A Decade After Drug Decriminalization: What Can The United States Learn From The Portuguese Model?

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INTRODUCTION

Illicit drug use and drug dependence are widespread in the United States. In 2009, an estimated 21.8 million Americans aged twelve or older were current illicit drug users (approximately 8.7% of the U.S. population age twelve or
older). An estimated 7.1 million Americans were dependent on, or abused, illicit drugs.\(^2\)

The statistics above are alarming because illicit drugs pose many risks of harm to drug users and to society. Illicit drug use increases risks of mortality, communicable and non-communicable physical disease, and mental illness. Illicit drug use is also associated with greater risks of crime, higher threats to public order and safety, and various other social costs. Given their risks and widespread use, illicit drugs pose some of the most relevant and challenging public policy problems.

Since former President Ronald Reagan declared a “War on Drugs” in 1982, the United States has taken a highly punitive approach toward illicit drug consumption, distribution, and production. During the past three decades, the num-

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2. Id. at 6 (finding that in 2009, 3.2 million people were classified with dependence or abuse of both alcohol and illicit drugs, and 3.9 million people with dependence or abuse of illicit drugs, but not alcohol).
3. See Thomas Babor et al., DRUG POLICY AND THE PUBLIC GOOD 48-53 (2010) (listing five classes of harm related to morbidity and mortality caused by illicit drug use: (1) overdose, (2) other injury, (3) non-communicable physical disease, (4) mental disorders, and (5) infectious disease); Robert MacCoun et al., Assessing Alternative Drug Control Regimes, 15 J. POL. ANALYSIS & MGMT. 330, 342 (1996) (listing suffering due to physical illness, suffering due to mental illness, addiction, effects of maternal use on infants, and HIV/other disease transmission as health-related harms connected to drug use).
4. Duane C. McBride & Clyde B. McCoy, The Drugs-Crime Relationship: An Analytical Framework, 73 PRISON J. 257, 271 (1993) (“From every conceivable methodological perspective, data consistently show that there is a strong correlation between drug use and criminal behaviour and that increases in drug use are related to increases in crime.”); Todd R. Clear et al., Correctional Alternatives for Drug Offenders in an Era of Overcrowding, 73 PRISON J. 178, 185-86 (1993) (“Because many drugs are expensive, many addicts must engage in criminal activity to obtain money to support their drug use. Studies show that criminal behavior remains high during periods of drug use.”) (internal citations omitted); see Babor, et al., supra note 3, at 58 (“Many drug users engage in criminal activities to obtain money to buy drugs. . . . These activities may consist of small-scale drug dealing; property crimes such as shoplifting, theft, fraud, robbery, and burglary; and also sex-work, which in many countries is a criminal activity.”).
5. See MacCoun et al., supra note 3 (listing accident victimization, fear/restricted mobility, and sense of public disorder and disarray as harms related to public safety and public order that are connected to drug use).
6. See id. at 342-43 (listing public and private health care costs, reduced performance in school and the workplace, and police, court, and incarceration among many social costs connected to drug use).
7. COMM. ON DATA AND RESEARCH FOR POLICY ON ILLEGAL DRUGS, INFORMING AMERICA’S POLICY ON ILLEGAL DRUGS 1 (2001) (“The consumption of illegal drugs and the design of efforts to control drug use pose some of the most difficult and divisive problems confronting the American public.”).
ber of arrests for drug law violations has nearly tripled and government spending on the drug war has increased considerably. The distinctly punitive nature of U.S. drug policies is illustrated by the fact that the number of people incarcerated for drug offenses in the United States is almost equal to the number of people incarcerated for all crimes in the entire European Union.

The severe crackdown on illicit drugs is part of a wider punitive trend within the U.S. criminal justice system. Since the 1980s, the U.S. incarceration rate has nearly quadrupled, resulting in the highest incarceration rate and the greatest number of people incarcerated worldwide. Each year, corrections budgets take

that included the 1984 Comprehensive Crime Control Act, the 1986 Anti-Drug Abuse Act, the 1988 Anti-Drug Abuse Amendment Act, and the 1988 Drug Free Workplace Act. These measures raised federal penalties for all drug-related offenses and introduced mandatory minimum sentences and asset seizure without conviction; they also established the federal death penalty for drug ‘kingpins.’

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a greater percentage of federal, state, and local funds.\textsuperscript{14} Recently, a few states have even spent as much or more funds on corrections than on education.\textsuperscript{15}

Some scholars and policymakers argue that punitive drug policies have not reduced the problems associated with illicit drugs in the United States.\textsuperscript{16} These critics have condemned the War on Drugs as a "failure,"\textsuperscript{17} "ineffective,"\textsuperscript{18} and "immoral."\textsuperscript{19} As a result, there is a call for researchers and policymakers to ex-

\textsuperscript{14} \textit{See The Pew Report, supra} note 13, at 14 ("Year by year, corrections budgets are consuming an ever larger chunk of state general funds, leaving less and less in the pot for other needs."). In 1980, the U.S. Federal Government spent $406 million on corrections, which increased to $6.98 billion in 2006. Similarly, state governments spent $4.54 billion on corrections in 1980, which increased to $42.7 billion in 2006. Local governments spent just less than $2.28 billion on corrections in 1980, which increased to $22.3 billion in 2006. See Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics Online, Tbl.1.2.2006. Justice System Direct and Intergovernmental Expenditures, http://www.albany.edu/sourcebook/pdf/t122006.pdf (last visited Dec. 13, 2010).

\textsuperscript{15} \textit{See The Pew Report, supra} note 13, at 16 (reporting that in 2007 five states – Vermont, Michigan, Oregon, Connecticut, and Delaware – spent as much or more funds on corrections than on education).

\textsuperscript{16} \textit{See e.g., Robert J. MacCoun & Peter Reuter, Drug War Heresies: Learning from Other Vices, Times, and Places 1} (2001) ("America's highly punitive version of prohibition is intrusive, divisive, and expensive and leaves the United States with a drug problem that is worse than that of any other wealthy nation. Notwithstanding a very substantial investment of resources and of public authority and rhetoric in drug control, there is little sign of major remission in America's drug problems.").

\textsuperscript{17} \textit{James P. Gray, Why Our Drug Laws Have Failed and What We Can Do About It: A Judicial Indictment of the War on Drugs} 1 (2001) ("I had concluded that drug reform was the most important issue facing this great country and that our so-called War on Drugs was our biggest failure."); Fernando Henrique Cardos et al., Op-Ed., \textit{The War on Drugs Is a Failure}, \textit{Wall St. J.}, Feb. 23, 2009, at A15; Samuel R. Gross & Katherine Y. Barnes, \textit{Road Work: Racial Profiling and Drug Interdiction on the Highway}, 101 Mich. L. Rev. 651, 750 (2002) ("The centerpiece of the War on Drugs – the attempt to limit the supply of contraband drugs in the United States – has been a conspicuous failure."); \textit{see also generally, Dan Baum, Smoke and Mirrors: The War on Drugs and the Politics of Failure} (1996).

\textsuperscript{18} Christina Jacqueline Johns and Jose Maria Borreto N., \textit{The War on Drugs: Nothing Succeeds Like Failure, in Crimes by the Capitalist State: An Introduction to State Criminality} 67, 78 (Gregg Barak ed., 1991) ("The war on drugs, both domestically and internationally, has been ineffective in stopping the use, manufacture, and trafficking of drugs, and has created a host of subsidiary problems."); Eddy Ramirez, \textit{Unintended Effect of War on Drugs Found in Study}, L.A. Times, Sept. 20, 2002, at A24 ("The record-setting incarceration policies over two decades of the country's war on drugs have been misguided, ineffective and costly. . .") (quoting Marc Mauer, assistant director of the Sentencing Project).

\textsuperscript{19} James Ostrowski, \textit{The Moral and Practical Case for Drug Legalization}, 18 \textit{Hofstra L. Rev.} 607, 687 (1990) ("Drug prohibition is immoral because it violates the individual right of self-ownership."); Jeffrey H. Reiman, \textit{Critical Moral Liberalism: Theory and Practice} 74 (1997) ("Deontologically, I think that the War on Drugs is immoral because I believe that a sane adult has the right to put whatever he wants in his body.").
plore different strategies in order to combat illicit drugs. Some U.S. drug policy experts are looking to the international community for alternative strategies.

This article examines drug reform in Portugal and discusses the lessons that the United States may take from Portugal’s revolutionary drug policies. In July 2001, Portugal became the first country in Europe to decriminalize drug use by repealing all of its criminal offenses for the personal use of illicit drugs, including cannabis, heroin, cocaine, and amphetamines. Portugal’s decriminalized regime treats illicit drug use strictly as a matter of public health by separating drug users from the criminal justice system entirely. Under this new regime, drug use is prohibited as an administrative offense, not a criminal offense. Rather than face criminal charges, drug users are required to meet with specialized administrative committees that can impose various non-criminal sanctions in order to induce users into treatment.

Drug decriminalization is highly controversial. Opponents fear that decriminalization will significantly increase the number of drug users and abusers, and increase drug-related crime. Opponents also argue that decriminalization will send the message that drug use is acceptable. It has been one decade since Portugal decriminalized drugs, and the evidence does not support these opponents’ fears. Researchers have found that “contrary to predictions, the Portuguese decriminalization did not lead to major increases in drug use,” but rather reduced “problematic use, drug-related harms and criminal justice overcrowding.”

20 See e.g., Gary Fields, White House Czar Calls for End to ‘War on Drugs,’ WALL ST. J., May 14, 2009, at A3; see also Alex Kreit, Beyond the Prohibition Debate: Thoughts on Federal Drug Laws in an Age of State Reforms, 13 CHAP. L. REV. 555, 555 (2010) (“In short, the argument that we should end the war on drugs in favor of a new approach no longer resides in the world of the politically unthinkable, and has quickly become a subject of serious policy and political discussion.”).

21 See e.g., Glenn Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies (2009) (evaluating the effects of drug decriminalization in Portugal); see also MacCoun & Reuter, supra note 16 (assessing the likely effects of drug legalization based on evidence from national drug approaches in Western Europe).

22 Greenwald, supra note 21, at 2.

23 van Beusekom, Loo & Kahan, Guidelines for Implementing and Evaluating the Portuguese Drug Strategy xiv (2002) (“The law on decriminalization represents a significant deviation from previous law, and is different from efforts in other countries such as Spain and the Netherlands, in that it explicitly separates the drug user from the criminal justice system, stating as basic principle that a drug addict should be considered a patient, not a criminal.”).

24 Caitlin Elizabeth Hughes & Alex Stevens, What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?, 50 BRIT. J. OF CRIMINOLOGY 999, 1012 (2010)(“The distribution and manufacturing of illicit drugs remain criminal offenses.”).

25 Id.

26 See Part I.C.

27 Hughes & Stevens, supra note 24, at 999.

28 Id.
It would be unwise to conclude that the United States should decriminalize drug use merely because one country has had a positive experience under a decriminalized regime. This article, therefore, does not build the complete case for drug decriminalization in the United States. Rather, the article argues that there are valuable lessons that the United States can take from Portugal’s drug reform. These lessons highlight some of the substantive limitations of the current discourse on drug decriminalization in the United States. The lessons also present convincing reasons for U.S. policymakers to consider treating drug use exclusively as a matter of public health, not criminal justice. Overall, these lessons cast further doubt over the sensibility of America’s highly punitive policies toward drug use.

Part I of this article outlines the arguments for and against the different legal approaches to drug use. Part II discusses the motivations to decriminalize drug use in Portugal, outlines how the Portuguese model works in practice, and presents evidence of the model’s successes and shortcomings. Part III shifts the discussion to U.S. drug policy and articulates the lessons that the United States may take from drug decriminalization in Portugal.

I. LEGAL APPROACHES TO DRUG USE

There are three main legal approaches to drug use, each of which has benefits and drawbacks. At one end of the spectrum is criminalization. In a criminalized regime, drug use is a criminal offense. Individuals face criminal charges and proceedings if they are caught using legally prohibited drugs.\(^{29}\) At the other end of the spectrum is legalization. In a legalized regime, people are legally permitted to use drugs under regulated conditions without the threat of criminal, civil, or administrative sanctions.\(^{30}\) In between these two options is decriminalization. In a decriminalized regime, drug use is not a criminal offense, but may remain subject to non-criminal sanctions (such as administrative sanctions).\(^{31}\) Decriminalization takes a position on the legal treatment of drug use only, and takes no position on

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\(^{29}\) See Douglas Husak, Legalize This! The Case for Decriminalizing Drugs 10 (2002) (describing drug criminalization regimes as having a “crime of drug use”).

\(^{30}\) See Greenwald, supra note 21, at 2 (“‘Legalization’ – which no EU state has yet adopted – means that there are no prohibitions of any kind under the law on drug manufacturing, sales, possession, or usage.”); Hughes & Stevens, supra note 24, at 999 (“Legalization is defined as the complete removal of sanctions, making a certain behaviour legal and applying no criminal or administrative penalty.”).

\(^{31}\) See Greenwald, supra note 21, at 2 (“In sum, ‘decriminalization’ means either that only noncriminal sanctions (such as fines or treatment requirements) are imposed or that no penal sanctions can be.”); Hughes & Stevens, supra note 24, at 999 (“Decriminalization is defined as the removal of sanctions under the criminal law, with operational use of administrative sanctions (e.g. provision of civil fines or court-ordered therapeutic).”).
drug production or drug distribution. Thus, in a decriminalized regime, drug production and drug distribution may remain criminalized.

A. Criminalization

Criminalization proponents have put forth a number of arguments in favor of treating drug use as a crime. One common argument is based on denunciation, which justifies criminal punishment as a mechanism to communicate society's collective disapproval of criminal behavior. From this perspective, criminalization proponents argue that criminal laws against drug use are necessary to communicate the message that drug use is dangerous and immoral. Eliminating criminal penalties, in their view, sends the opposite message to society that drug use is morally acceptable.

Criminalization proponents have also put forth arguments based on retribution. From this perspective, drug users deserve to be punished because drug use is inherently wrong and immoral. Criminal punishment based on retribution also holds drug users responsible for the alleged harms that they cause to society. Research, for instance, suggests a connection between drug use and higher crime rates, public disorder, and disease. These harms extend beyond individual drug users and pose risks to society generally.

In addition to denunciation and retribution, criminalization proponents have justified criminal laws against drug use based on deterrence. These proponents allege that drug use will skyrocket if it is no longer treated as a criminal offense. In their view, drug prices will drop and become readily available. They further

32 HUSAK, supra note 29, at 54 ("[D]ecriminalization only changes punitive state policy toward recreational drug users. It is noncommittal about how illicit drugs should be produced or sold.").

33 See Joel Feinberg, The Expressive Function of Punishment, reprinted in A Reader On Punishment 71, 75 (R.A. Duff & David Garland eds., 1994) (claiming that punishment is an "expression of the community's condemnation").

34 For instance, former President George W. Bush took this position by stating, "legalizing drugs would completely undermine the message that drug use is wrong." Remarks by the President in Announcement of the Director of the Office of Drug Control Policy, 147 Cong. Rec. 7921 (2001).

35 See e.g. William Bennett, Should Drugs Be Legalized?, in DRUGS: SHOULD WE LEGALIZE, DECIRIMINALIZE OR REGULATE? 63, 67 (Jeffrey A. Schaler ed., 1998) ("I find no merit in the legalizers' case. The simple fact is that drug use is wrong. And the moral argument, in the end, is the most compelling argument.").

36 See supra note 4.

37 See supra note 5.

38 See supra note 3.

39 HOUSE OF COMMONS, SCIENCE AND TECHNOLOGY COMMITTEE, DRUG CLASSIFICATION: MAKING A HASH OUT OF It? 2005-6 H.C. 1031 at 63. ("At the heart of the classification system, and indeed the entire prohibitionist paradigm within which it operates, is the assumption that criminal sanctions are an effective deterrent to use, specifically that the heavier the sanctions the stronger the deterrence.").

40 William J. Bennett, A Response to Milton Friedman, in DRUG LEGALIZATION: FOR AND AGAINST 54 (Rod L. Evans and Irwin M. Berent eds., 1992) (arguing that drug use would skyrocket if
contend that more people will start to use drugs, and that current users will continue to use drugs, because the penalties for drug use will be less severe.\textsuperscript{41} Some criminalization proponents emphasize the need to protect children from drugs, alleging that criminally prohibiting drug use discourages youth from starting to use drugs.\textsuperscript{42}

Criminalization opponents have challenged the arguments presented above based on denunciation, retribution, and deterrence. In terms of denunciation, criminalization opponents disagree with the notion that governments condone drug use when they refuse to treat it as a crime.\textsuperscript{43} These opponents argue that governments can condemn drug use through a health-focused public campaign. They further contend that criminal penalties make it more difficult for drug users to overcome addiction. These points mirror the views of the Commission for a National Drug Strategy ("CNDS"), an expert committee created in 1998 by the Portuguese Government to evaluate national drug policies. In recommending that Portugal decriminalize drug use, the CNDS stated that "decriminalize does not mean 'deproblematize."\textsuperscript{44} The CNDS also emphasized that the stigma attached to criminal proceedings frustrated attempts to aid drug-dependent users.\textsuperscript{45}

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\begin{itemize}
\item Prohibitionists suggest that once the prohibition is lifted, consumption of drugs will skyrocket because of a lack of legal restriction, a significant decrease in price and the use of commercial advertising promoting their use. They feel that lower prices would increase consumption among current consumers but more importantly legalization would increase the number of consumers who currently abstain only because of the legal threats or the perceived morality of the law.
\item Defenders of drug prohibition make a straightforward supply-and-demand argument: Legalization, or any lessening of aggressive enforcement, will lower the high cost of drugs, in terms of price, risk of arrest, severe punishment, and social opprobrium. Consequently, drug abuse will skyrocket.
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\textsuperscript{41} Thornton et al., \textit{ supra } note 40.

\textsuperscript{42} Peter De Marneff has advocated this position in \textit{Douglas Husak \& Peter De Marneff, The Legalization of Drugs} 138 (2005) ("I believe that the reasons I have given for heroin prohibition are also neutral in this sense. First, they are identified by the interests that children and adolescents have in not being in an environment in which heroin is easily available. Second, these interests are important, given the impact that heroin abuse by their parents or by them at this crucial stage of their development will have on their future prospects. Third, these interests are grounded in the interests that we have in developing certain habits and mastering certain skills as adolescents and young adults that are part of the best secular explanation of why we care about equality of educational opportunity, which is a fundamental commitment of liberalism and progressivism.").

\textsuperscript{43} Husak, \textit{ supra } note 29, at 56 ("Opposition to prohibition does not entail that drug use is approved or condoned by the state. The contrary supposition has been a major obstacle to understanding and endorsing decriminalization.").

\textsuperscript{44} CNDS, \textit{Commission for a National Drug Strategy (Comissão para a Estratégia Nacional de Combate à Droga), National Strategy to Combat Drugs (Estratégia Nacional de Luta Contra a Droga)} 82 (1998) (document on file with author).

\textsuperscript{45} Id.
Criminalization opponents also question the retributive argument that drug use is inherently dangerous or immoral.46 These opponents emphasize that other legal substances, such as alcohol and tobacco, impose more social costs to public health and safety than do illicit drugs.47 Therefore, the distinctive harms of illicit drug use that justify criminal prohibition are unclear.48 These opponents recognize that even if there are situations under which drug consumption is particularly risky, such as driving or operating machinery, it is possible to criminalize drug use under those specific circumstances in a legalized or a decriminalized regime.49

From a deterrence perspective, criminalization opponents challenge the notion that eliminating criminal penalties would make drugs more readily available by significantly lowering their price.50 These opponents further contend that criminal penalties are ineffective deterrence to drug use and question the deterrent effect of criminal laws generally.51 They emphasize that criminal penalties frus-
trate the ability of drug-dependent users to overcome addiction\(^52\) and make drugs more attractive to the public through a "forbidden fruit" effect.\(^53\) Therefore, criminal prohibition may actually undermine the goals of deterrence.

**B. Legalization**

Drug legalization proponents have put forth two types of arguments: consequentialist and rights-based arguments.\(^54\) From a consequentialist perspective, legalization proponents argue that the advantages of prohibition do not outweigh the negative consequences of prohibition and/or the benefits of legalization.\(^55\) From a rights-based perspective, legalization advocates argue that individuals have a moral right to use drugs, which is rooted in personal autonomy to make private decisions over one's body.\(^56\)

Consequentialist proponents of legalization contend that legalized drug regimes are the most beneficial regimes to public health and safety. In other regimes, drugs are produced in an unregulated, illegal manner. As a result, drug users do not know whether the drugs that they put into their bodies are pure.\(^57\) In a legalized regime, government regulation can assure drug purity. This guarantee

\(^{52}\) See generally, Martin Y. Iguchi et al., *Elements of Well-Being Affected by Criminalizing the Drug User*, 117 PUB. HEALTH REP. S146 (2002) (outlining the ways in which criminalization adversely affects the well-being of drug users, and thus frustrates their ability to overcome addiction).

\(^{53}\) Milton Friedman, *Prohibition and Drugs*, NEWSWEEK, May 1, 1972, at 104 ("Legalizing drugs might increase the number of addicts, but it is not clear that it would. Forbidden fruit is attractive, particularly to the young."); MACCUN & REUTER, supra note 16, at 89 ("There is a popular intuition that the illicit status of marijuana and other drugs might even heighten their attractiveness for young people -- a forbidden fruit effect. . . . Some policy analysts have expressed skepticism regarding the forbidden fruit argument. Nevertheless, there are several psychological mechanisms that might produce such an effect.").

\(^{54}\) Robert W. Sweet & Edward A. Harris, *Moral and Constitutional Considerations in Support of the Decriminalization of Drugs*, in *HOW TO LEGALIZE DRUGS* 430, 462 (Jefferson Fish ed., 1998) ("The catalyst behind this proposed legislative reform comes not only from the consequentialist cost-benefit analysis of the war on drugs but also from considerations of the fundamental rights and principles that underlie the system of government that are protected by the Constitution.").

\(^{55}\) See MACCUN & REUTER, supra note 16 ("[T]he key consequentialist policy question, though not the only one, is whether, notwithstanding increases in use, there would be a net increase or decrease in drug-related harms.").

\(^{56}\) See e.g., STEVIE B. DUKE & ALBERT C. GROSS, *AMERICA'S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS* 167 (1982) ("The right to choose which drugs to use, and whether to use them at all, is arguably as fundamental as the right to decide where to live, where to work, whether to marry, whether to have children, how much education to seek and how to raise one's children. . . . There is essentially only one right at issue -- autonomy over the basic operations of one's mind.").

\(^{57}\) HUSAK & DE MARNEFF, supra note 42, at 93 ("Drug prohibition is destructive to public health. Since the vast majority of illicit drugs taken for recreational purposes are purchased on the street from unlicensed sellers, consumers can have no confidence about what they are buying. Even sellers rarely know the exact content of the substances they distribute.").
could reduce numerous health risks associated with taking impure drugs, such as overdose and accidental drug-related death.\(^{58}\)

Consequentialist proponents of legalization further contend that legalization would reduce drug-related crime. In their view, criminal prohibition increases drug prices, which causes drug users to resort to crime in order to pay for drugs.\(^{59}\) Legalization might also eliminate the black-market for drugs, which fosters criminal activity. When drugs are prohibited, drug distributors and producers cannot resort to proper legal channels to negotiate disputes with consumers. As a result, drug distributors and producers resort to crime in order to resolve disputes.\(^{60}\)

Consequentialist proponents of legalization also emphasize the economic benefits of drug legalization. Taxation and regulation would produce billions of dollars in government revenue, which could be spent on social-welfare programs.\(^{61}\) Moreover, since drug use would no longer be a crime, the resources that were spent on drug-related law enforcement and corrections could be diverted to other areas of the criminal justice system.

Legalization opponents stress that drug use and drug addiction would skyrocket if drugs were legally available, and as a result, health-related harms to drug users and to society would soar.\(^{62}\) These opponents also argue that even if drug prices fell in a legalized regime, drug users would still resort to crime to feed

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58 Duke & Gross, supra note 56, at 284 (“One of the advantages of legalization is removal of the black-market incentives toward more powerful forms of drugs and thus encouraging drug users to use less potent, safer, less addictive forms. . . .”); Husak & De Marneff, supra note 42, at 93 (“Enormous gains could result if state oversight of illicit drugs were comparable to the Food and Drug Administration’s supervision of foods and licit drugs.”).

59 Todd Austin Brenner, The Legalization of Drugs: Why Prolong the Inevitable, 18 CAP. U. L. REV. 237, 250-51 (1989) as printed in Evans & Berent, For and Against at 157, 174 (supra note 40) (“[A]n initial consequence of legalization would be that all junkie-related robberies and deaths would be nullified. The significantly reduced prices of drugs would alleviate the temptation to steal or rob for drug money and also curb the desire to attack drug dealers or gangs.”); Husak & De Marneff, supra note 42, at 67-68 (“Partly because of addiction, many illicit drug users want drugs very badly and are willing to go to extraordinary lengths to obtain them. Many illicit drugs are expensive. This combination of strong demand and high price leads users to commit economic crimes to get the money to buy drugs. Some estimates of the number of property offenses committed by drug addicts are astronomical.”).

60 Husak & De Marneff, supra note 42, at 66 (“When something goes wrong with illicit drug production or sale, buyers and sellers do not have the redress that we take for granted when a problem arises with a lawful product. . . . Disputes . . . must be resolved outside normal legal channels. As a result, one would expect that illicit drug markets would be violent.”).

61 Ethan A. Nadelmann, The Case for Legalization, in Evans & Berent, For and Against at 19, 23 (supra note 40) (“Between reduced government expenditures and new tax revenue from legal production and sales, public treasuries would enjoy a net benefit of at least $10 billion per year and possibly much more; thus billions in revenues would be available for much-needed drug-treatment, educational and job-training programs.”).

62 William J. Bennett, Mapping Up After the Legalizers: What the ‘Intellectual’ Chorus Fails to Tell You, in Evans & Berent, For and Against at 225 (supra note 40) (“With legalization, drug use will go up, way up.”).
Moreover, any increases in state revenue generated by legalization would be offset by health-related costs from increased addiction and increased spending on drug education, prevention, and treatment.\(^64\)

Rights-based advocates of legalization argue that there is a zone of privacy in which individuals have a right to make autonomous decisions concerning themselves and their bodies.\(^65\) From this perspective, individuals have a moral right to use drugs because it is a private activity that does not violate the rights of others.\(^66\) Governments violate this moral right when they prohibit drug use. Rights-based advocates further argue that if people commit crimes that violate the rights of others under the influence of drugs, then the resultant crimes ought to be punished, not the underlying drug use.

Legalization opponents disagree with the rights-based argument that drug use is a purely private activity. These opponents emphasize the harms associated with drug use that extend beyond individual users, such as higher crime rates, public disorder, and disease.\(^67\) From this perspective, if a moral right to use drugs exists, then it may be overridden by the conflicting state interest in protecting society from the harms associated with drug use.\(^68\)

\(^63\) See James Q. Wilson, Against the Legalization of Drugs, in Evans & Berent, For and Against at 39 (supra note 40) (arguing that "no one knows how much" crime "would be reduced if drugs were legalized); Edward J. Tully & Marguerite A. Bennett, Pro-Legalization Arguments Reviewed and Rejected, in Evans & Berent, For and Against at 70-71 (supra note 40) (arguing that drug-related crime will not necessarily decline in a legalized regime because (1) most drug addicts will continue to resort to crime to cover the expenses of food, clothing, and shelter; and (2) any reduction of crime associated with lower drug prices would be offset by an increased amount of crime committed by a growing number of drug users).

\(^64\) U.N. Office on Drugs and Crime, World Drug Report 2009 1 (2009) ("[A]ny reduction in the cost of drug control [due to lower law enforcement expenditure] will be offset by much higher expenditure on public health [due to the surge of drug consumption].")

\(^65\) See e.g., Joel Feinberg, Autonomy, Sovereignty, and Privacy: Moral Ideas in the Constitution? 58 Notre Dame L. Rev. 445, 454 (1983) ("The kernel of the idea of autonomy is the right to make choices and decisions – what to put into my body, what contacts with my body to permit, where and how to move my body through public space, how to use my chattels and physical property, what personal information to disclose to others, what information to conceal, and more."); Douglas N. Husak, Drugs and Rights 81-90 (1992) (discussing the circumstances under which individuals have or lack a moral right to recreational drug use). Although he does not take a position for or against drug legalization, John Lawrence Hill provides an overview of the philosophical and constitutional rights-based arguments for drug use in The Zone of Privacy and the Right to Use Drugs: A Jurisprudential Critique, in Evans & Berent, For and Against at 101-122 (supra note 40).

\(^66\) See supra note 65.

\(^67\) See Paul Smith, Drugs, Morality and the Law, 19 J. Applied Phil. 233, 235-36 (2002) (providing a summary of this argument against a right to use drugs).

\(^68\) James Q. Wilson, Legalizing Drugs Makes Matters Worse, Slate, Sept. 1, 2000, available at http://www.slate.com/id/88934/ ("John Stuart Mill, the father of modern libertarians, argued that people can only restrict the freedom of another for their self-protection, and society can only exert power over its members against their will in order to prevent harm to others. I think that the harm to others from drug legalization will be greater than the harm – and it is a great harm – that now exists from keeping these drugs illegal.").
Legalization opponents also challenge the rights-based argument that drug use is an autonomous activity.\textsuperscript{69} These opponents acknowledge that people may start to use drugs voluntarily. But as these users continue, they become mentally and physically dependent upon drugs.\textsuperscript{70} In their view, mental and physical dependence erodes individual choice. Based on this principle, the prohibition of drug use does not violate, but rather protects, personal autonomy.\textsuperscript{71}

C. Decriminalization

Drug users in a decriminalized regime may face civil or administrative sanctions, but not criminal punishment. Governments can eliminate criminal penalties for drug use in two ways. Under \textit{de jure} decriminalization, criminal legislation is amended to eliminate all criminal offenses for drug use.\textsuperscript{72} Under \textit{de facto} decriminalization, drug use is still formally prohibited under the criminal law. Law enforcement and courts, however, do not enforce these laws.\textsuperscript{73}

Similar to legalization advocates, decriminalization proponents argue that the War on Drugs has failed and that there is little evidence to support the link between criminalization and decreasing drug use.\textsuperscript{74} Conversely, decriminalization proponents argue that criminal penalties harm the well being of drug users and make it harder to assist them in overcoming drug dependence.\textsuperscript{75} These proponents also contend that treating drug use as a crime wastes valuable resources on

\begin{itemize}
\item \textsuperscript{69} JAMES B. BAKALAR \& LESTER GRINSPOON, \textit{DRUG CONTROL IN A FREE SOCIETY} 4 (1984) ("Certainly we are much less inclined than Mill to treat drug use as the free, rational act of an autonomous person. It is usually considered a product of ignorance, impulsiveness, or worst of all, addiction – conditions in which the drug user’s freedom become a minor concern.").
\item \textsuperscript{70} \textit{Addiction is a Brain Disease}, 2 \textit{GLOBAL ISSUES} 15, 16 (1997) (commentary from Dr. Alan Leshner, former director of the National Institute of Drug Abuse) ("Let’s, again, separate initial drug use from addiction. Although addiction is the result of voluntary drug use, addiction is no longer voluntary behavior, it’s uncontrollable behavior.").
\item \textsuperscript{71} John Lawrence Hill, \textit{supra} note 65, at 120 ("Even if the original decision to use drugs was an autonomous choice, is there a sense in which continued drug use may cease being autonomous because of the habituating effect of drug use? If, as a general matter, the use of drugs precludes autonomous choice . . . it is possible even for a government regime that embraces the harm principle to justify regulation of private drug use.").
\item \textsuperscript{72} \textit{Id.} at 59 ("Under \textit{de jure} decriminalization, all existing crimes of illicit drug use will be repealed. Such offenses would be removed from the books by a deliberate legislative act.").
\item \textsuperscript{73} \textit{Id.} at 59-60 ("Under \textit{de facto} decriminalization, such crimes will not be enforced. They will continue to exist as anachronisms. . . . No one will be arrested, prosecuted, convicted, or punished for violating these laws.").
\item \textsuperscript{74} HUSAK, \textit{supra} note 65, at 51-52 ("Despite fundamental differences, almost all decriminalization theorists begin from the same premise: America is losing the war on drugs. Our approach to the drug problem is ineffective and counterproductive. It has not and will not succeed, and it actually compounds many of the problems it is designed to solve.").
\item \textsuperscript{75} \textit{Id.}
\end{itemize}
drug-related law enforcement. These resources could be better spent on practical programs, such as needle exchange programs, which contain and decrease the harms associated with drug use.

Some drug policy experts perceive decriminalization as a sensible middle ground between criminalization and legalization, but other experts view decriminalization as the worst of both regimes. Criminalization advocates, for instance, criticize decriminalization on the grounds that drug use will skyrocket because people will be free to use drugs without fearing criminal punishment. Legalization advocates also criticize decriminalization for perpetuating the harms of leaving the production and distribution of drugs to the criminal black market. Although decriminalization takes no formal position on drug trafficking and drug production, in some countries that have enacted decriminalized regimes, the distribution and production of drugs for non-personal use remain criminalized.

Decriminalization opponents have also raised concerns about implementation and enforcement. Administrative penalties may not be effective to persuade drug-dependent users into treatment programs because there are no tangible consequences attached to ignoring administrative sanctions. Thus, harsh criminal penalties and criminal prosecution may be more effective to persuade drug users to stop using drugs and to seek treatment. Moreover, decriminalization regimes depend on police officers to issue citations to drug users. If drug use is not a

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76 Id. ("Many theorists who defend this conclusion [that the War on Drugs is futile] . . . argue that most of the tens of billions of dollars spent by the criminal justice system to enforce LAD [laws against drug use] has been wasted. Despite the numbers of drug traffickers arrested and the volumes of contraband seized, the supply of drugs available to consumers, as reflected by street price, remains relatively unchanged.").

77 Howard Abadinsky, Drug Use and Drug Abuse: A Comprehensive Introduction 395 (6th ed. 2008) ("There would be a reduction in the resources necessary for drug law enforcement. . . . These resources could be shifted to other areas of crime control and for drug treatment and prevention.").

78 Chantel Collins, Substance Abuse Issues and Public Policy in Canada: I: Canada's Federal Drug Strategy 12 (2006) ("Some arguments against decriminalization of simple possession of cannabis, for example, rely on the fear that health and social costs would increase if the stigma of substance use were to be removed, and it is maintained that substance use would increase as a result."); Husak, supra note 29, at 151 ("Prohibitionists believe that we must continue to criminalize drug use because the alternative would be disastrous. If we did not punish drug use, the number of recreational drug users would skyrocket.").

79 See Jeffrey A. Miron, Drug War Crimes: The Consequences of Prohibition 78 (2004) ("But because transactions in a decriminalized market are illegal, there is still a black market with all of the attendant ills.").

80 For example, Portugal has decriminalized personal drug use, but has maintained criminal penalties for drug distribution and production. See Greenwald, supra note 21, at 1.

81 This concern is discussed in the context of Portugal's drug decriminalization regime. See infra Part II.C.6.
crime, then police officers may prioritize responding to actual crime, and thus not issue citations to drug users.  

II. DRUG DECRIMINALIZATION IN PORTUGAL

In October 2000, the Portuguese Parliament drastically amended its drug laws by passing Law 30/2000 (Lei 30/2000), which decriminalized (de jure) the consumption, acquisition, and possession of all illicit drugs for personal use.  After Law 30/2000 took effect on July 1, 2001, Portugal became the first European country to eliminate its criminal offenses for drug use through a deliberate legislative act.  Under Portugal's decriminalized regime, drug use is prohibited as an administrative offense, rather than as a criminal offense.  The consumption, acquisition, and possession of illicit drugs for non-personal use, such as drug trafficking, remain criminalized.

A. The Road to Drug Decriminalization

The movement to decriminalize drug use in Portugal can be traced back to the country's struggle to tackle a wave of drug-related problems in the 1980s and 1990s. During this period, illicit drug use (primarily heroin) rose considerably in Portugal. The harms of increasing drug use became more visible in Portuguese society as drug-related crime increased, public health worsened, and fear of social instability escalated.

Faced with a potential drug epidemic, the Portuguese government created an expert committee called the Commission for a National Drug Strategy (“CNDS”) to evaluate and to revise national drug policies. In 1998, the CNDS released an influential report that called for Portugal to adopt a harm-reduction strategy to combat drug use. The report also called for the government to separate drug

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82 See infra Part II.C.6.
83 Lei n.º 30/2000 de 29 de Novembro. [Law 30/2000 of the 29th of November].
84 GREENWALD, supra note 21, at 2.
85 Hughes & Stevens, supra note 24, at 1001.
86 GREENWALD, supra note 21, at 1.
87 Hughes & Stevens, supra note 24, at 1001 (“[T]here was in the late 1980s and 1990s a significant population of intravenous heroin users, who obtained their drugs through open-air drug markets that became notorious.”).
88 VAN BEUSEKOM, LOO & KAIIAN, supra note 23, at xii (“At the end of the 1980s and in the early 1990s, the negative consequences of drug use became more visible, including increasing criminality, health problems of heroin addicts, and feelings of insecurity among the general population.”);
89 GREENWALD, supra note 21, at 6.
90 JAMES A. INCIARDI & LANA D. HARRISON, HARM REDUCTION: NATIONAL AND INTERNATIONAL PERSPECTIVES X (2000) (“In contrast to the more punitive drug strategies seen in the United States, harm reduction is a pragmatic policy aimed at minimizing the damage that drug users do to themselves, others, and society at large. Harm reduction approaches reject the notion of a ‘drug free’
users from the Portuguese criminal justice system entirely.\textsuperscript{91} The decriminalization of drugs for personal use was one of the specific recommendations of the CNDS report.\textsuperscript{92} According to the CNDS, subjecting drug users to criminal proceedings had neither provided an adequate nor an effective response to drug use.\textsuperscript{93}

The Portuguese government approved the CNDS report almost in its entirety and formed the National Drug Strategy based on its recommendations.\textsuperscript{94} The strategy is based on eight structuring principles. Two of these principles, the “humanistic principle” and the “principle of pragmatism,” lie at the heart of the strategy.\textsuperscript{95} The “humanistic principle” forbids ostracizing drug users as criminals, and demands that drug users be treated as full members of society who are in need of treatment.\textsuperscript{96} The “principle of pragmatism” enforces the view that drug use will always exist in society and that drug policies should not strive towards the unattainable ideal of eliminating drug use entirely.\textsuperscript{97} Rather, drug policies should serve to reduce and to contain the negative consequences of drug use.\textsuperscript{98}

The Portuguese government translated the eight structuring principles into a set of thirteen strategic options, which shape the National Drug Strategy.\textsuperscript{99} The second of these strategic options calls for the Portuguese government “to decriminalize the use of drugs, prohibiting them as a breach of administrative regulations.”\textsuperscript{100} Law 30/2000,\textsuperscript{101} which decriminalizes drug use, stems directly from this second strategic option.

B. How Drug Decriminalization Works in Practice

Law 30/2000 mandates that each of the eighteen administrative districts in Portugal create and maintain at least one Commission for the Dissuasion of Drug

\textsuperscript{91} See generally, CNDS, supra note 44.
\textsuperscript{92} Id. at 9 (“3.2.6: Descriminalizar o consumo privado, assim como, a posse ou aquisição para esse consumo.”) (recommending that drug use be decriminalized).
\textsuperscript{93} van Beusekom, Loo & Kahan, supra note 23, at 14 (“The CNDS recognized, and the government explicitly concurred, that imprisonment or fines have so far not provided an adequate response to the problem of drug use, and that it has not been demonstrated that subjecting a user to criminal proceedings constitutes the most appropriate and effective means of intervention.”).
\textsuperscript{94} Id. at 1 (“To the surprise of some of the members of the CNDS, the Council of Ministers approved the report almost in its entirety and produced a National Drug Strategy consistent with the report.”).
\textsuperscript{95} Id. at xiii.
\textsuperscript{96} Id.
\textsuperscript{97} van Beusekom, Loo & Kahan, supra note 23, at 14.
\textsuperscript{98} Id.
\textsuperscript{99} Id. at xiii-xiv.
\textsuperscript{100} Id. at 13.
\textsuperscript{101} Lei n. ° 30/2000 de 29 de Novembro.
A DECADE AFTER DRUG DECRIMINALIZATION

Addiction ("CDT") to manage the administrative sanctions for drug use in the district. A person caught using illicit drugs faces a CDT, rather than a criminal court. Each CDT is comprised of three members: two representatives from the medical and social service sectors (e.g., physicians, psychologists, psychiatrists, or social workers) and one representative from the legal sector (e.g., lawyers).

Although police officers are not permitted to make criminal arrests for personal drug use, they maintain a critical role in the decriminalized regime. When police officers encounter a person who is using or possessing drugs, the officers are instructed to confiscate the drugs and issue an administrative citation to the individual. After its issuance, the officers then send the citation to the appropriate CDT, and the administrative process begins. The cited individual has 72 hours after the citation's issuance to appear before the CDT.

When a person appears before a CDT, the Commission's first task is to determine whether the person is a drug user or a drug trafficker. The amount of drugs confiscated from the person at the time that the citation was issued is determinative. Law 30/2000 permits users to carry ten days worth of a drug. If an individual carries more than this quantity, then the CDT will end administrative proceedings and refer the person to the criminal courts, where criminal charges will commence for drug trafficking.

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102 Article 5, Lei n.º 30/2000 de 29 de Novembro; Mirjam Van Het Loo et al., Decriminalization of Drug Use in Portugal: The Development of a Policy, 582 ANNALS AM. ACAD. POL. & SOC. SCI. 49, 58 (2002) ("To deal with these administrative offenses, each of the eighteen administrative districts in Portugal will establish at least one committee that deals only with drug use in that district (larger districts such as the ones containing Lisboa and Porto will probably have more than one committee.").

103 Art. 7, Lei n.º 30/2000 de 29 de Novembro. Hughes & Stevens, supra note 24, at 1002 ("The CDTs are regional panels made up of three people, including lawyers, social workers and medical professionals.").

104 GREENWALD, supra note 21, at 4 ("Even in the decriminalization framework, police officers who observe drug use or possession are required to issue citations to the offender, but they are not permitted to make an arrest."); VAN BEUSEKOM, LOO & KAHAN, supra note 23, at 58 ("Although police will cite users and send the citation to the administrative committee, they will not arrest users.").

105 See supra.

106 GREENWALD, supra note 21, at 4 ("The citation is sent to the commission, and the administrative process will then commence.").

107 Id. ("The cited offender appears before the commission within 72 hours of the citation's issuance.").

108 VAN BEUSEKOM, LOO & KAHAN, supra note 23, at 58 ("If the committee determines on the basis of the evidence brought before it that the person is a drug trafficker, then the committee will refer that person to the courts.").

109 Hughes & Stevens, supra note 24, at 1002 ("The new law ... is restricted to use/possession of up to ten days' worth of a drug. This amounts in practice to 0.1 g heroin, 0.1 g ecstasy, 0.1 g amphetamines, 0.2 g cocaine, or 2.5 g cannabis.").

110 Id. ("Individuals found with more than this quantity will be charged and referred to the courts, where they may face charges for trafficking or trafficking/consumption (where the offender is
Administrative proceedings continue for individuals determined to be drug users by the CDTs. The CDT will then discuss the circumstances of the case and decide whether the user is a recreational drug user or a dependent drug user. Since the main goals of the decriminalized regime are to dissuade drug use and to encourage dependent drug users into treatment, the type of sanctions that the CDT imposes depends on this judgment.\textsuperscript{111} The CDTs have a wide variety of sanctions at their disposal, including:

- Monetary fines
- Warnings
- Suspension of licenses for professions or activities
- Ban from specific places
- Ban from interacting with specific people
- Restriction on travel
- Requirement to report regularly to the Commission
- Ban on possessing guns
- Seizure of personal possessions
- Cessation of subsidies or allowances from public agencies\textsuperscript{112}

The law guides the CDTs to consider numerous criteria when imposing sanctions, such as the severity of the offense, the type of drug used, whether use is in a public or private location, whether use is occasional or habitual, and the personal and economic circumstances of the user.\textsuperscript{113} The CDTs, however, have vast discretion to apply and to weigh these factors when determining appropriate sanctions in specific cases.\textsuperscript{114}

The CDTs cannot mandate drug treatment, but the commissions are designed to have the authority to impose one or more sanctions in ways that can induce specific drug users into treatment.\textsuperscript{115} The CDTs have explicit authority under

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\textsuperscript{111} Id. ("[T]heir primary aim is to dissuade drug use and to encourage dependent drug users into treatment. Towards this end, they determine whether individuals are dependent or not.").

\textsuperscript{112} Arts. 15-18, Lei n.º 30/2000 de 29 de Novembro.

\textsuperscript{113} van Beusekom, Loo & Kahan, supra note 23, at 58 ("The law states that the committee should consider a number of criteria in determining what action to take with a drug user. These criteria include the severity of the offense, the type of drug used, and whether use is in public or private; if the person is not an addict, whether use is occasional or habitual; and the personal and economic/financial circumstances of the user.").

\textsuperscript{114} Greenwald, supra note 21, at 5 (Which of these [criteria] are to be weighted, and the weight they are to receive, are left to the sole discretion of the commission members").; van Beusekom, Loo & Kahan, supra note 23, at 58 ("How these criteria are to be used is not stated. Some are of the opinion that the committee may choose not to take any action; others believe that some form of action, even if suspended, is required.").

\textsuperscript{115} van Beusekom, Loo & Kahan, supra note 23, at 59 ("The committee cannot mandate compulsory treatment, although its orientation is to induce addicts to enter and remain in treatment.").
Law 30/2000 to suspend and to terminate sanctions if drug-dependent users voluntarily enter and complete drug treatment. The CDTs also have explicit authority to suspend sanctions if recreational drug users fulfill agreed upon conditions (such as a promise not to reoffend). The CDTs may reinstate sanctions when cited drug users violate any agreed upon conditions that suspended previously imposed sanctions.

C. The Portuguese Model's Successes and Shortcomings

The following analysis synthesizes the available research on Portugal's decriminalized regime. The analysis is organized into six main finding areas: (1) drug use prevalence; (2) health-related harms; (3) crime; (4) drug supply; (5) burdens on the criminal justice system; and (6) implementation. Although there are a very limited number of studies on Portugal's decriminalized regime, the available evidence suggests that there have been many positive outcomes from drug decriminalization in Portugal. Researchers' views on the extent of these positive results differ.

1. Drug Use Prevalence

Lack of national data on drug use in Portugal makes it difficult to measure the effect that decriminalization has had on drug use within the country. Prior to decriminalization, surveys were conducted on drug use prevalence amongst Portuguese secondary school students. However, no general population surveys were conducted on drug use within the country. These surveys began in 2001, after decriminalization was implemented.

Contrary to critics' expectations, available research does not indicate that drug use has skyrocketed in Portugal since decriminalization. Drug use seems to have increased within certain subgroups, and declined within other subgroups. Between 2001 and 2007, lifetime and past-year drug usage slightly increased among Portuguese adults for almost all illicit substances. Conversely, lifetime usage rates slightly declined for teenagers. These trends are consistent with drug use...
trends in Italy and Spain. Therefore, changes in drug use in Portugal may reflect regional trends, not changes due to decriminalization.

Existing research suggests that there is one significant trend that may be attributed to decriminalization in Portugal. Since Portugal decriminalized drug use in 2001, the prevalence of problematic drug use ("PDU"), especially intravenous drug use, has declined. This trend is inconsistent with trends in Italy and Spain, where PDU has increased. This dissimilarity suggests that decriminalization may have reduced the most harmful forms of drug use in Portugal.

2. Health-Related Harms

In 1999, a few years prior to decriminalization, Portugal had the highest number of drug-related AIDS cases in the European Union and the second highest prevalence of HIV among drug-infected users. The number of drug-related AIDS cases was also increasing, even though the number was decreasing in neighboring France, Spain, and Italy. Research suggests that drug-related disease has declined in Portugal after decriminalization. Incidences of HIV and AIDS among drug users declined substantially. The number of tracked cases

121 Hughes & Stevens, supra note 24, at 1008 ("The similarity in general population and youth trends in Portugal, Italy and Spain adds support for the argument that reported increases in general population use in Portugal reflect regional trends and thus are not solely attributable to the decriminalization.").

122 Id.


124 Id. at 8.

125 Id. at 8-9 (reporting that the number of problematic drug users seems to have increased in Italy and Spain).

126 Id. at 10 ("[T]he fact that Portugal is the only of these nations to have exhibited declines in PDU provides strong evidence that the Portuguese decriminalization has not increased the most harmful forms of drug use.").


128 Id.

129 INSTITUTO DA DROGA E DA TOXICODEPENDÊNCIA, RELATÓRIO ANUAL 2008: A SITUAÇÃO DO PAÍS EM MATÉRIA DE DROGAS E TOXICODEPENDÊNCIAS 38 (2009) (reporting that the number of drug-related HIV diagnoses declined consistently from 907 in 2002, 630 in 2004, 484 in 2006 to 267 in 2008 and that the number of drug-related AIDS diagnoses declined from 532 in 2002, 492 in 2004, 413 in 2006, to 279 in 2008); Hughes & Stevens, supra note 24, at 1015 ("The number of drug users who are diagnosed with HIV and AIDS has also declined. . . . This is a highly significant trend that has been attributed primarily to the expansion of harm-reduction services."); GREENWALD, supra note 21, at 16-17.
of Hepatitis C and B in treatment centers also declined, despite the fact that many more drug users sought treatment after decriminalization took effect.\textsuperscript{130} Drug-related mortality in Portugal has also declined since decriminalization.

During the 1990s, the number of drug-related deaths multiplied tenfold.\textsuperscript{131} Between 1999 and 2003, however, there was a significant drop in drug-related deaths within the country.\textsuperscript{132} Drug policy experts credit this decline to the increasing number of heroin users who entered substitution treatment programs after decriminalization.\textsuperscript{133}

Since decriminalization, there has also been a significant increase in the number of drug-dependent users who have sought treatment. Overall, the number of drug dependent users who sought treatment increased from 23,654 in 1998 to 38,352 in 2008.\textsuperscript{134} The number of people in drug substitution treatment programs increased from 6,049 in 1999 to 14,877 in 2003.\textsuperscript{135} More people also entered detoxification programs, therapeutic communities, and halfway houses during this period.\textsuperscript{136}

3. Crime

It is unclear whether decriminalization has influenced the amount of drug-related crime in Portugal. These crime trends are difficult to measure because statistics on drug-related crime were not collected regularly in Portugal prior to decriminalization.\textsuperscript{137} In 2004, the main Portuguese police branch that handles drug crime investigations released a report concluding that crimes strongly linked to drugs (theft, robberies, public assaults, and certain types fraud) increased by nine percent between the five-year intervals of 1995-1999 to 2000-2004.\textsuperscript{138}

\begin{footnotesize}
\begin{itemize}
\item[130] Caitlin Hughes & Alex Stevens, The Effects of Decriminalization of Drug Use in Portugal 3 (2007) ("There were also reductions in the numbers of tracked cases of Hepatitis C and B in treatment centres, despite the increasing numbers of people in treatment.").
\item[131] Greenwald, supra note 21, at 17 (reporting that "throughout the predecriminalization 1990s, the number of acute drug-related deaths increased every year, increasing more than tenfold from 1989 to 1999, reaching a total of almost 400 by 1999").
\item[132] Id. ("The total number of drug-related deaths has actually decreased from the predecriminalization year of 1999 (when it totaled close to 400) to 2006 (when the total was 290)."; Hughes & Stevens, supra note 24, at 3 (illustrating that the decline in drug-related deaths from 1999 to 2003 was due to a significant decline in deaths due to opiates).
\item[133] Hughes & Stevens, supra note 24, at 3 ("The fall in deaths related to opiates has been linked to the big increase in the numbers of heroin users who have entered substitution treatment.").
\item[134] Hughes & Stevens, supra note 24, at 1015.
\item[135] Greenwald, supra note 21, at 15.
\item[136] Id.
\item[137] Hughes & Stevens, supra note 24, at 1000 ("Unfortunately, data on drug-related crime is not routinely collected and hence it is not possible to identify more recent trends or to compare trends in neighbouring Spain or Italy.").
\item[138] Id. at 1009 (citing to Direcção Central de Investigação e Intervenção do Tráfico de Estupefacientes, Contributo da Polícia Judiciária/Unidades de Coordenação Con-
report, however, did not attribute the increase to drug decriminalization. The report also did not discuss the possibility that police officers may have more time and resources in the decriminalized regime to focus on boosting the reporting of drug-related crimes.

4. Drug Supply

From 1997 to 2008, the number of drug seizure operations in Portugal did not change significantly. The quantity of drugs seized during this period, however, increased by approximately 500 percent. This increase may reflect the fact that decriminalization has enabled Portuguese law enforcement to refocus their supply reduction efforts on large-scale operations, as opposed to street-level deals involving small quantities of drugs. It might also suggest, however, that there was an increasing supply of drugs in Portugal.

Furthermore, empirical evidence suggests that drug prices have declined in Portugal since decriminalization. Declining drug prices are signs of success if they reflect reduced drug demand, but are signs of failure if they reflect an increased drug supply. More detailed studies are needed to determine whether the declining drug prices in Portugal are due to decreased drug demand or increased drug supply. Some researchers contend that data from secondary school surveys in Portugal on the use of cannabis, cocaine, and ecstasy suggest that decreasing drug prices are connected to a reduced drug demand.

Some drug policy experts have expressed concerns that decriminalization in Portugal has posed obstacles to law enforcement’s drug supply reduction efforts.

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139 Id. at 1010.
140 Id.
141 Id. at 1011 ("From 1997 to 2008, there was limited change in the number of seizures of illicit drugs in Portugal.").
142 Id. ("As one of the evaluation reports noted between 1995-99 and 2000-04, the amount of drugs seized increased by 499 percent") (citing DIREÇÃO CENTRAL DE INVESTIGAÇÃO E INTERVENÇÃO DO TRÁFICO DE ESTUPUFACIENTES, supra note 138).
143 Id. at 1008 ("Most interviewees were of the view that the decriminalization had reduced the burden on the Portuguese criminal justice system and enabled police to refocus their attention on more serious offences, namely drug trafficking-related offences.").
144 Id.
145 Id. at 1013 ("[Since 2001], the reported average price of 1 gram of heroin decreased from $50.27 in 2001 to $33.25 in 2008 and the average price of an ecstasy tablet fell from $6.86 in 2001 to $2.80 in 2008.").
146 Philip Keefer et al., Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs, in INNOCENT Bystanders: Developing Countries and the War on Drugs 9, 31 (Philip Keefer & Norman Loavza eds., 2010) ("Declining prices may be a sign of success if they reflect reduced demand or a sign of failure if they entail increased supply.").
147 Hughes & Stevens, supra note 24, at 1013.
148 Id.
These experts contend that since drug use is no longer a crime, the police can no longer access drug users to gather information about drug suppliers and drug users.\textsuperscript{149} Other drug policy experts have argued that Portuguese law enforcement has adapted under the decriminalized regime and improved supply reduction efforts by relying upon new information sources, such as international cooperation.\textsuperscript{150}

5. Burdens on the Criminal Justice System

Decriminalization seems to have taken some pressure off of the Portuguese criminal justice system. In 2000, approximately 14,000 people were arrested for drug-related crimes in Portugal.\textsuperscript{151} This number dropped to an average of 5,000 to 5,500 people per year after decriminalization.\textsuperscript{152} The number of people that the police have cited for administrative drug use offenses has also remained constant at about 6,000 per year.\textsuperscript{153} Therefore, there has not been a great surge in contact between drug offenders and the Portuguese police after decriminalization.\textsuperscript{154}

During the four years prior to and four years after drug decriminalization, drug trafficking charges increased by 11\%.\textsuperscript{155} Some Portuguese drug policy officials have stated that this increase reflects the fact that decriminalization has enabled law enforcement to pay more attention to drug trafficking crimes.\textsuperscript{156} The increase, however, may also reflect an increase in drug trafficking in Portugal.\textsuperscript{157}

Since decriminalization, there has also been a reduction in the percentage of prisoners sentenced for drug-related offenses (44\% in 1999 to 28\% in 2005).\textsuperscript{158} This decline has contributed to a decrease in prison overcrowding, which was a serious problem in Portugal when decriminalization took effect.\textsuperscript{159}

\begin{itemize}
  \item \textsuperscript{149} Hughes & Stevens, \textit{supra} note 130, at 7 (“Decriminalization reduced law enforcement access to drug users and their information for example on street price, places of use, and networks. Decriminalization also made it harder to distinguish trafficker-consumers from consumers. From one perspective . . . decriminalization has made supply reduction more difficult.”).
  \item \textsuperscript{150} Id. (“Yet from the other perspective law enforcement have adapted to new ways of getting information on the drug markets and new approaches to identifying traffickers. For example, the law enforcement sector has increasingly used international cooperation to detect and dismantle drug trafficking networks in source countries. For at least some key informants this has improved their supply reduction efforts.”).
  \item \textsuperscript{151} Hughes & Stevens, \textit{supra} note 24, at 1008.
  \item \textsuperscript{152} Id. at 1008-1009.
  \item \textsuperscript{153} Id. at 1009.
  \item \textsuperscript{154} Id.
  \item \textsuperscript{155} Hughes & Stevens, \textit{supra} note 130, at 4.
  \item \textsuperscript{156} Id.
  \item \textsuperscript{157} Id.
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} Id.
\end{itemize}
6. Implementation

Most of the identified negative outcomes from drug decriminalization in Portugal involve implementation and enforcement. There are conflicting views on whether Portuguese law enforcement has embraced its role in the decriminalized regime.\textsuperscript{160} For the Commissions for the Dissuasion of Drug Addiction ("CDTs") to function, police officers must issue administrative citations when they encounter drug users. Researchers have found that some police officers welcomed the regime and view it as an effective approach to solving problems of drug addiction.\textsuperscript{161} Other police officers, however, view citations as futile and do not issue them to drug users; these officers feel that drug users would not complete treatment without the fear of criminal arrest and punishment.\textsuperscript{162}

It is also unclear whether the lack of enforcement power possessed by the CDTs has undercut the effectiveness of administrative sanctions. The CDTs cannot mandate drug treatment. Although the CDTs can use a range of administrative sanctions to persuade drug users to enter treatment, there is no enforcement mechanism to prevent drug users from ignoring imposed sanctions.\textsuperscript{163} Despite this concern, there has been a rapid increase in the number of drug users entering treatment programs in the decriminalized regime.\textsuperscript{164} This increase may suggest that the range of sanctions available to the CDTs is effective. It might also suggest that more users are willing to enter drug treatment programs because they no longer fear the stigma of criminal sanctions.\textsuperscript{165}

In addition to enforcement obstacles, Portuguese drug policy experts have identified poor relationships between the CDTs and service providers in local communities. These poor relationships have frustrated the ability of some drug

\textsuperscript{160} \textsc{Greenwald, supra} note 21, at 4 ("The effect that the decriminalization regime has had on police conduct with regard to drug users is unclear and is the source of debate among Portuguese drug policy experts.").

\textsuperscript{161} Id. ("Other police officers, however, are more inclined to act when they see drug usage now than they were before decriminalization, as they believe that the treatment options offered to such users are far more effective than turning users into criminals. . . ."); Hughes & Stevens, \textit{supra} note 24, at 6 ("Key informants asserted law enforcement have embraced the more preventative role for drug users.").

\textsuperscript{162} \textsc{Greenwald, supra} note 21, at 4 ("There are, to be sure, some police officers who largely refrain from issuing citations to drug users on the grounds of perceived futility, as they often observe the cited user on the street once again using drugs, leading such officers to conclude that the issuance of citations, without arrests or the threat of criminal prosecution, is worthless.").

\textsuperscript{163} Id. at 3 ("While the Dissuasion Commissions are not authorized to mandate treatment, they can make suspension of sanctions conditions on the offender's seeking treatment. This is typically what is done, though in practice, there are very few ways to enforce the condition, since violations of a commission's rulings are not, themselves, infractions of any law.").

\textsuperscript{164} See \textsc{supra} notes 134-136 and accompanying text.

\textsuperscript{165} \textsc{van Beusekom, Loo & Kahan, supra} note 23, at 60 ("There is a consensus that decriminalization, by destigmatizing drug use, will bring a higher proportion of users into treatment, thereby increasing the need for treatment.").
users to obtain treatment.\textsuperscript{166} Some drug policy experts believe that the CDTs are too bureaucratic and inefficient, which may highlight a need to reform their structure.\textsuperscript{167} There is also a general sense among drug policy experts that the Portuguese government is investing less in the regime over time, which is beginning to undercut the regime's effectiveness.\textsuperscript{168}

III. POTENTIAL LESSONS FROM DRUG DECRIMINALIZATION IN PORTUGAL

U.S. policymakers should not rush to decriminalize drug use merely because one country has had a relatively positive experience under a decriminalized regime. It is possible that decriminalization was a relative success in Portugal due to specific social, cultural, and political factors that do not apply in the United States.\textsuperscript{169} Despite this possibility, there are at least five valuable lessons that the United States may take from Portugal's revolutionary drug reform.

\textit{Lesson 1: Drug decriminalization is no longer an abstraction.}

The most fundamental lesson that may be taken from Portugal's drug reform is that Portugal moved drug decriminalization from an abstraction to a reality. Portugal is the first example of a functioning \textit{de jure} decriminalized regime, illustrating that it is possible for a nation to abandon all of its criminal offenses for drug use. Governments can no longer maintain criminal laws against drug use merely on the basis that no other legal frameworks have been implemented successfully in other countries.

Of course, there are different practical obstacles to implementing decriminalization as a comprehensive strategy to combat drug use in the United States. Portugal was able to eliminate all criminal offenses for drug use by enacting a single law that applied throughout the entire country. Unlike Portugal, decriminalization cannot be fully implemented in the United States by one piece of sweeping legislation. Each of the fifty states, as well as the U.S. Federal Government, has its own criminal drug laws.\textsuperscript{170} Each state would have to support decriminalization for the regime to apply in every state. Even if all of the states

\begin{itemize}
  \item \textsuperscript{166} Hughes & Stevens, supra note 24, at 7.
  \item \textsuperscript{167} Id. at 6 ("[K]ey informants noted numerous difficulties in their [CDT's] design and implementation. Principally, they were seen as being excessive in design, and so very resource intensive. Other problems include that CDTs are too bureaucratic in operation. . . .").
  \item \textsuperscript{168} Id. at 8 ("Several interviewees saw more positive impacts at the commencement of decriminalization, when resources and support were greater.").
  \item \textsuperscript{169} Hughes & Stevens, supra note 130, at 9 ("The Portuguese experience cannot provide a definitive guide to the effects of decriminalization of drugs, but only indications of the results of decriminalization in the specific Portuguese context. It is not possible to tell the extent to which changes were caused by decriminalization or wider drug strategy.").
  \item \textsuperscript{170} Suzanne LeVert, The Facts About LSD AND Other Hallucinogens \textit{62} (2006) ("Today, drug laws in the United States are complicated, with each state having its own laws that sometimes differ from federal law.").
\end{itemize}
favored decriminalization, it is constitutionally permissible for the U.S. Federal Government to maintain its criminal penalties for drug use. Conversely, Congress cannot constitutionally force states to eliminate their criminal penalties for drug use.

Statistics show that criminal laws against drug use are enforced overwhelmingly at the state level; most federal drug arrests involve drug trafficking. Even though a sweeping overhaul of U.S. drug policies is highly improbable, the Portuguese experience could provide an impetus for states to explore alternative legal approaches to drug use. Now that Portugal has provided a concrete example of a functioning decriminalized regime, a number of states could experiment with this approach for a set period of years to see whether it renders positive results. If so, then the movement to decriminalize drug use could gain momentum throughout the entire United States.

Such experimentation would require deliberate planning and cooperation from the U.S. Federal Government. Right now, cooperation seems unlikely given the latest actions of the U.S. Federal Government toward medical marijuana dispensaries in California. Recently, the U.S. Federal Government ordered dozens of medical marijuana dispensaries in California to close, and threatened to file criminal charges against any dispensary that remained open. These hostile actions suggest that a shift in the U.S. Federal Government's position on states' treatment of drug use is necessary to foster states' experimentation with different legal approaches to drug use.

Lesson 2: Social and cultural attitudes towards drug use influence the success of newly enacted drug policy reforms.

Social and cultural attitudes toward drug use and drug users played an important role in the success of Portugal's drug decriminalization regime. The legislature did not force the decriminalized regime upon Portuguese society. Rather,

171 Gonzales v. Raich, 545 U.S. 1, 22 (2005) (upholding the Controlled Substances Act, which granted federal law enforcement agents power to enforce federal drug laws against individuals whose drug use was permissible under state law).

172 COMM. ON DATA AND RESEARCH FOR POLICY ON ILLEGAL DRUGS, supra note 7, at 189 (“The federal government concentrates its enforcement effort on trafficking offenses – only 2% of the 27,000 federal drug arrests in fiscal year 1998 were for possession, and most of these were misdemeanor arrests in the District of Columbia. By contrast, 80% of the drug arrests made by state and local law enforcement agencies are for simple possession (i.e., possession of small amounts without evidence of intent to distribute.”)).


174 Hughes & Stevens, supra note 24, at 9 (“Overall, it is clear that the Portuguese decriminalization was an innovative experiment. At the time of adoption there was political and public support for the reform.”).
harm reduction principles were already embodied in Portuguese politics and society when Law 30/2000 took effect. In the years prior to decriminalization, the Portuguese public became increasingly accepting of the view that drug addicts should not be treated as social outcasts, but rather treated as citizens in need of treatment. The public also became increasingly skeptical of the existing criminalization regime and its ability to reduce the problems associated with drug use.

Political and social attitudes toward drug use are important because they shape the social stigma (or lack thereof) attached to drug use and drug dependence. Drug policy experts believe that more drug users accepted treatment after decriminalization in Portugal because there was less social stigma attached to using drugs and receiving drug treatment. Social stigma currently deters a significant number of drug users from seeking treatment in the United States. The 2009 National Survey on Drug Use and Health reported that 8.5% of drug users did not receive treatment (despite admitting that they needed treatment) because they felt that it would cause neighbors or community members to have a negative opinion of them. The Portuguese reform illustrates that for harm reduction models to function, the U.S. public must change its attitudes towards drug use and drug treatment.

The Portuguese public allegedly understood that Law 30/2000 served to reduce the harms of illicit drug use and did not legalize drugs. In the United States, there is great confusion over the different legal approaches to drug use. Many policymakers conflate the meanings of drug decriminalization and drug legalization. Such confusion frustrates the ability to have coherent discussions within the public realm on the benefits and drawbacks of each legal approach toward drug use. If the U.S. Federal Government or state governments wish to gain public support for less punitive approaches to drug use, then they must communicate and clarify the meanings of those reforms to the public. Without clarification, it will be difficult for non-punitive drug reforms to garner sufficient public support.

To reiterate, harm-reduction principles strive to minimize and contain the damage that drug use causes to users and society at large. See supra note 90.

Greenwald, supra note 21, at 6 ("[D]ecriminalization was driven . . . by the consensus view that [drug abuse] was a highly significant problem, that criminalization was exacerbating the problem, and that only decriminalization could enable an effective government response."); Hughes & Stevens, supra note 130, at 9 ("At the time of adoption there was political and public support for the reform.")

Hughes & Stevens, supra note 24, at 7.

Off. of Applied Stud., Dep't of Health & Human Servs, supra note 1, at 86.

Husak, supra note 29, at 49 ("Disagreement and uncertainty about its meaning [decriminalization] has clouded the debate about whether decriminalization should be implemented. Such confusion helps to explain the wildly different results that are reported when the public is polled about drug policy.").

Id.
Lesson 3: A large amount of preparation and investment are required for a new decriminalized regime to function.

The elimination of criminal penalties for drug use was only one of many steps taken by the Portuguese government to make drug decriminalization a success. It took over a year for the Portuguese government to create the CDTs within each administrative district and to recruit and to train representatives to serve on them.\textsuperscript{181} The Portuguese government also increased resources for drug treatment to ensure that the drug users who were referred to the CDTs had access to treatment. Furthermore, the government had to communicate with law enforcement and local service providers about their roles in the new decriminalized regime.\textsuperscript{182}

The lesson that the United States can take from the Portuguese experience is that a great deal of preparation and investment are necessary for drug decriminalization to be a success. Drug decriminalization cannot be a rushed process. If U.S. policymakers and advocates focus exclusively on eliminating criminal laws for drug use without ensuring that drug treatment and administrative infrastructures are in place, then drug decriminalization will likely fail.

Lesson 4: There are potential benefits to treating the use of all illicit drugs as a matter of public health, not criminal justice.

Most of the discourse on drug decriminalization (and drug legalization) in the United States has focused on the medical use of cannabis.\textsuperscript{183} This can be explained by the fact that cannabis is the most commonly used illicit drug in the United States and is perceived as the least harmful illicit drug.\textsuperscript{184} Outcomes from Portugal’s drug decriminalization regime suggest that this discourse on drug decriminalization in the United States is severely limited.

The Portuguese decriminalization experience illustrates that there are potential benefits to treating the use of all illicit drugs as a matter of public health. Decriminalized regimes have great promise to reduce the harms of problematic drug use (PDU), and especially the intravenous use of heroin, cocaine, and amphetamines. PDU is a serious matter of public concern because of the risks to health and safety that it poses to drug users and to society. By focusing overwhelmingly on cannabis, major players in the U.S. drug decriminalization debate are overlooking some of the most promising aspects of decriminalization.

\textsuperscript{181} \textsc{van Beusekom, Loo & Kahan}, supra note 23, at 59 (describing preparations for decriminalization in Portugal).

\textsuperscript{182} Hughes & Stevens, supra note 24, at 7.

\textsuperscript{183} \textsc{Ted Geiffrd, Should Drugs Be Legalized?} 70 (2000) (“Much of the fight for outright legalization of drugs centers on marijuana.”).

\textsuperscript{184} \textsc{Husak}, supra note 29, at 99 (describing marijuana as “the most popular and least harmful illicit drug.”).
Lesson 5: There are advantages to treating drug use as an administrative offense exclusively.

Portugal’s drug reform raises questions about whether drug use should be handled as an administrative matter entirely, even when drug-dependent users fail to complete treatment. After decriminalization, there was a significant increase in the number of problematic drug users, and intravenous drug users especially, who entered drug treatment programs in Portugal. Drug policy experts attribute this surge to the less severe social stigmas attached to drug use and obtaining drug treatment by addressing drug use separately from the criminal justice system.

The potential advantages of treating drug use as an administrative offense exclusively might be persuasive evidence to reconsider the current approach of drug courts in the United States. Drug courts are specially designed courts that place non-violent drug offenders into treatment programs after they have been criminally arrested for drug use. Drug offenders are rewarded for continuing treatment, and if they complete treatment, then their criminal charges or convictions, or both, may be expunged. But if offenders do not complete treatment, then drug courts may punish offenders with graduated sanctions, which could ultimately lead to incarceration. The potential application of criminal penalties to drug users is what distinguishes U.S. drug courts from Portuguese CDTs.

Many scholars praise drug courts as a more promising alternative to incarceration for non-violent drug offenders to overcome drug dependence. Other scholars are highly critical of drug courts. These critics suggest that recreational drug users are the most likely participants to succeed in drug court programs, whereas drug-dependent users are the participants most likely to fail. By not meeting the conditions of drug courts, drug-dependent users regularly receive punitive sentences that are harsher than sentences that they would have received

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185 Alex Kreit, The Decriminalization Option: Should States Consider Moving From a Criminal to a Civil Drug Court Model?, 2010 U. Chi. Legal F. 299, 306 (2010) (“Drug courts vary widely in the details of their operations, but in essence they allow some drug offenders to obtain treatment under the close supervision of a drug court in place of a traditional sentence.”).
186 Glade F. Roper, Introduction to Drug Courts, in Drug Courts: A New Approach to Treatment and Rehabilitation 1, 12 (James E. Lessenger & Glade F. Roper eds., 2007) (“A benefit for all [drug court] participants, and a probable motivator to some degree, is the possibility of having their charges reduced, dismissed, or expunged after completing the drug court process.”).
188 Bowers, supra note 187, at 3 (“Drug courts have created a few enemies and a great many more supporters from all corners of political and institutional spectra.”); Jeffrey A. Butts & John Roman, Drug Courts in the Juvenile Justice System, in Juvenile Drug Courts and Teen Substance Abuse 1 (Jeffrey A. Butts & John Roman eds., 2004) (“The drug court concept is widely praised, from the White House to state-houses and city halls all over the country.”).
189 See generally, Bowers, supra note 187 (arguing that drug courts provide the worst results to their target populations).
if they had accepted criminal plea bargains over drug court treatment.\textsuperscript{190} Offenders never escape the stigma of these punitive sentences, and risk being excluded from public benefit programs and employment opportunities because of their drug use convictions.\textsuperscript{191} Thus, drug courts may further harm drug-dependent users, which is the population that they are designed to help.

Although drug courts provide an alternative to the immediate incarceration of drug users, these courts are still connected to a criminal justice system that treats drug use as a crime. Therefore, when participants enter the drug courts, there is an institutionalized stigma attached to drug use.\textsuperscript{192} Drug courts perpetuate this stigma because they are based on a system of rewards and punishments. When participants act "badly" (either by testing positive for drugs or breaking other imposed conditions that create a presumption of drug use), they are treated as pariahs, not patients. For continuing "bad" behavior, drug court participants can be eventually incarcerated, which is the ultimate representation of societal segregation and ostracism.

Due to the difficult nature of drug dependency, there will always be drug-dependent users who fail to complete drug treatment. Thus, Portuguese CDTs cannot persuade all drug-dependent users to complete treatment. The issue is how to handle these cases in the best way. U.S. drug courts might further harm drug-dependent users who do not complete treatment successfully through the imposition of criminal sanctions. The Portuguese experience illustrates that it might be less harmful to continue to reach out to these drug-dependent users through administrative means, even if those means fail.

\textbf{CONCLUSION}

This article focused on Portugal's revolutionary move to decriminalize the personal use of all illicit drugs. The analysis described how the Portuguese movement to decriminalize drug use garnered support, outlined how the regime functions in practice, and presented the available evidence on the regime's successes and shortcomings. Although the available evidence is limited, it suggests that drug decriminalization has been a relative success in Portugal. Future empirical studies must be conducted to gain a more accurate picture of the effects of drug decriminalization in Portugal.

It has been almost three decades since the United States declared a War on Drugs. As the war continues, skepticism continues to grow over its sensibility and

\begin{itemize}
\item \textsuperscript{190} ld. at 4 (arguing that drug courts "subject failing participants to alternative termination sentences that exceed customary plea prices").
\item \textsuperscript{191} Iguchi et al., supra note 52, at S148 (noting that criminalization policies exclude drug offenders from access to health benefits, housing benefits, and assistance for higher education).
\item \textsuperscript{192} VAN BEUSEKOM, Loo & Kahni, supra note 23, at 15 ("In the U.S. drug court system, the consumer has a criminal record and it is this stigmatization that the Portuguese policy explicitly aims to prevent.").
\end{itemize}
legitimacy. Portugal's experience with drug decriminalization does not provide conclusive evidence that decriminalization will work in the United States. The Portuguese experience, however, offers valuable lessons from a country that accepted that criminalization was not curbing the problems associated with drug use, and consequently adopted a non-punitive strategy to address these problems. Although the evidence one decade after decriminalization in Portugal is limited, it invites reflection over U.S. drug policies and casts further doubt over the sensibility of the United States' highly punitive approach towards drug use.