benefits, which seem not to be easily identifiable in the long run. The biggest share of this paper is to be occupied by the analysis of law enforcement’s shortcomings at both theoretical and practical levels with the use of country-examples where necessary. Finally, the conclusion would support the thesis that law enforcement does indeed more harm than good.

2. LAW ENFORCEMENT AS A CONCEPT

As the centrepiece of –virtually every- drug policy world-wide, law enforcement is used to alleviate the harmful effects drugs have on people and society in general. The relevant drug legislation

has been shaped around the concepts of “*life sentences, anti-laundering measures and forfeiture and confiscation of assets*” (Dorn and South, 1990: 173), which belong to the criminal justice system. Therefore, the aim of this strategy is to incapacitate and punish the offender, in order to act as a personal and general deterrent, as well as to rehabilitate (Herring, 2014). In turn, this consequentialist justification for criminalisation is linked with drug use being considered as a wrong, causing harm mainly to others but also to drug users themselves (Shiner, 2006).

The moral logic behind enforcement is further underpinned by the international community, mainly through the United Nations (UN) conventions of 1961, 1971 and 1988, which promoted the criminalisation of drug possession, use and manufacture (Wood et al, 2009). These were reaffirmed in UN sessions on drugs that followed and in the new five-year deal UN is to fund in Iran, whereby capital punishment is still in use, provoking vivid opposition due to pressing and glaring human rights concerns (Dehghan, 2015). UN’s policy choice acted as the paradigm for many countries’ choices in the field of drug control. USA and Mexico are prime examples of avid supporters of the drug law enforcement regime, having been among the first countries to raise the flags of the war on drugs, a war whose results are as ambivalent as the choice of starting it in the first place. Despite that, other countries, such as the UK, which had adopted different trajectories in the past, seemed to follow, displacing the medical approach in favour of law enforcement (Stimson, 1987). The war on drugs became mainstream, with the Duterte regime in Philippines being the latest example of this trend.

Ideologically rooted in the theory of harmfulness and drawing from a paternalistic assumption of wrongness in drug use (Ruggiero, 1999), law enforcement regards drugs as an evil that needs to be eradicated. For those considering law enforcement as the optimal solution to the problem, they should also bear in mind that it is possibly the most extreme one as well, since it involves harsh criminal sanctions. Treatment, and prevention come second in terms of both importance and expenditure therein (Pearson, 2001). This is precisely where the oxymoron of law enforcement lies; while being morally justifiable, it is unclear if it is practically so too. In order to be the latter, its benefits shall outweigh its costs, based on the principle of proportionality. This, following a utilitarian tradition, implies that the measures adopted have to be legitimate, suitable and necessary for achieving the goal

that the state pursues (Lacey 1988 and Shiner, 2006). In other words, efficiency is a key ingredient for a successful and justifiable legislative intervention (Lacey, 1988), together with parsimony, which calls for the minimum amount of intervention possible (Braithwaite and Pettit, 1990).

The aims of drug law enforcement cannot be attained, if these principles are not met. In turn this affects the former's moral position which might no longer be sustainable. Drug law enforcement risks becoming a house of cards, yet, at the same time, people would continue to be exposed to harm. As has already been noted, harm is the key word for justifying this regime. Its use as a justification is unproblematic if it refers to violent behaviour towards others. On the contrary, the situation becomes trickier if it concerns the harm inflicted to oneself. How is it possible to assess harm, let alone justify countervailing measures, in these cases? Lacey argued that such harm-reduction intervention is acceptable, only if it aims for preventing long-term negative effects to one's fundamental interests, namely one's future welfare and well-being (1988). If those fundamental interests are absent, then the chances of serious harm to surface are far and between, turning law enforcement into a coercion strategy to regulate a person's potentially risky or socially unacceptable lifestyle, often associated with the dominant views of the middle class (Miller, 2001). This cannot help but recall the new deviancy, social control and victimless crimes discourse of the 1960s and 70s (Duster, 1970 and Schur, 1965).

3. THE 'BENEFITS' OF DRUG LAW ENFORCEMENT

For a model with such shaky foundations as this one to be upheld, its benefits should far outweigh its shortcomings. Or so a cost-benefit analysis of drug law enforcement, another aspect of its intrinsic middle-class values (Miller, 2001), must have concluded prior to its adoption. While it is difficult to holistically evaluate all its alleged benefits, the economic theory of criminal law enforcement supports a positive outcome (Becker, 1968). This theory is based on the deterrence hypothesis, which "*asserts that people respond significantly to the deterring incentives created by the criminal justice system. If so, increasing the resources that society devotes [to the latter] ...may be the best policy prescription for reducing the amount, and social costs, of crime*" (Garoupa, 1997: 267).

This, further bolstered the moral view for deterrence, and its economics-based conception implying that benefits would occur in practice.

Advocates of the war on drugs strategy, such as George H. W. Bush, provided data that showed positive results in the US, namely large decreases in monthly drug use, deriving from the relevant harsh punitive policies (Meares, 1998). Of course, such data were contested by scholars, as other factors unrelated to drug policy per se, such as the recession in the early 1990s and demographic trends, that might have had an impact on the decrease were not taken into account (Degenhardt et al, 2008). Another benefit, not directed to the people but to the state, is that the latter re-gained its legitimisation narrative. This was achieved through the reinforcement of control and the reconfiguration of penal welfarism (Garland, 2001), cultivated by the growing perception of drugs as a threat, which has provided the concept with significant ammunition (Elvins, 2003). In times of welfare state crisis, a new narrative was needed, which was provided by the notions of crime and fear that accompanies it, two powerful notions in justifying state intervention and letting a state authority to govern (Shiner, 2013). For those in power, law enforcements can be proven a valuable ally, adding some covert benefits into the game. These relate to the reinforcement of state power via crime and fear narratives of policy elites (Simon, 2007); the ancient saying of divide and conquer was transformed to terrify and govern. The fearsome rhetoric of the 'war on drugs' has enabled further state intervention, to the point of coercion, in people's everyday lives, in way that resembles an Orwellian nightmare (McCulloch, 2007). Duterte's 'war on drugs' is a good example of that; the fine line between myth and reality has become severely blurred (Levine, 2002).

4. DRUG LAW ENFORCEMENT AND ILLEGAL DRUG MARKETS

Continuing our analysis, it is time to deal with the implications and costs of drug law enforcement. Amongst its goals a twofold one exists, aiming for reduction in both demand and supply sides of illicit substances, through the application of criminal law (Lambropoulou, 2003). The setting is usually the illegal drug market scene, purportedly fragmented in different formations, from street dealers to drug brokers in exclusive settings to organised crime networks, which, while overlapping,

do not allow for much transfer of information among the stakeholders involved at the various levels (Pearson, 2007). Enforcement strategies therein take the shape of measures directed towards “*persons (arresting traffickers/couriers on the spot when intercepted); drugs (seizures); organisations (breaking up trafficking networks); and, income generated by criminal activity (financial investigations and confiscation of assets)*” (Ellis et al, 2002:109).

Insofar as the people involved are concerned, the failure of law enforcement policies lies in the fact that while the quantities supplied are reduced as a result of an increased probability of detection, the actual number of traffickers in a market is multiplied. Thus, new players are allowed in an already established place, negating the effects of any decrease in quantity. A study focused on explaining why the war on drugs by the US in Colombia has not been proven effective confirms these assumptions, further explaining that the increased number of traffickers hinders police efforts for enforcement (Poret and Tejedo, 2006). Of course this does not mean that law enforcement aggravates the situation. As illegal drug markets are modelled after non-cartelised oligopolies, the entry of new traffickers distorts this ideal-type without, subsequently, increasing the market’s output (Kopp, 2004). In the end, law enforcement does not seem to have almost any impact in its people-related strategies, the illicit drugs market being able to adapt to the changes incurred by them.

In regards to the drugs-related side of law enforcement, the most commonly used method is drug seizure, focusing on reducing their supply. Studies on the efficiency of such strategies mainly use heroin as their variable and their explanatory framework is comprised of the effects of seizures on price, purity or availability (Mazerolle et al, 2007). These, do not seem to be affected by law enforcement in the said form neither in Australia (Weatherburn and Lind, 1997 and 2001) nor in Canada (Wood et al, 2003). Earlier data in the US, on the other hand, show some progress in heroin and cannabis - albeit not accompanied with any significant drop in use in either-, but not in cocaine (Moore, 1990). More recent UK data, demonstrate that there is a tendency in constantly falling market prices for most substances, showcasing the resilience of drug markets when confronted with seizures (McSweeney et al, 2008). The fallen prices might be a result of globalisation, which “*offsets the effects of supply containment policies*” (Storti and Grauwe, 2009: 488).

In any case, drug markets evolve in response to enforcement efforts, efforts that increase the professionalization of the trade therein (Dorn and South, 1990). If production is stopped in country A, then it might automatically soar in country B (Paoli et al, 2009). Another relevant point, in particular regarding the more sophisticated aspects of criminal organisations and their activities, is that intensifying enforcement activity increases disorder in the targeted area, resulting in higher rates of homicides and gun violence in order to combat police intervention (Werb et al, 2011). Mexico, tarnished by drug-related violence, can easily support this claim. The government's war-like stance on tackling the country's long-standing drug problem is considered as a key driver for crime and violence in the relevant markets, affecting people outside of them as well (Widner et al, 2011). Consequently, enforcement in illicit drugs *fora* has been proven negligible at best, with harsher forms of it being responsible for having severely adverse consequences.

5. DRUG LAW ENFORCEMENT AND PUBLIC HEALTH

These adverse outcomes can also occur in areas pertaining to the public health sphere. Studies have shown that injecting drug users adapt their behaviour, by rushing during the injection phase, in fear of a police crackdown (Kerr et al, 2005). Such behaviour usually involves a hurried preparatory stage, increasing risks for infections and vascular damage (Murphy et al, 2001, Maher and Dixon, 1999 and 2001). At the same time, it disconnects "*street-based injectors from health and other service providers*" (Aitken et a, 2002: 194). Moreover, police presence deters users from using syringe exchange programmes. As a study of the metropolitan San Francisco area has shown, law enforcement had a negative impact in terms of arresting both volunteers in such programmes as well as potential clients, leading the latter to resort to riskier practices (Bluthenthal et al, 1997). Therefore, any serious harm reduction strategy can, potentially, be jeopardised by law enforcement. The users, in a panicked mood, either do not check the quality of the drugs they are taking or they fail to comply with the appropriate procedures, increasing chances for overdose and damaging their health (Cooper et al, 2005).

A cross-county analysis of US data, confirmed the link between higher rates of law enforcement and HIV prevalence among injecting drug users, further showing that, in terms of deterrence in injecting, these strategies have no impact at all (Friedman et al, 2006). To tackle these issues, some alternatives have been promoted, mainly by modifying policing practices. These involve aborting the crackdown model, trying, instead, to forge close co-operation between the police, governmental and non-governmental organisations and community members (Cooper et al, 2004). That way, harm reduction initiatives would be able to function effectively, as for example in the case of North America's first state sanctioned supervised injection facility in Vancouver (Small et al, 2006).

6. DRUG LAW ENFORCEMENT AND BROADER SOCIETY

Non-drug using members of society do not remain unscathed from the impact of law enforcement either. Community safety is at stake because injecting drug users that get caught would probably resort to crime once more, in order to try injecting again, and, also, because failed dealers would attempt other types of crime for making some profit (Maher and Dixon, 1999). At another important level, *“police policies and practices associated with the war on drugs have been the most influential in perpetuating racially discriminatory police discretionary behaviour”* (Bass, 2001: 164). This view is particularly prevalent in the US, whereby the criminal justice systems seems to use drug law enforcement as a tactic to perpetuate racial discrimination towards African Americans, leading authors to call this phenomenon *“the New Jim Crow”* (Alexander, 2012). Studies of drug activity in Seattle, confirm the existence of racial disparity in terms of people arrested, despite the dominance of white people in all drug markets except that of crack cocaine (Beckett et al, 2006).

In the UK, the majority of people targeted by the “stop and search” policy, but also being subsequently arrested are predominantly of black origin as well (Eastwood et al, 2013). This can be explained by the limited resources these people might have compared to a wealthier, white population, highlighting the shortcomings of applying a single police strategy (Cooper et al, 2005). For example, white men of a homeless community in San Francisco were found to carry syringes

more often compared to black ones, due to the latter's fear of arrest (Bourgois et al, 1997). Nonetheless, African Americans are not the only group victimised by law enforcement; in the Australian suburb of Cabramatta, men and especially those of young age and of Asian origin are more prone to police crackdowns, and, hence, less likely to follow the procedures of safely injecting themselves (Maher and Dixon, 1999).

7. PATH-DEPENDENCE AND LACK OF HIGH QUALITY RESEARCH

The war on drugs tactic has also been economically costly, with the money attributed to it probably having a better use in other –more effective- harm reduction strategies (Alexander, 1990). Of course once law enforcement was in place, then it became difficult to fundamentally deviate from it due to the complex nature of policy-making that, sometimes, deters bold initiatives (Stevens, 2011). If the stakes are high for bureaucracies, then misinformation could be created to exaggerate the chosen method's potential benefits (Benson et al, 1995). Supporting claims based on the number of arrests and seizures are not enough for assessing drug law enforcement (Bright and Ritter, 2010). Even the more sophisticated assumption that targeting the supply-side of drug markets would incur a price increase can be problematic. In fact, it is a rather myopic one as other components that might interfere and affect drug consumption patterns, including their prices, are not taken into account (Poret, 2003).

This underlines the *lacunae* in framing law enforcement's objectives, which should move away from supply reduction and suppression. Instead, they should conform to harm reduction-related goals, with methods of measurement tailored to achieving those (Trace, 2012). On the other hand, even the numerous studies on the costs of law enforcement have been judged as flawed in terms of the methodological design employed therein (Mason and Bucke, 2002). As Mazerolle et al. observed: “*the general quality of research in drug law enforcement is poor, the range of interventions that have been evaluated is limited, and more high-quality research is needed across a greater variety of interventions*” (2007: 138). Notwithstanding that, the scholarship in that regard is still valuable as its main point, the ineffectiveness of the drug law enforcement regime, is systematically proven, albeit

with discrepancies in the methods followed. Thus, a more streamlined approach would be beneficial for making a stronger case for this argument.

8. CONCLUSION

From what has been set down *supra*, it appears that the associated costs of drug law enforcement far outweigh its benefits. The latter are difficult to identify and measure in terms of their effectiveness, bearing in mind that supply reduction –and even market price- have more often than not little to do with drug control. On the contrary, drug law enforcement exacerbates and increases harms to users, worsens public health levels and reproduces social exclusion and division, through patterns of race disadvantage. Its negative implications spread across various levels and fields, be it in the organisation of drug markets *per se*, the people involved therein or society in general. Furthermore, all these highlight the quick adaptability of the drug scene to any of its forms, and, at the same time, law enforcement's slow response to the challenges posed by the current situation. Things are to get even more challenging with the emergence of new technologies, either in their use to facilitate e-trade, as well as to evade and even counteract control through cyber-attacks (Ghodse, 2008), or in the production of new legal-highs. As a crime control strategy, law enforcement has, consequently, failed to achieve its goals.

In the realm of policy though, the situation is different, with this model being a successful political project in reinforcing the somewhat lost state-exercised notion of control over its people. The international community still supports this tactic, showcasing a paradoxical persistence, fuelling the analysis of how difficult long-established policies are to change. The persistence of drug law enforcement was further driven by the tendency for convergence through a globalisation of processes including but not limited to the field of criminal justice, fuelled by a neo-liberal discourse (Muncie, 2005). Despite the strong path dependence, there is a *plethora* of literature studying the implications of law enforcement to the afore-mentioned areas, and strongly suggesting a need for a change in the form of either its reconceptualization or its scrapping altogether in favour of another policy. These voices, while inconsistent in terms of the methods employed in their studies, shall be heard if a change

in the current situation is to occur. Fighting a war with inappropriate strategies and/or weapons hardly ever guarantees winning it.

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