

# Puerto Rico Needs Drug Decriminalization – Anthony Vera ©February 2014

Go to YouTube© and search “drug addiction in Puerto Rico.” There you will see videos that overwhelm with the epidemic of despairingly lost lives barely surviving the inferno of addiction. They appear as the walking dead just about everyone on the island disdains, blames, and ignores with disgust. Countless are homeless. It is a human tragedy perpetuated by ignorance and perverse thinking on the part of government and society. If they are not in treatment or maintained on Methadone, they are behind bars – some say, having no difficulty finding a high while in prison.

More than ten years ago, Douglas Husak (2003) came to the conclusion that:

*If there is a good reason to criminalize illicit drug use, we have yet to find it. We need a better reason to criminalize something other than predictions about how its frequency would increase if punishments were not imposed. These predictions are dubious both normatively and (in this case) empirically. Despite my uncertainty about the future, there is one prediction about which we can be absolutely confident. After decriminalization, those who use illicit drugs will not face arrest and prosecution. The lives of drug users would not be devastated by a state that is committed to waging war against them. Punishment, we must always be reminded, is the worst thing a state can do to us. The single prediction we can safely make about decriminalization is that it will improve the lives of the hundreds of thousands of people who otherwise would be punished for the crime of using drugs for recreational purposes.*

A little progress has been made convincing the public that the “War on Drugs”<sup>1</sup> begs for a ceasefire and new strategy. Uruguay started a new trend in Latin America when, in December 2013, it decided to legalize marijuana without any pretense that it was being done for anything other than collecting tax revenue and hopefully subverting the violent black market (see <http://qz.com/161903/uruguay-may-have-started-a-marijuana-legalization-storm-in-latin-america/>). Before that Colombia, the most important War on Drugs ally the U.S. has, began questioning the prevailing drug policy wisdom, admitting that the war is being lost and that the U.S. created problem with a population’s insatiable appetite for illegal drugs. In the United States, state after state is passing some form of cannabis sale legislation in direct defiance of federal drug policy. In more ways than one, the message is getting to Washington that the war was lost a long time ago.

This brief essay is an appeal for rationality and a smarter use of public resources to correct the colossal failure of drug policy and loss of human potential on the island, and the United States.

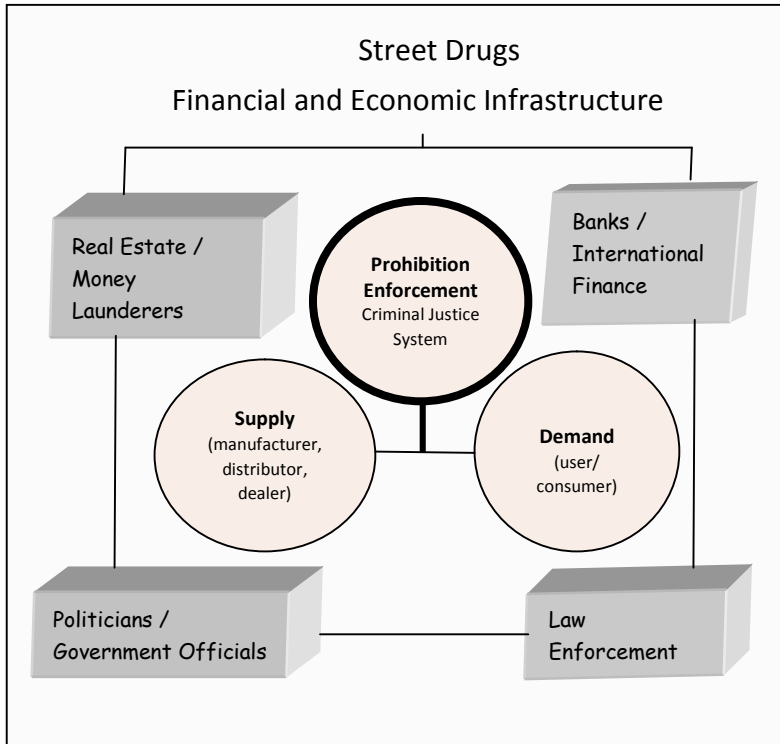
## The Big Picture

It is important to first define the terms used here to explain the “drug problem” in Puerto Rico. When referring to **drugs** I am limiting the term to so-called “street drugs” that are classified as Schedule 1 substances under the federal Controlled Substances Act; including opium and coca derivatives, and tens of other synthetic addictive products. The **street drug market** has a **supply** (producer/dealer) and **demand** (user) side. The “drug problem” also has to be viewed from an **economic** (manufacturer/distributor / dealer and financial infrastructure within the formal and informal economy)

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<sup>1</sup> President Obama ordered discontinued use of the phrase “War on Drugs,” but he is doing no more and no less than all the previous administrations in continuing the folly of a wasteful strategy, and worse, perhaps, dogging states that have legalized medical use of marijuana.

**and criminal justice** (prohibition enforcement) **dimension**. The matrix of the drug problem, as illustrated below, is complex but the problem itself is not insoluble.



The starting point is keeping in mind that Puerto Rico’s drug problem is within an island that is geographically small, containable, culturally homogenous, and rich in treatment intervention know-how. The island is, of course, greatly influenced and driven by external forces that go far beyond the United States. Additionally, not being a sovereign nation, Puerto Rico cannot control its borders without the consent and assistance of the United States. Nevertheless, within the self-governing powers the island has been given by the U.S. Congress as a constitutionally established ‘free associated state,’ Puerto Rico can create internal drug policy and intervention strategies with the

governing power of a *de-facto* state (i.e., acting as if it were a sovereign state).

The drug problem does not begin or end in Puerto Rico. It needs to be stipulated that the island’s drug problem represents a microcosm of global deviancy and malignancy that is as destructive as that which any pandemic or war can inflict on humanity. Perhaps worse than war and pestilence, global narco-trafficking corrupts those whom we think should be incorruptible: the bankers, elected officials, police enforcement personnel, and the wonderful family man who is reputed to be the pillar of our community. The media, of course, turns our eyes to the junkie, corner peddlers and gangs killing each other in the streets and terrorizing poor communities. But I go ahead of myself. Let us complete the big picture.

We need to dissect the street drug problem matrix, focusing first on the reality that it is a criminal industry created for people with a need that is satisfied by an addictive substance that can destroy human capacities. There is no typical addict (Speaker, 2003). Some people are functional addicts – they hold a job, raise families, celebrate their grandchildren’s birthdays, and die of natural or unnatural causes totally unrelated to illegal drug use. Their numbers may be far greater than the dysfunctional ones that serve as the marginalized, scapegoats and objects of disdain that help reinforce our sense of moral worth, and shape the public imagery of addiction. That public profile of the addict started to be formed at the beginning of the 20<sup>th</sup> century when government sponsored “researchers increasingly defined addiction as a vice rather a disease, thus framing it as a problem of criminology, not medicine.” (Speaker) The dysfunctional addict – stereotypically viewed as “the junkie” – is



today labeled with a disease classified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) as substance abuse or substance dependence. These mental disorders include not only street drugs but legal substances, such as alcohol, caffeine, and nicotine dependency; the latter said to be more addictive than heroin and cocaine (Sandra Blakeslee, *New York Times*, March 29, 1987).

The criminal components of the industry are 1) violent competition for market share, 2) corruption in society's financial, political, and governmental environment, and 3) disruption of agriculturally dependent economies in developing nations that spark narco-terrorism and, to the extent that it undermines a country's economy, push waves of undocumented immigrants to the United States and Puerto Rico. All three components are created by the demand for drugs. The supply side of street drugs arguably contributes far more cost to society than the street and white collar addict, but drug addiction's weight on society should not be minimized either.

Puerto Rican street addicts are not the ones to whom we can attribute the wave of homicides on the island urban centers; few, if any, are implicated in killing to get a fix. Most incarcerated offenders, largely the poor and unemployed among the addicted population, engage in property crimes, larceny, petty sale of stolen property, prostitution, and racketeering behavior to pay for their addiction. They contribute nothing to the island's tax base. They are a major contributor to the HIV/AIDS epidemic. Many are in prison for minor drug sales or possession – some serving life sentences in U.S. federal and state prisons, and in Puerto Rico costing the taxpayer more than \$30,000 per year to keep an inmate locked up. More than anything else, the street addict is a non-violent, defenseless soul, whose only reason for living is the next fix. Around them revolves a multi-billion dollar industry that depends on their addiction and criminalizes their behavior while making it easier for the white collar user to remain anonymous (Riga, 1993). The parasite on society is not the addict, it is the supplier and all those the industry supports – bankers, real estate money launderers, corrupt politicians and law enforcers, aberrant government officials, and even the official War on Drugs enforcement bureaucracy's perversities (Weisberg, 2009). Decapitate the parasite and you radically reduce the homicide rate in Puerto Rico from 26 per 100,000 to less than 10 per 100,000, because about 70% of the homicides in Puerto Rico are associated with the supply-side of the drug market. Aside from that, big savings and humane dividends may be derived from reframing our view of street drugs from a crime problem to a public health challenge. That is the basis of drug decriminalization. How do we do it? The answer is not rocket science. It is a matter of political will and public awakening.

## **How to decriminalize street drugs in Puerto Rico**

Over the past three or four decades there has been a fair amount of debate and controversy regarding decriminalization. Most of the oppositional view is speculative and fraught with irrationality and moralistic baggage. While the debates drag on, one inescapable reality in the U.S., that applies to Puerto Rico, cannot be ignored:

*We have the highest incarceration rate in the world; over forty percent of our state inmates and a full half of our federal inmates are incarcerated for nonviolent drug crimes, drug arrests have tripled in the last three decades, with over eighty percent essentially for mere possession; the generic cocaine charge in the federal system will predictably lead to seven years in prison; and all this while cocaine use rates in the United States have remained unchanged. . . . the drug trafficking industry remains untaxed and undeterred except by street corner violence and drive-by shootings. The federal government spends many billions*

*for drug control, even independent of prosecution and incarceration, but a pittance for proven programs of inmate rehabilitation. (Weisberg)*

Many who favor decriminalization admit that adopting the strategy requires preparation to deal with the unintended consequences that surely follow. Like any invention, use and time provide the experience to make improvements. There is also confusion and obfuscation around the meaning of 'decriminalization' and 'legalization.' They are not synonymous but both terms carry the ambiguity of words like "happiness" and "love;" they mean different things to different people. Here is how I define the concepts.

**Legalization** of street drugs confers a right to purchase, possess and use street drugs under free-market defined conditions; like buying beer or cigarettes at the corner store. The state may regulate its use by prohibiting sale to minors, but otherwise allow the forces of supply and demand to set the price. The state could, and does, try to make it a revenue generating product by taxing it heavily, as they do cigarettes (presumably to discourage consumption and risk black market competition). Both have limited success in the sense that, in the case of cigarettes, some smokers have been incentivized to quit and it is harder for minors to buy them. Yet, addicted adults still pay any price for a pack and kids manage to obtain them anyway.

**Decriminalization** is state action to legislate street drug addiction and dependency as a personal and public health problem with mental health impacts that are remedied with a comprehensive public health and social action response. It requires developing an implementation strategy that will compete effectively with the illegal street drug market by:

- 1) providing free availability of better quality drug choice for users that have been medically screened and confirmed as addicted drug users,
- 2) offering multi-modal drug treatment (within a harm reduction framework) and rehabilitation support for drug-free living and gainful employment,
- 3) creating case management support for housing, food, and health care as integral to the treatment of addiction,
- 4) development of aggressive public education and youth development programs,
- 5) continuing border drug interdiction efforts, and
- 6) maintaining job creation and family support programs for low-income communities.

A decriminalization strategy does not legalize drugs or attempts to crack down on illegal drug sales. The strategy works to drive the illegal drug industry out of business, or contain it within market-defined parameter, by offering a better product to the addict. Above all, decriminalization does not punish drug use or possession. Although there is evidence to the contrary (Boaz, 2011), it should be anticipated that under a decriminalization policy, as defined above, addiction, experimentation, and drug use may actually increase during its initial stages, plateau and then begin a downward decline. It is also possible that in a non-punitive, decriminalized, environment the anonymous addict will surface and artificially spike the incidence rate of addiction.

In some ways, such as the creation of Drug Treatment Courts, principles of decriminalization have been embraced in the mainland. And programs that have for decades dispensed Methadone, a heroin

antagonist, is consistent with a decriminalization, but all exist within a prosecutorial paradigm that perpetuates failed policy at an astronomical cost to society.

Human behavior is difficult, if not impossible, to predict. Enough is known, however, to devise experimental intervention designs that will be perfected with experience for optimal outcomes. At the present time Puerto Rico is spending more than \$400 million dollars per year to keep men and women locked up and the preponderance of inmates are serving time for crimes related to property and person, the majority of those crimes can be tracked down to drug related behavior. If half of the crimes known to be drug related could be diverted from prison to community treatment, the \$60 million of prison expense saved with the added millions wasted in arrests (for everything from petty larceny, robbery, breaking and entry, etc.), detention, and police surveillance, will help pay for the investment required to effectively treat a problem that is slowly dehumanizing our treasured island.

Legislation in support of decriminalization should be preceded by a well thought out process of expert review and report recommendations to the governor of Puerto Rico, followed by island-wide education and dialogue that will guide development of a decriminalization model that takes from the experience in countries like Portugal that has had a form of decriminalization since 2001 (Hughes and Stevens, 2010). The structural and programmatic changes required to successfully implement a decriminalization strategy are formidable but the long-term dividends can be even greater.

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