

Criminal Justice or Let's Jail Everyone
Judging the Moral Correctness of Sentences
for Drug Users

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Introduction

This paper examines the trends in the criminal justice system overall and in one county in Minnesota (Dakota County), and asks the question whether the jailing of so many citizens for drug crimes is really in the better interests of society. When 1 in 32 of your adult neighbors are either in jail, or on parole or probation, can that be a good thing?

National Trends in Crime and Incarceration

According to the Department of Justice, at the end of 2001 there were 6.6 million adults involved in the justice system. That figure translates to 1 in 32 of all adults in the U.S. were either in jail, on parole or probation according to the report. 3.8 million people were on probation and 731,147 people were on parole. That is a 3.8% increase over 2000. Additionally, 1.3 million were in prison and 631,240 were in jail, representing an incarceration increase of 1.1% over the previous year (U.S. Justice Report, Probation and Parole in the U.S., 2002). By June of 2002, America set a record for incarceration and had over 2 million in its jails and prisons (Facts about Prisons and Prisoners, 2003)

To put this in perspective further, Kara Gotsch of the American Civil Liberties Union stated: “We have 25% of the world's prisoners but we're only 5% of the world's population” (BBC U.K. Report). The Justice Department report also pointed out that 25% of those in prison and jail were there on drug offences and 18% were in jail for driving while intoxicated, and arrest rates (and incarceration rates) for murder, rape and other violent crimes were in decline.

Crime and Incarceration in Dakota County MN

In Minnesota's Dakota County, adults charged with felony offenses rose for the fifth straight year to 1,834 in 2002 from 1,520 the previous year. According to the County

Attorney's office is was the largest single year increase since 1990 in felony prosecutions (Dakota County Crime Statistics, 2002). The number of felony offenses charged in Dakota County likewise increased 25% from 2,069 in 2001 to 2,587 in 2002.

Drug charges represented 44% of all adult felony charges brought by the Dakota County Attorney's office in 2002, representing a 20% increase over 2001. In August of 2001, the first ever felony DWI (Driving While Intoxicated) prosecution took place in the county.

While the Dakota County Attorney has stated that Dakota County's overall violent crime rate is far less than the national average, his annual report stated: "last year's 404 charges of violent crimes exceeded the 314 charges in 2001, a 28% increase" (Dakota County Adult Crime Statistics, 2002).

At the same time, Dakota County is struggling with overcrowded conditions at its jails. In a recent news article, Commander Mike Scott of Dakota County lamented to the reporter: "We are busting at the seams trying to keep up with the support services," said Commander Mike Scott. "It involves a lot of people time, from every day calling around to find open jail beds to transporting the inmates back and forth." (Minnesota Sun Newspapers, 2003) On average, the county estimates it costs \$89 per day to house an inmate at the county level in its jails. Mandatory jail times for offenses such as drunk driving or DWI, and sentencing guidelines for Judges that impose mandatory jail time are cited as one cause for the increased jail population in Dakota County.

Societal Costs

The costs to society are high when violent and predatory criminals are allowed to remain in society and are not incarcerated, however, the costs and benefits tilt in favor of

treatment programs over incarceration (Poor Prescription, 2000). It is estimated that in 2000, Americans spent over \$40 Billion dollars on incarceration. \$24 Billion is spent on incarcerating nonviolent offenders. Yet for every dollar spent on treatment, \$7.46 is saved in societal costs (Facts on Treatment Costs vs. Incarceration Costs, Rand Corporation Citation, 1994).

Consider that drug offender incarcerations in state prisons rose from 7.6% to over 20% (nearly tripling in size) from 1984 to 1998. During the same period, federal prisons saw an increase of 29.5% to 58% of the prison population due to drug offenses (Diminishing Returns, 2000). America's get tough policy on crime certainly appears to be working, but with a hefty price tag.

A policy report put out by Rand Corporation reports that if law enforcement were to concentrate on the highest-level drug dealers, and not on the lower level dealers and users, consumption of cocaine in America would be reduced by over 100 Kg per million dollars spent. When law enforcement is focused on lower tier dealers and drug users, consumption is cut only 13Kg per million dollars spent by taxpayers (Mandatory Minimum Drug Sentences: Throwing Away the Key or Throwing Away Taxpayers' Money?, 1997).

Considering that the cost to taxpayers is estimated to be anywhere from \$23,000 to \$50,000 per year to incarcerate a person in our prisons and jails, the cost effectiveness of treating drug offenders as opposed to incarcerating them cannot and should not be overlooked in the so called war on drugs.

Analysis and Conclusion

While society through its elected representatives have clamored for more jail time for violent offenders, the legislatures and politicians have typically answered the call with mandatory sentencing for what once were considered minor offenses or offenses that did not justify the expenditure of resources.

Dakota County for example is the only county in the nation that is experimenting with a program to lock up juveniles who bully others at their schools. Certainly bullying is a sociological problem that must be addressed, but does bullying constitute a crime? And if it does, is it that is serious enough to place our children behind bars for even a night? Similarly three strike laws that incarcerate nonviolent offenders for life, have been judged to be legally constitutional by the U.S. Supreme court, but are they morally correct? The particular case the Supreme Court recently heard and ruled upon involved the theft of a golf club from a sporting goods store by a “two-time loser”. This being his third strike under California law, he was sentenced to life in prison.

The Utilitarian approach to answering the moral right of the last example presented might well be that this person should be in prison for the “greater good” for committing a third crime against society. Yet that statement turns a blind eye towards fairness (i.e. does the time fit the crime), and justice. Therefore, the Utilitarian approach

is not the best method to judge the moral correctness of mandatory jail time for drug users and other nonviolent-offenders as it does not consider justice when applied.

Consider the first time offender who steals a golf club or does drugs. The person will most likely be given a light sentence if any at all, sentenced to a short period of probation with a condition that they remain law abiding, and in some cases, the case will be dismissed if those conditions are met (referred to as a stay of adjudication). Yet the three-time offender facing a three-strikes law may be sentenced to life in prison. This violates a basic tenant to American justice and that is equal protections under the law for people accused of similar crimes.

Therefore the Utilitarian approach cannot be used effectively as an argument to decide on the moral issue in these particular issues.

If we apply the Categorical Imperative in answering this question of the moral correctness of incarcerating drug users and other nonviolent offenders, the criteria must meet the following three conditions:

- 1) That the man made law must be universal and consistent;
- 2) It must respect rational beings as ends in themselves, and;
- 3) It must stem from, and respect the autonomy of rational beings.

In terms of law and sentencing derived from those laws that govern crimes such as drug use, there are no universals. Each state in our Union reserves the right to prescribe its own crimes and penalties. As an example, mere possession (absent any intent) of an auto-opening knife (commonly referred to as a switch blade) is a crime in Minnesota, whereas it is perfectly legal to possess one in Idaho. While it can be argued that in terms of citizenship within a state as opposed to U.S. citizenship, the rights and

obligations of an individual are consistent within the state that he or she resides.

Therefore the first part of the Categorical Imperative is met. But can we say that mandatory sentences for drug users treat and respect rational beings as an end in themselves?

The argument against mandatory sentences and incarceration for all but the worst of drug related offenses would be that we are treating people as a means to accomplish lower drug consumption and to reduce drug related crime. We are not treating people as an end in and of themselves when we ignore the individual when society hands out mandatory jail time for a drug related offense.

Yet there is an argument for mandatory sentences in that as rational beings we all have choices, we can live by the rules or break them and suffer the consequences. This philosophy however again is treating people as a means and not as an end as it completely ignores any rationalization towards the moral evaluation of any given law. It simply states, the law is the law, end of discussion.

Keep in mind we are not talking about murder, theft, or other crimes that are universally accepted as meeting Kant's Categorical Imperative as being wrongful acts, and therefore being morally incorrect. But rather we are considering whether incarcerating nearly 620,000 people for drug use is morally correct (Facts About Prisons and Prisoners, 2003).

Hence we would have to conclude that the laws dictating mandatory jail time for drug offenses are unjust and morally defective when faced with these two arguments. This is not a moral judgment on the act of drug use or abuse, but on the laws governing how we treat people who merely use drugs absent any other crime.

Further, we have to ask ourselves as a society, if there is an alternative to mandatory jail time of drug offenders that would meet societies end goal of decreased consumption and an intuitive belief that in a corresponding decrease in drug related crimes? There is. It is called treatment.

Treatment of drug offenders differs greatly from mandatory sentencing in that it does treat people as an end rather than a means. It shows the utmost respect for the individual and seeks to return them as a productive member of society (although that once a stated goal of incarceration, the goal with mandatory sentencing appears to be more towards keeping individuals off the street rather than rehabilitation).

Secondly, we can universalize the rule of treatment. It would most certainly be more beneficial to society to have a productive member working and producing goods and services for the rest of society and personally benefiting from a job, benefits and pay than it would to have someone sit in our jails and prisons for extended periods of time.

Lastly, treatment allows for self-realization that individual actions such as drug abuse can affect all of society in terms of monetary and social costs. This meets the third part of the Categorical Imperative in regards to autonomy. As De George states: "Moral beings give themselves the moral law. As ends in themselves, moral beings are not subservient to anyone else. They each determine the moral law for themselves in accordance to reason" (De George, 1999, pg. 88). Treatment gives them this opportunity.

Treatment would be preferable from both a Utilitarian point of view and from a Kantian point of view in how society deals with drug users. Society would benefit from reduced costs in terms of dollars spent on prisons and incarceration and individuals

would benefit from a state that treats them with respect and dignity in hopes of returning them to society as moral and productive citizens.

Society should do all in can do to return to a more traditional role for the criminal justice system which is to keep predatory criminals off our streets through incarceration. We should not be a society of laws that will criminalize actions that may be immoral, but do not present a clear and present danger to others. This not only frees up law enforcement to pursue more serious crimes, but benefits society by lowering the need for more tax dollars flowing to new prisons and beds for increased inmate populations.

Further this is not an argument for decriminalization of drug possession and use, but rather for evaluating the need to reform the sentences and sanctions given to offenders.

Knowing that 1 in 32 of your friends and neighbors may fall into the current statistics and trends for incarceration, parole and probation should be a wake-up call to everyone for immediate reform of the types of sentences that are handed down for nonviolent and in particular, non-predatory crimes.

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